

Democracy, Exile, and Revocation

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What first caught my eye when reading Patti Lenard's clear and carefully argued critique of citizenship revocation was a claim at the end of her first paragraph: the power to revoke citizenship, she says, "is incompatible with democracy." That is quite a strong claim, and my thoughts turned immediately to the *fons et origo* of democracy, ancient Greece. Weren't the Greek city-states notorious for the readiness with which they disenfranchised, banished, exiled, even outlawed some among their own citizens? And in the case of Athens especially, wasn't this in part because it *was* a democracy (at least for those who qualified for citizenship), and expulsion from the demos was one of the devices used to protect it?

A little research confirmed this conjecture.¹ City-states, including Athens, exiled their citizens regularly, and on a wide variety of grounds, some having to do with offences committed against fellow citizens, such as unintentional homicide, but others relating to violations of standards expected in public life, such as sacrilegious behavior or failure to perform assigned public duties. In Athens in particular, exile was used as a penalty for attempts to subvert democracy by actions judged to be tyrannical; and in addition, the institution of ostracism provided an opportunity for the citizen body as a whole to expel, for a period of ten years, prominent individuals regarded as divisive or disruptive. As Benjamin Gray sums it up, "in fourth-century Athens and across the late Classical and Hellenistic world, citizen expulsion was commonly deployed and regarded as a legitimate, even necessary, function of civic government."² The Greeks, then, thought that democracy was not only compatible with revoking citizenship but sometimes required it; those whose presence threatened the health of the polis could justifiably be cast out.

**Editor's Note:* This essay is in response to "Democracies and the Power to Revoke Citizenship" by Patti Tamara Lenard, which appeared in the Spring 2016 issue of *Ethics & International Affairs*, vol. 30, no.1.

But that was then, and of course the situation is quite different now. For one thing, exile in Greece was easier to cope with. The city-states had no borders in our sense, and therefore no border guards. They had “territories,” but a territory in the case of a polis meant simply the area of surrounding land needed to sustain it economically. The exiled person could readily move to another city without having to pass through immigration control. Moreover, modern citizenship carries with it a bundle of social and economic as well as political rights, which ancient citizenship did not, so perhaps being deprived of it then was comparatively less of a loss. On the other hand, for many Greeks it appears to have been a very great psychological and emotional loss. Exile was regarded as social death.

Why do we think so differently about revocation today? The arguments that Lenard lays out so well are those that many liberals would surely endorse. They appeal centrally to the rights of the person whose citizenship is at stake. At one level, the Greeks would not have understood these rights because they did not have the concept of a right. At another level, however, they would have been astonished to see so much attention being paid to the individual person and so little to the flourishing of the political community as a whole. One reason for this is that the democrats among them were not inclined to take the survival of democracy for granted. The potential tyrant who might need to be dealt with via expulsion was a real danger. Lenard fully accepts that democracies need to protect themselves against physical threats to their citizens, and to punish those who may threaten, but she assumes that democracy itself is firmly grounded. Perhaps so, but what are we then to say about people who by speech or action, or both, challenge the fundamental principles on which it relies—people, in other words, accurately described as enemies of democracy? Should we simply tolerate them, or is there more to be said? In what follows, I assume that revocation only becomes an issue in the case of those who menace democracy by, as Lenard says, “participating in a foreign state’s military, treason, spying, or committing acts that otherwise threaten the national security of one’s state.” Do we have obligations to such people that rule out canceling their citizenship?

Democracy rests on an implicit contract that requires citizens—in return for the rights, opportunities, and benefits that they receive—to carry out certain obligations, including obeying the law, performing certain acts of public service, and conducting themselves politically in a manner that is respectful of fellow citizens. What if somebody refuses the terms of this contract? Think of the libertine who wants to live simply as he pleases, or the religious devotee who wants to remain

physically inside the society but not belong to it in any other sense—he won't pay taxes, or perform jury service, or vote. Perhaps democracy can tolerate the presence of such people so long as their numbers remain small. But would it be wrong in principle to ask such a person either to sign up to the contract or leave? Hobbes, admittedly no democrat, has as his fifth Law of Nature "Complaisance; that is to say, *That every man strive to accommodate himselfe to the rest,*" and he suggests that the person who makes no attempt to come to terms with his fellows should be likened to the stone whose irregular shape and hardness makes it difficult to build with, and so "is by the builders cast away as unprofitable, and troublesome."³ We have no reason actively to harm such a person, but is it reasonable to exclude him from our society?

One of Lenard's central arguments is that revocation of citizenship is a coercive act (presumably when it is coupled with deportation), and in a democracy coercive policies have to be justified to citizens, who must also be given "the opportunity to refute such justifications where they are believed to be inadequate." But this demand for justification must apply to the citizen body as a whole, not to each citizen taken individually. Otherwise it will be impossible to satisfy. The way this is usually put is that citizens must be offered a justification for coercion that is reasonable for them to accept, but the work that "reasonable" is doing here is to signal that there are likely to be some individuals for whom nothing is going to be acceptable. As Bernard Williams remarks in one of his discussions of the "Basic Legitimation Demand" that liberal states must meet, governments cannot be expected to justify their use of power to everyone, since some of the addressees may be "anarchists, or utterly unreasonable, or bandits, or merely enemies."⁴ So if the power to revoke is going to be exercised against someone who has positioned herself as an opponent of the state—she has declared jihad against its citizens, for instance—then although a liberal state must still treat her in a way that respects her human rights, it cannot be expected to offer her a justification for the revocation that she is likely to accept. Lenard is quite right to say that in a case like this it needs to be shown that revocation is more effective than other ways of dealing with potentially dangerous individuals, such as imprisonment, but wrong to suggest that the justification offered must be directed at the terrorist herself. The idea that coercion must always be justified to the person coerced is simply a mistake: when I forcibly remove my drunken friend's keys from his grasp and bundle him into the back of my car, I have no need to convince him that what I am doing is right.

A different argument against revocation offered by Lenard is that it is discriminatory, because it involves applying a harsher penalty to people for whom revocation is feasible (since they also hold citizenship elsewhere) than to others who might have behaved in a similar way, but who will be rendered stateless by revocation. One response to this is that although revocation of citizenship is certainly different from alternative forms of punishment, such as imprisonment, it is not on that count necessarily worse. Indeed, Lenard admits as much when she points out that people bent on committing acts of violence are unlikely to be deterred by the threat of losing one of their citizenships. We might return here to the Greeks, for whom exile was often regarded as a milder alternative to imprisonment or death. But even supposing that revocation is the more severe option, how much weight should we place on the claim about discrimination? There are two questions potentially in play here: First, are people being treated alike? And second, are people being treated proportionately to what they have done or to the threat that they pose?

Lenard's approach implies that we should first ask what punishment is appropriate for the single-citizenship person who has committed some hostile act, and then we should ask whether adding the threat of revocation discriminates against the person who holds dual nationality and is therefore liable to be expelled. But we could turn this around. We could instead first ask whether the person has acted in a way that justifies removing him from the political community, and then, given an affirmative answer, ask whether this can be done without some breach of fundamental rights. We might then end up treating the single-citizenship person more favorably, but this could be seen as analogous to reducing the prison sentence imposed for causing death by dangerous driving for someone whose special circumstances would make incarceration especially onerous—a parent who would be deprived of contact with young children, for instance. It is not always discrimination (in the invidious sense) to take the situation of the person convicted into account when passing sentence.

Still, it must be said, once revocation of citizenship is permitted, this immediately divides the population into two classes: those who have citizenship for life, regardless, and those who hold it on the condition that they do not behave in ways that threaten the political community. This appears to offend against the principle that citizenship is an equal status: there should be no second-class citizens. In this connection, Lenard rightly points out that it would be objectionable to treat naturalized and birthright citizens differently, but also points out that

“revocation laws can be written so as to subject *all* dual citizens to the risk of revocation.” But now we need to face up to the fact that liberal states do routinely expose their citizens to the risk of losing some of their human rights, for a period, since imprisonment is universally practiced in these states. The citizenship deal does not say that each person gets the whole bundle of rights regardless of how they behave; it assumes that certain rights—to freedom of movement, employment, association, family life, political participation, and so forth—can be severely limited, if not removed altogether, in the case of persons who commit serious crimes. The whole practice of imprisonment may no doubt be challenged for this reason, but this is not the premise from which Lenard’s argument begins.

The convicted felon does of course remain a citizen, albeit with reduced rights for the period of incarceration (and sometimes beyond), whereas the person whose citizenship is revoked loses everything in her present country of residence. But since it is common ground in this debate that no person may be rendered stateless, she must have citizenship rights in some other state. So the key question seems to be whether these rights are adequate to meet reasonable human rights standards. The worry about revocation is not that citizenship in country A is lost, but that the alternative status available to the revokee in country B is inadequate. This is a real concern, and confirms Lenard’s point that if any practice of citizenship revocation is going to be acceptable (which in general she denies), it must have stringent legal safeguards built into it, including inquiry into the likely consequences of forcing the person to move to B. I have no quarrel with many of the cautions Lenard expresses about existing methods of revocation. The issue before us is whether she has shown that revocation is wrong in principle, regardless of the way in which it is carried out.

The strongest argument against revocation, as I see it, is not that it always treats the person whose citizenship is removed unjustly, but that it potentially creates unfairness and/or a collective action problem between states. Lenard puts the point well: “States that choose to revoke citizenship are effectively off-loading responsibility for individuals they have deemed dangerous onto states that are often less able and willing to ensure that they are prevented from committing harm globally.” One problem with jihadists is that any one of them might be intending to commit some horrific act, but it is difficult to tell in advance, so either they have to be subject to costly round-the-clock monitoring or they have to be charged with conspiracy on the basis of what may be rather flimsy evidence (visiting bomb-making sites on the Internet, for example). It should not come as a surprise

that security services are keen to shift the burden of combating terrorism elsewhere. But if they do this in cases of dual nationality, the counterpart state has an obligation under international law to admit the person being deported. This seems like an arbitrary imposition by one state on another.

How should the burden-shifting conflict be resolved? We should start from the premise that states have both an opportunity and a responsibility to form the political identities of all future citizens who are present on their territories for a period of several years or more, regardless of place of birth. They can and should provide citizenship education in schools as well as citizenship classes for newly-arrived immigrants, and enact other policies to encourage social and political integration. For liberal states, this is an opportunity to inculcate democratic values and national loyalty. If they fail in this task, they should be held responsible for dealing with the problems that may arise from political ignorance or alienation. Applying this principle would mean distinguishing between, say, home-grown terrorists and those arriving from elsewhere: only the latter would be liable to have their citizenship revoked for activities of the kind that Lenard lists.

To sum up, I have been challenging the idea that there is some fundamental incompatibility between democracy and the use of expulsion as a device to safeguard it *in extremis*. Just as it is reasonable for a democracy to be somewhat selective in deciding who to admit as new members, so in exceptional cases it can be justified in revoking membership (this is *not* to say that the conditions on entry and exit should be the same). There are good reasons why the use of that device should be much more sparing today than it was in ancient Greece, and Lenard brings these out well. But *rarely* is not the same as *never*, which is the position she wants to defend. For those who set their faces against the implicit contract that, I have suggested, democracy embodies, revocation procedures incorporating strong human rights safeguards may still be justified.

NOTES

¹ I have consulted two excellent works of scholarship: Sara Forsdyke, *Exile, Ostracism, and Democracy: The Politics of Expulsion in Ancient Greece* (Princeton, N.J.: Princeton University Press, 2005) and Benjamin Gray, *Stasis and Stability: Exile, the Polis, and Political Thought, c. 404–146 BC* (New York: Oxford University Press, 2015).

² Gray, *Stasis and Stability*, p. 119.

³ Thomas Hobbes, *Leviathan*, Richard Tuck, ed. (Cambridge: Cambridge University Press, 1991), ch. 15, p. 106.

⁴ Bernard Williams, "Toleration, a Political or Moral Question?" in Bernard Williams, *In the Beginning Was the Deed*, Geoffrey Hawthorn, ed. (Princeton, N.J.: Princeton University Press, 2005), p. 136.