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Comments on “Immigration Policy: Between Demographic Considerations and Preservation of Culture,” by Prof. Na’ama Carmi

1) Why the protection of minority rights?

The paper raises the questions: If the international law protects the rights of persons belonging to minority groups to maintain their culture, what about the rights of majority groups? If it is legitimate for states to take legal measures to help minority groups to maintain and preserve their culture, why is the state not allowed to protect the culture of the majority?

The recognition of minority rights and the special protections afforded to minority groups in international law came about in order to reach and to promote the principle of equality between different groups in a society, to decrease the gaps, and to foster diversity and pluralism. The assumption of the international law is that the majority or the dominant group - as individuals - exercises their culture through the mechanisms of the state bureaucracy and majoritarian decision-making processes.

Historically, diversity was ignored by models of the “normal” citizen, the normal meaning the heterosexual, white male. Anyone who did not fit this model was excluded, marginalized, silenced or assimilated. Thus, non-white groups were often denied entry to Western democracies, or if admitted, were expected to integrate or assimilate. This is why the relevant question is how to protect the rights of the minority.

The modern, liberal, nation state is based on the concept of liberal neutrality, which promotes “color-blindness” to ethnic and cultural belonging. However, in the name of nation building and harmony, these states promote one language and one culture in which the bureaucracy and economy of the state function. With this project of nation building, members of minority groups are faced with a choice as to whether to be marginalized from the major economic, educational and political institutions of the state or to accept the dominant cultural group or to be assimilated or integrated at least in the public sphere.

Liberal scholars argue that the autonomy of individuals is intimately tied to their access to their culture and therefore, in order to reach equality between individuals for fulfilling their choices, their culture must be recognized and equalized. Therefore, the multicultural state recognized more than one culture and tried to promote equal rights between cultures. Recognition of the rights of the minority came about because of the cultural power and dominance of the majority and not the opposite.

2) Is it legitimate for a state to exclude persons/limit immigration on the basis of the “illiberal culture” of his/her group in order to protect the dominant political culture of the state?

Prof. Carmi’s definition of “culture” relates mostly to beliefs of liberal democracy, separation of church and state, universal human rights, individual rights, etc. **This definition belongs to the character of a regime or state rather than a culture of a group.**

Culture is not homogenous in nature. Culture includes its own dynamics and contradictions. Every cultural community exists in the midst of others and is influenced by them, and in the era of globalization, the cultural interaction is very strong. Individuals relate to their culture in several different ways: some cherish its system of meaning and significance, some struggle against its beliefs and structure and adopt different values and beliefs, and some pick up beliefs and practices of many different cultures and create their own way of life. **This is one explanation for why excluding individuals based on cultural or ethnical belonging is illegitimate: it is arbitrary.**

Historical lessons of exclusion also show us that it is illegitimate. Joseph Carens reminds us that exclusionists in the 19th century in the US cited the dangers of immigration from non-liberal societies as grounds for keeping out Catholics and Jews from Europe and all Asians and Africans. Canada and Australia had comparable restrictions on similar grounds.

If we accept the concept of “illiberal culture” as a means for exclusion, one might say that France, which is based on a “secular culture” and civic citizenship, could easily exclude Israelis from immigrating to France. France could argue that the Israelis came from a culture that contradicts secularism – it does not accept the separation between church and state; it does not guarantee full equality for all of its citizens; and it is an ethno-non-liberal state and not a civic state. In addition, most of its adult population has participated directly or indirectly in controlling another people for 40 years - the occupation. Of course, this argument of France would be illegitimate.

Exclusion based on cultural belonging is incompatible with universal human rights values. The Universal Declaration of Human Rights (1948) says that “All **human beings** are born free and equal in dignity and rights”. It also says that **everyone** is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as **race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.** These provisions apply to all states. Of course, states have the power to limit immigration by different means. But it is illegitimate to exclude people based on their cultural belonging or ethnicity. There is no liberal, democratic state in the world today which excludes individual immigrants directly based on their cultural or ethnic belonging.

Excluding persons based on their so-called “illiberal cultures” will also divide the world between East and West. It ignores the moral duties of wealthy countries to help poor countries, from which, the vast majority of immigration originates.

3) Immigration policy and national minority rights

According to Carmi, the duty of the state under international law to respect the rights of a minority group within the state, may lead the state to want to restrict immigration of individuals belonging to this minority in order to protect the culture of the majority and to maintain its dominance, such as in the case of the Jews and Arabs in Israel.

Theories on or principles of multiculturalism, that I mentioned above, especially when it relates to a national minority group (according to Will Kymlicka, “a national minority is a group that formed a complete and functioning society in their historic homeland, prior to being incorporated into a larger state.”) **aim to reach full equality between all the citizens – as individuals and as a group. This equality cannot be divided based on the subject of**

the rights – whether it is internal within the state or whether it relates to the state’s policy of immigration. This principle also de-legitimizes the argument that a state must seek to consistently empower the majority in order to keep its dominance as a majority group because, the assumption of theories or principles of multiculturalism is that the number of persons who belong to a group within the state is not a matter for their enjoyment of full equality.

For example, multi-nation states (e.g., Canada, Switzerland, Belgium or Spain) recognize the national groups languages as official languages and some of them even grant the right of veto in matters that relate to their direct interests in order to minimize the affect on decision-making processes of belonging to one group or another, regardless of whether it is the majority or the minority. Therefore, it is not a legitimate interest of the state to take measures to strengthen the dominance of one group over the other. These measures would violate the principle of equality.

According to Carmi, it is legitimate that the sovereignty of a state will express exclusively the interests of the majority, in some cases, such as immigration. In fact, she made a linkage between the sovereignty of the state and the ethno-belonging of just one group. The argument that exercising this kind of sovereignty won’t contradict equal rights between all citizens within the state is false. If a state gives superiority to the dominant group, even in one field, it will put the minority in a second-class status.

One example to emphasize this point is the family unification case. In this case, citizens who belong to the dominant group can exercise their liberty and the right to choose their spouse without any discrimination. However, citizens who belong to the national minority do not have this right.

In addition, the same argument regarding limitations on immigration in order to preserve the dominance of the majority, could also justify many other means and measures by the state. For example, it could justify encouraging the women of the majority to increase their birth rate and giving them benefits and incentives to do this, such as child allowances. One might say that this demographic scheme is not allowed because it belongs to the relationship between the citizens within the state, who must be treated equally, and that this is different than immigration policy. However, this argument is also false because the reasons for justifying an exclusionary immigration policy are also based on the internal relations between the citizens because it gives internal dominance to one group. This is why an exclusionary immigration policy, based on the national belonging of the existing minority, will continue to constitute the identities internally between the groups where one identity of a group might be defined by negating the identity of the other group.

Israel as an example. The Law of Return grants every Jewish person in the world the right to become a citizen of Israel. A new decision of the Supreme Court regarding conversion to Judaism, gives every **person** in the world the right to become a Jew by being accepted by any Jewish community and then to gain citizenship in Israel. This means that the sovereignty of the state to decide who is a citizen is given to a foreign group outside of its territory. However, regarding the national minority, who are the natives, the new Citizenship Law and the proposed amendment prohibits them - Arab citizens - to have family unification with their Arab spouses or children from the Occupied Territories or other states. In addition, Israel denies the Palestinian refugees to exercise their right to return. An open question for the discussion is whether the new definition of the state as a Jewish state is not just to promote

the Jewish/Hebrew culture, which can be ensured by multicultural principles, but whether it is also to negate the Arab identity from the state. Is the Jewish state today, in the Middle East, the anti-Arab state?