

Philos 117AC, Fall 2017

Setting the Stage:

Felipe Fernández-Armesto, *Our America: A Hispanic History of the United States*,
Ch. 8, “The Republic of Hesperus, c. 1914–2012,” and pp. 330–34

Main Text:

Wellman, “In Defense of the Right to Exclude”

Basic Thesis: Legitimate states have the right to exclude would-be immigrants.

- “Legitimate” only if “adequately protects the human rights of its constituents and respects the rights of all others.”
- That a state has the *right* to exclude does not depend on whether exclusion would have good or bad *consequences* (which will be empirically debatable).

Argument:

- (1) Legitimate states have a right of self-determination in “self-regarding matters.”
- (2) Self-determination includes freedom of association.
- (3) Freedom of association includes choosing whom *not* to associate with.
 - Of course, this freedom of association must be balanced against other considerations. E.g., Augusta National Golf Club’s exclusion of women has to be balanced against the loss of opportunities for women, symbolic impact of exclusion.—Implies that states may not discriminate against genders, religions, etc. in immigration decisions?
- (4) Therefore, legitimate states have a right not to associate with would-be immigrants.
- (5) Therefore, legitimate states have a right to exclude would-be immigrants.

“just as... a golf club may choose whom... to admit as new members, a group of fellow citizens is entitled to determine whom... to admit into their country” (!?)

Sub-argument for (1):

- May *Sweden* start enforcing speed limits *in Norway* (if this reduces traffic fatalities)? Can Sweden annex Norway (if it doesn’t violate individual rights)? Intuition: No!
- What explains that intuition? A right of political self-determination.

Objection to sub-argument: Why assume that states have the same sort of interest in self-determination, or rights to it, as individuals?

Reply to objection: Violating a state’s self-determination “wrongly fails to give [its citizens] the respect they are owed as a consequence of their collective achievement of maintaining a political institution that adequately protects the human rights of all [its citizens].” By analogy, interfering in how one parent in a couple raises their child seems to disrespect both parents.

Sub-argument for (3): The government can’t force us to marry a particular person!

Objection to sub-argument: Control over whom to marry simply matters more than control over who becomes a citizen of your large and impersonal country. After all, you have to live with,

share a bed and bank account with, etc., your spouse. But you won't ever meet the vast majority of fellow citizens.

Replies to objection:

- Religious and political groups can also be large and impersonal, but still freedom not to associate seems to matter.

Reply to reply: True, but these groups are defined by certain joint aims: e.g., the practice of Roman Catholicism, the protection of the environment. So, it makes sense to exclude individuals who refuse to accept those aims. Is a state like the U.S. defined any similar joint aim (other than, e.g., peace, justice, liberty, prosperity)? Wellman himself says no. For him, the unit with the right of exclusion is simply a political state, not an ethnic group. In any event, if immigrants are willing accept the joint aim, is there still a ground to exclude them?

- Admitting new members has other effects on old members, even if most of them never meet each other. The size of the club changes dues, access, and “wear and tear on the course” (!). And once people join the club, they get a say in what it does. Similarly, in the case of states, immigration can lead to changes in population, culture, economy, and political system.

Replies to reply:

- Such changes happen even without immigration, by the choices of individual citizens (e.g., to have children, to become more conservative, to watch more superhero movies, to twerk, etc.). If that's OK, why isn't immigration OK?
- Is this argument not based on the *consequences* of exclusion?

Objection (which Wellman doesn't consider) *to the transition from (4) to (5):* Does my right *not to associate* with you (e.g., marry you, be your friend, etc.) imply that I may *exclude* you in the sense of literally drawing a line in the sand and pushing you back over it if you try to cross it? Maybe if I *own* the land on the near side of the line.

- But then the right in question isn't freedom of association, but instead a *property* right *in a certain territory*.
- And what's the argument that “we” own this territory, but “they” don't?