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**THE ETHICS OF IMMIGRATION**  
**Justice in border control**

Supervisor: Prof. Sebastiano Maffettone

Candidate: Elena Marati  
ID number: 072862

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## INTRODUCTION

Migrations are not new to our history and probably will never come to an end. Yet, the migrations occurring in the modern era are characterized by a demographic relevance that previous fluxes did not have. Starting in the XIX century, the entire world has engaged in a demographic revolution, with the populations of advanced economies leaning towards a progressive decline and those of poor countries rising sharply.<sup>1</sup> This has resulted, of course, in large numbers of people travelling from the overcrowded South of the World to the prosperous opportunity-rich North. In 2014, the number of migrants in the world had reached the peak of 240 million and the number has not varied much in the period to follow.<sup>2</sup> Indeed, people leave their country of origin for several reasons, ranging from personal drives (usually family ties or occupational requirements) to the more pressing need to escape an unwelcoming environment. The former are usually more accepted in today's discussions, while the category of the "runaways" is inflaming the current debates on border regimes. Those who flee the perils of war, who get away from natural catastrophes or simply seek a decent standard of life, amount to large numbers and their chosen destination is not always able to accommodate them all.

Since modern states are conceived as entities with sovereign authority over a defined territory, the presence of immigrants on the State's territory is largely at discretion of the State in the present political reality. What is more, in democratic societies, the idea that the authority vested in the State is based on the consent of its members, seems to legitimate the privilege awarded by the State to its nationals. At present, however, the phenomenon of globalization has rendered local issues a global matter. The existence of a universal ethic protecting of human rights, along with a diffused sense of responsibility for ensuring the respect of these rights, has produced a global morality that requires justifications for refusing entry to be well-founded.

In the first chapter of this dissertation, I will bring forward the argument that states, conceived as communities of membership, are entitled to self-determination and have a right to exclude non-members by setting the rules for their immigration policies. However, I will point to the fact that this right of states raises highly problematic moral questions that need to be addressed. In particular, I will hold that states have some responsibilities towards outsiders that they are morally (and up to a certain degree legally) compelled to fulfill. As Wellman and Cole have rightly remarked, the topic of immigration is "theoretically significant because of the way in which it pits

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<sup>1</sup> Allievi and Dalla Zuanna, *Tutto quello che*, 9-11.

<sup>2</sup> Centro Studi e Ricerche IDOS, "Dossier".

the claims of the state as a whole against the individual rights of both citizens and foreigners”.<sup>3</sup>

Hence, in the second chapter I will present the claims of immigrants in demanding access. I will examine the motivations behind their choice to leave and settle somewhere else. Justice compels us to take these motivations in high consideration. In a just world founded on liberal egalitarian principles, resources and opportunities would be fairly distributed, there would be no exploitation, faults would be punished and remedied and commitment would be rewarded. In this world, human dignity would be respected in all places and circumstances and there would not be so many people forced to abandon their home out of need or fear. Unfortunately, reality is very far from this ideal model, as the plight of migrants clearly demonstrates, so that it becomes a utopia to be constantly subjected to compromise. When faced with concrete situations, extreme positions supporting open or closed borders are bound to fail, in favour of middle-ground schemes.

While the first and the second chapter are focused on the theoretical assumptions of arguments opposing and favouring the opening of borders respectively, in the third chapter I will bring the two sides together by addressing the issue of designing just first-admission policies of immigration. Each country that considers itself a “country of immigration” needs to confront the difficult task to find her own. At the time of writing, the Italian Prime Minister Matteo Renzi is trying to find an agreement on the allocation of the immigrants arriving from Africa to the southern coasts of Italy on makeshift boats. At the same time, the presidential campaign in the United States is making big talk on Mexican immigration at the Californian border. Islamic immigration is at the centre of public debates for public security concerns in the face of terrorism, which are also at the heart of refugee flows from Syria and Iraq. Not to mention the diaspora of populations running from the climatic consequences of the ecological crisis. Therefore, the need for well-pondered, efficient, and principled immigration policies seems to be more pressing than ever.

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<sup>3</sup> Wellman and Cole, *Debating Ethics*, 1.

## CHAPTER I

### **Borders: drawing the line of national self-determination**

Immigration involves the crossing of a border, hence the issue cannot be addressed without understanding what is the practical and moral function of borders. Once, Mark Krikorian, Director of the American think-tank named Centre for Immigration Studies (CIS), made a sharp intervention on the issue of border regulation by making appeal to Aristotle. The Greek philosopher considered the polis (city-state in ancient Greece) as the ultimate form of communal gathering after the family and the village. In his view, the very act of gathering in a political community was proper of the human nature.<sup>4</sup> In this chapter I will develop this conception and draw an explanation of the importance of borders in the organization of social communities. I will then show the link between borders and the entity of the nation-state in the elaboration of national identities. Here-hence, the concept of state sovereignty and the willingness to determine the course of the nation. In the last part, I will examine the claims advanced by supporters of the right of states to set the terms of admission to their territory- the so-called right to exclude -, pointing, however, to the existence of some moral limitations in upholding this right.

#### **I.I “A line in the sand”<sup>5</sup>**

The concept of border is theoretically and empirically complex. From the Great Wall of China to the *limes* of the Roman Empire, it has always been conceived as the edge of a territory subject to a peculiar system of order to be secured from the invasions of enemies. This military connotation of borders has shaped international relations throughout the course of history and should not be undervalued: these strips of land have been theaters of wars. However, what is relevant for the present discourse is the theoretical implication of the existence of a border. Generally speaking, borders can be defined as the physical demarcation and symbolic representation of the legitimate control of a community of people over a territory.

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<sup>4</sup> Reason Foundation, “Should America Open Its Borders?”.

<sup>5</sup> *Fig.* to create or declare an artificial boundary and imply that crossing it will cause trouble. *McGraw-Hill Dictionary of American Idioms and Phrasal Verbs*. S.v. "draw a line in the sand." Retrieved June 2 2016 from <http://idioms.thefreedictionary.com/draw+a+line+in+the+sand>

The need for communities to bound their territorial space, to fix a boundary between a geographical habitat - that they feel as their own - and the rest of the world is very ancient. With the exception of nomadic civilizations, one of the most relevant dimensions defining a human community, from tribes to more complex societies, is the need to settle and delimitate the space in which natural resources are exploited for subsistence. For Schmitt, the border is the product of an original appropriation of land that provides the basis for any social organization.<sup>6</sup> In line with this view is the idea that humans are “geographic beings” who base their activities on spatial organization.<sup>7</sup> This attachment of human beings to territory has been effectively conveyed with the term “human territoriality” in the branch of geographical studies and further explicated as “an expression of the basic nature of human beings in organizing their social life”.<sup>8</sup> Therefore the need for a community of preserving its place of settlement and the importance of holding exclusive authority over it.

Some borders have been drawn along natural lines - mountains, rivers, coasts -, others have marked a territorial conquest, and others have tried to accommodate ethnical differences. In their primitive understanding, they represented the point of rupture between human society and the environment. With the rise of the ancient empires they have represented the pride of “civilizations” in the face of “barbarians”, considered as part of the wild environment to be subjugated or ostracized.<sup>9</sup>

These “lines on the ground” assume the double function of unifying and dividing. The very act of setting up a border amounts to an act of creation as it generates a local reality, but at the same time it is an act that introduces a discontinuity. On the one hand, borders create a local reality by assembling individuals into a community under the jurisdiction of a state. On the other hand, they draw a sharp distinction between “insiders” and “outsiders”. In the “national-container context” in which we live, such distinction translates into an exclusive concept of cultural belonging distinguishing nationals from foreigners.<sup>10</sup> The contemporary debates on immigration policy revolve precisely around the relevance to be awarded to the just mentioned distinction. If borders are commonly accepted as the limits of sovereignty of nation-states, the latter should hold the right

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<sup>6</sup> Schmitt, *Nomos of the Earth*, 42.

<sup>7</sup> Diener and Hagen, *Borders*, 4.

<sup>8</sup> Paasi, “Territory”, 110.

<sup>9</sup> Kratochwil, “Of systems, boundaries, and territoriality”, 27-52.

<sup>10</sup> Drake, *Political Sociology*, 98.

to unilaterally decide whether to accept immigrants within their borders and under what conditions. However, the traditional distinctions domestic/international, territorial/nonterritorial, inside/outside are challenged by the forces of globalization<sup>11</sup>. The liberal global setting is eroding borders in all fields, from the economy, to politics, to culture so that relations at the global level are more and more *trans-national* rather than *inter-national*.<sup>12</sup>

The growing acceptance of universal norms and human rights applying to individuals, regardless of their nationality, seems to point to a substitution of nationalist identifications with post-nationalist ones.<sup>13</sup> However, the shaping of new identities across borders does not necessarily imply that national identity should be disregarded, especially given that the shift from a national society to a global society does not seem to have occurred at present. Social interaction at the global level is not a proof of the existence of an overarching social system, which would involve a common set of rules and practices that are hard to detect at the global level.<sup>14</sup>

## **I.II A national sense of belonging**

In its modern conception, the drawing of borders is usually associated to historical moments like the Peace of Westphalia (1648) or the Congress of Vienna (1815), where they have acquired the role of guaranteeing a balance of power in a system of sovereign nation-states. Indeed, the latter were born as “bordered power containers”<sup>15</sup> of national communities. States, according to their most known definition by Weber, are political organizations that legitimately exert the monopoly over the use of force on a population within a well-defined territory<sup>16</sup> as well as a “set of practices”. The traditional assumption is that national borders usually coincide with cultural borders, gathering the elements that differentiate national identities between them: lifestyle, history, traditions, social organization<sup>17</sup>. The term nation-state is in itself an interpretation since it takes as given that nations equate territorial states so that statehood and nationhood are thought to be indisputably interlinked and see their unifying trait in the exclusivity of their border. In fact,

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<sup>11</sup> Held and McGrew, *Globalization*, 20.

<sup>12</sup> Allievi, “De-finire il confine”, 9.

<sup>13</sup> Habermas, *The Postnational Constellation*, 58-113.

<sup>14</sup> Allievi, “De-finire il confine”, 8.

<sup>15</sup> Giddens, *The Nation-State and Violence*, 120.

<sup>16</sup> Weber, *From Max Weber*, 48.

<sup>17</sup> Audinet, *The Human Face*, 95.

this can be easily challenged as many borders where the result of a diplomatic decision rather than the natural outcome of an act of self-determination of a nation.<sup>18</sup> Although the principle of self-determination has been recognized in several international declarations and conventions and is widely accepted as a principle of customary law, it has always coexisted with the idea that the territorial integrity of states should be safeguarded.<sup>19</sup> International practice thus recognizes the sovereignty of states even if states do not always correspond to nations. In practice, territory and nation have come to approximately coincide: as it has been demonstrated in many accounts of social psychology, the inhabitants of a defined territory through time come to perceive a sense of belonging in relation to that territory.<sup>20</sup> The so-called “nation-building process” enacted by states has rendered national identities more and more fitting to existing boundaries, through the school system, the diffusion of symbols, the transmission of a common language and the valorization of a common historical heritage<sup>21</sup>, so that the national culture has become *the* culture peculiar to a specific territory. The leader of the British Conservative Party John Major once made an evocative appeal to the safeguarding of the specificity of the British culture:

Fifty years on from now, Britain will still be the country of long shadows on cricket grounds, warm beer, invincible green suburbs, dog lovers and pools fillers<sup>18</sup> and, as George Orwell said, “Old maids bicycling to holy communion through the morning mist” and, if we get our way, Shakespeare will still be read even in school.<sup>22</sup>

It is exactly through the evocation of distinctive images and familiar settings that nationality renders territory “a space of belonging”.<sup>23</sup> In his critique of Kant, Hegel sustained that humans are embedded in particular historical practices and relationships and that their identity and capacity for moral agency is *bound* to the community they belong to and their role in that community.<sup>24</sup> If

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<sup>18</sup> A well-known example is the Sykes Picot Agreement (1916) between France and United Kingdom for the partition of Southwestern Asia.

<sup>19</sup> For instance, see: UN General Assembly, (1960), Declaration on Colonial Independence: “*Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.*”

<sup>20</sup> Watts, “State/Nation-State”.

<sup>21</sup> Kymlicka, *Contemporary Political Philosophy*, 263.

<sup>22</sup> John Major, former Prime Minister, in a speech to the Conservative Group for Europe, April 22, 1993. The reference to Orwell alludes to a 1941 essay “The Lion and the Unicorn.” <http://www.johnmajor.co.uk/page1086.html>

<sup>23</sup> Hirst, *Space and Power*, 27.

<sup>24</sup> Kymlicka, *Contemporary Political Philosophy*, 209.



extreme, nationalism takes a romantic drive<sup>25</sup>, resulting in a sort of civic religion that deifies the nation<sup>26</sup>, which can go to the detriment of tolerance and respect for individual claims. On a functionalist account, instead, national identity provides the members of a society with a common cultural framework that makes it possible for the state apparatus to function thanks to the perception of a common sense of solidarity<sup>27</sup>, which ensures that each of them takes on his role for the well being of the nation as a whole. On this account, Krikorian makes reference to Aristotle's analysis of the meaning of virtue to explain his view of the national sense of belonging. Aristotle thought that each virtue was associated with two vices, its excess and its deficiency. In the same way, patriotic solidarity is a virtue that becomes a vice when excessive (xenophobia), but also when it is lacking.<sup>28</sup> For liberal democratic states, which base their legitimacy on the consent of their community, the make up of this community is essential for the functioning of their political apparatus. According to David Miller, a state that wants to be legitimate and trace its future path depends on the existence of a shared national identity that may feather away in the face of large waves of immigration.<sup>29</sup> In the modern international arena, the collective identification in "a people" can only take the form of nationhood with the claim to sovereign statehood<sup>30</sup>. Consequently, from a liberal-nationalist perspective, self-determination implies a degree of control over national culture and its evolution and, as a consequence, over its territorial space.<sup>31</sup>

The public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops [...] They may not of course succeed: valued cultural features may be eroded by economic forces and other factors that evade political control. But they may certainly have good reason to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically.<sup>32</sup>

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<sup>25</sup> The term "romantic nationalism" is used by Brian Barry in opposition to "civic nationality": he criticizes the former for its irrational character, an extermination of national identity; he praises the latter as a flexible common identity, that doesn't oppose change. see: Kymlicka and Banting, *Multiculturalism and the Welfare State*, 325.

<sup>26</sup> Fulcher and Scott, *Sociology*, part 3.3.

<sup>27</sup> Miller, *On Nationality and Citizenship*, 31-32 and 108.

<sup>28</sup> Reason Foundation, "Should America Open Its Borders?".

<sup>29</sup> Miller, *On Nationality*, 128-29.

<sup>30</sup> Drake, *Political Sociology*, 60.

<sup>31</sup> Fine, "Ethics of Immigration", 254-268.

<sup>32</sup> Miller, "Immigration: the case for limits", 200.

Does it follow that national communities have a moral right to regulate access to their borders?

### **I.III The right to exclude**

Taking up the principle of self-determination mentioned above, Christopher Heath Wellman gives an interesting justification for the “right to exclude” of states. First of all, he makes a distinction between legitimate and non-legitimate states, concluding that only the former are entitled to self-determination and sovereignty over their own affairs and territory since they protect the basic moral rights of their members and respect those of others. As an example, he makes reference to the contention over the Nuremberg trials and takes the view that Nazi Germany’s autonomy in judging its countrymen could be infringed by the Allied Powers because Germany had disrespected the rights of its nationals and the other states, losing her right to non-interference.<sup>33</sup> Indeed, the sovereignty of a state within the international setting depends upon the recognition of such status by the other states. Apart from specific political considerations, the reputation of a state today is growingly based on its compliance with basic human rights: they are the necessary conditions of any system of social cooperation and their systematic violation cannot be accepted.<sup>34</sup> On the whole, if a state respects basic rights along with the other commonly accepted conditions of statehood, it is considered legitimate and is therefore entitled to self-determination.

It may be argued that immigration is not a purely internal matter for which states can make a claim of non interference. The phenomenon is problematic because it affects the receiving state as much as the state of origin of the immigrants, the individuals involved in the process (i.e. the immigrants and the members of the receiving society) and global equilibria from the point of view of demography and distribution of resources. However, if a state A were to interfere in the border regulations of a legitimate state B, it would run counter to the highly valued principle of equality among states. An imposition of this sort may only come from a supra-national global authority that does not exist at present.

The second step in Wellman’s argument is that self-determination entails freedom of association, namely the capacity to determine the composition of the “self” - i.e. the membership of the state -

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<sup>33</sup> Wellman and Cole, *Debating the Ethics of Immigration*, 16-28.

<sup>34</sup> Freeman, “The Laws of Peoples”.

and this is only possible if the constitutive members can decide whether to accept or not new incomers.<sup>35</sup> Michael Walzer has conveyed this thought as follows:

Admission and exclusion are at the core of communal independence [...] Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.<sup>36</sup>

One may reject the assumption that states can be reduced to associations and argue that justifying the right to exclude with a claim of freedom of association would not take fully into account its territorial character.<sup>37</sup> An answer to this argument is provided by the “associative ownership” theory by Pevnick. It allows to link the associative and territorial characters of the right to exclude by attributing to the people a direct property right to the political institutions they create and maintain and, in virtue of this, an indirect property right to their national territory.<sup>38</sup>

The control of national territory is particularly relevant in the case of liberal democracies since it is a power that has been vested in the state by its citizens through the ballot box. A liberal democratic state is not the result of a voluntary association in the strict sense, but the “social pact” among its citizens is repeatedly signed through elections. Then, political decision-making has to take into account the requests of the citizenry as a matter of accountability. The right to exclude is at the heart of the legitimacy of political representation for the very fact that it includes three consequential rights: the right to exclude from territory, the right to exclude from settlement and the right to exclude from the political community.<sup>39</sup> The “political disconnect” on issues of immigration has been undervalued for a long time: many studies and surveys report a discrepancy between the restrictionist attitude of citizens and the expansive immigration policies of Western states until recently.<sup>40</sup> Such discrepancy is contrary to the very essence of liberal democracy, which invests the state with an obligation to take the vital interests of its own members into account and compels the government to justify its decisions to the the electors. Even well-known supporters of open borders, recognize the fact that liberal democracies have a right to exclude in

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<sup>35</sup> Wellman and Cole, *Debating the Ethics of Immigration*, 41.

<sup>36</sup> Walzer, “The Distribution of Membership”, 174.

<sup>37</sup> Lægaard, “What is the right to exclude immigrants?”, 252.

<sup>38</sup> Pevnick, *Immigration and the Constraints of Justice*, 30-33.

<sup>39</sup> Fine, “Ethics of Immigration”, 255.

<sup>40</sup> Schuck, “The Disconnect between Public Attitudes and Policy Outcomes in Immigration”, 17.

order to determine their political membership (democratic self-determination).<sup>41</sup> In a democracy, the policies adopted by the state should follow, in theory, the lines of the general will of its members so policies affecting the composition of membership itself are of foremost importance. Membership is a “prerogative of the republican sovereign”.<sup>42</sup> To control membership, states must control immigration.<sup>43</sup>

Deontological and consequentialist arguments in favor of a right to exclude are often intermingled. I have mentioned the reasons that may entitle a state to this right *a priori* (self-determination, freedom of association, territorial ownership, democratic rule), but often the decision of whether or not to exclude immigrants includes a more practical cost-benefit calculation. Therefore, exclusion may be justified in the name of the costs that would be born by nationals if access to borders was left uncontrolled. I will briefly examine what are considered to be the main negative consequences of non-exclusion.

The first concern, in line with the argument of self-determination and national identity, is that allowing unrestricted access to one’s own territory will destroy its local culture.<sup>44</sup> Some may argue that ancient cultures have deep roots that cannot be easily eradicated<sup>45</sup>, but the numbers can be relevant. A large influx of immigrants necessarily involves the introduction of different traditions, customs and values into the hosting society. If the number of immigrants is consistent and persistent, their cultural stimuli - negative and positive - will inevitably change the cultural make up of the receiving society.

The second concern is demographical: by renouncing to exclusion a country would accept the risk of being overcrowded and therefore would have to engage into fast building, expanding the size of urban centers by adding up periphery after periphery.

This issue is related to the third concern, which is very powerful in today’s debates, over public security. The provision of security has two dimensions: an internal dimension, which ensures that the inhabitants of a territory comply with the law in their dealings with each other, and an external

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<sup>41</sup> Carens, “Who Should Get in?”, 95-110.

<sup>42</sup> Benhabib, *The Rights of Others*, 65.

<sup>43</sup> Fine, “Ethics of Immigration”, 259.

<sup>44</sup> Miller, “Immigration: the case for limits”, 199.

<sup>45</sup> I discussed this issue with the Pakistani Ambassador in Italy Nadeem Riyaz during an internship at the Embassy. His opinion was that some cultures are so ancient and complex that they will never die, even if they are exposed to large fluxes of migration.

dimension, which aims at protecting the state from threats coming from outside. Internal security would be endangered by the consistent presence of members who come from a different legal system and therefore are accustomed to different social norms: if new incomers are not well accepted, they are ghettoized or join deviant subcultures at the risk of public order. External security is commonly associated to the concept of “homeland security” in a strict sense<sup>46</sup>, which today is the idea that population and territory should be protected by the perils of terrorism. The idea that allowing the crossing of borders favors the installment of terrorist cells is the showpiece of many right-wing politicians in Europe and is frequently recalled by Donald Trump in the ongoing presidential campaign for the US presidency, however it may be argued that the profiling of the immigrants in question is the relevant issue here.<sup>47</sup>

Finally, the fourth concern is about the consequences of immigration on the host country’s economy. It is a highly debated issue since some economists present immigrants as a resource in terms of human capital, while others adopt a Malthusian view<sup>48</sup> and highlight their weigh on the welfare system. On one side, the inclusion of new members is said to enlarge the pool of people with useful ideas that can generate progress<sup>49</sup> or can supply labor in sectors that are not covered by the local population; on the other side, the addition of needy members with low-skills requires more expenses on social assistance or provokes competition between them and the lower-income locals.<sup>50</sup> Once again, costs and benefits are compared in choosing whether to exclude immigrants or not.

On the whole, the reasons just listed seem to be plausible enough to justify the claim to a right of exclusion. Nevertheless, entitling states to a moral right to exclude does not mean that this right is unlimited. The traditional view on immigration policy concedes a large autonomy to the state, as it has been clearly expressed by Sedgwick at the beginning of the past century<sup>51</sup> “a state must obviously have the right to admit aliens on its own terms, imposing any conditions on entrance or

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<sup>46</sup> If considered outside the anti-terrorism logic following 9/11, the concept has a broader meaning. The updated definition of the US Department of Homeland Security’s mission: “With honor and integrity, we will safeguard the American people, our homeland, and our values.” (<https://www.dhs.gov/news/2016/05/11/secretary-johnson-announces-new-dhs-mission-statement>)

<sup>47</sup> Kukathas, “The case for open immigration”, 217-18.

<sup>48</sup> Malthus thought that countries have an almost fixed amount of resources so population growth inevitably leads to poverty. (for further explanation, see: *Poor Economics* by Banerjee and Duflo)

<sup>49</sup> Kapur and McHale, *Give us your best and brightest*, 95-96.

<sup>50</sup> Macedo, “The Moral Dilemma of U.S. Immigration Policy”.

<sup>51</sup> Sidgwick, *The Elements of Politics*, 248.

any tolls on transit, and subjecting them to any legal restrictions or disabilities that it may deem expedient . . . it may legitimately exclude them altogether". The contemporary view accepts the sphere of autonomy of the state in regulating access to its border, but takes into account that it is not unconstrained. Territorial sovereignty and freedom of association must be valued within a broader set of considerations, among which they may lose preeminence<sup>52</sup>. What follows is that the right to exclude is a presumptive right, in the sense that it must be weighted against other contextual and moral concerns.<sup>53</sup> A *legitimate* exercise of the right to exclude will translate into an immigration policy that respects the human rights of the immigrants seeking entrance and it will be *just* so long as it does not discriminate unjustly in denying access.<sup>54</sup>

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<sup>53</sup>Wellman and Cole, *Debating the Ethics of Immigration*, 45.

<sup>54</sup> Miller, "Justice in Immigration", 2.

## CHAPTER II

### The claims of immigrants

Until now, I have advanced the claims of receiving states for refusing entry to their territories. The backbone of their argument is that the modern conception of nation-state entitles them to sovereignty over their territory and internal matters. Nevertheless, many contest the validity of the state-centric arrangement of modernity in the contemporary global setting. The forces of globalization have radically modified the international relations of the past. The scope of interdependence among states has increased exponentially in all fields and individuals have acquired a growing role in global affairs. Some academics sustain that there has been a shift from a state-centric to a multi-centric world, others that state sovereignty is fading away in the face of transnational ties between private individuals, groups, and organizations<sup>55</sup>. In this “cob-web model”<sup>56</sup> of multiple and overlapping connections across borders, justice is no longer limited to the internal dealings of states but has acquired a global dimension that compels states to award equal consideration to other states but also to humans worldwide in virtue of their human nature.<sup>57</sup> This type of justice would be empty if did not imply a responsibility on the part of states towards outsiders. The extent of this responsibility is highly debated and it is at the core of quarrels over immigration since it raises the moral concerns that render the right to exclude presumptive rather than absolute.

In the following sections I will address the views of supporters of open borders - i.e. free movement across borders. I will first critically examine the arguments in favor of a right to immigrate. I will then consider the three dimensions of global justice that ground the claims of immigrants: the requirements of distributive justice, the obligations of remedial justice that entitle immigrants to claims towards specific states, and the international responsibility to protect human rights. All the arguments are morally powerful, but the last case (protection of human rights) will be identified as the only one compelling in absolute terms and therefore able to overcome the right to exclude of states in all circumstances.

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<sup>55</sup> Rosenau, *The study of Global Interdependence. Essays on the Transnationalization of World Affairs*.

<sup>56</sup> Burton, *World Society*, 36-45.

<sup>57</sup> Miller, *Strangers in our midst*, p. 23

## II.I Is there a right to immigrate?

The existence of a right to immigrate is the premise of many works of proponents of open borders.<sup>58</sup> Even though each one adopts his own interpretation, the support of this position revolves around four major arguments. Often authors use more than one of them to back up their views, but in this section they will be presented separately in order to summarize more clearly their content.

The first argument addresses the right to immigrate as being a right to uphold in itself. As other rights, it is thought to ensure the fulfillment of basic human needs. Freiman and Hidalgo among others, include it in the list of freedoms that liberal thought jealously protects.<sup>59</sup> A similar approach is adopted by Oberman, who makes a comparison between the right to immigrate and other rights, showing that they are all necessary to satisfy significant interests of human beings.<sup>60</sup> However, immigration in order to be considered a right must be strictly related to an aspect of human life, while the reasons for which someone decides to leave his country vary from necessity to preference in a wide range of possible explanations and usually migration is not the only way to fulfill these human needs in general. Moreover, as Miller rightly highlights, rights are supposed to be feasible in their application and compatible among them, while a right to immigrate would be very hard to uphold in practice and would conflict with other fundamental rights, for example the already mentioned right to national self-determination.<sup>61</sup>

The second argument endorses the so-called cantilever strategy that presents the right to immigrate as an extension of the right to free movement, its transposition from the domestic to the international realm. Since freedom of movement is recognized as a human right, as codified in the Universal Declaration of Human Rights<sup>62</sup>, then why should it lose validity when it involves the crossing of a border?<sup>63</sup> Since it is required by states to respect and guarantee their citizens' freedom to move from one city to another within the country, one may wonder how can the same

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<sup>58</sup> see: Carens, Dummett, Kukathas, Cole.

<sup>59</sup> Freiman and Hidalgo, "Liberalism or Immigration Restrictions, But Not Both."

<sup>60</sup> Oberman, "Immigration as a Human right", 4-5.

<sup>61</sup> Miller. "Is there a right to immigrate?"

<sup>62</sup> UDHR 1948, Art. 13, part 1: "*Everyone has the right to freedom of movement and residence within the borders of each State...*"

<sup>63</sup> Carens, "Migration and Morality", cited in Bader, "The Ethics of Immigration", 332.



freedom be denied in moving from a country to another.<sup>64</sup> Blake gives an exhaustive answer to this perplexities in highlighting the role played by liberal freedoms in the relationship between the state and its citizens: they are part of a pact that limits the state by awarding special guarantees to those who subject them to its authority; the same relationship does not hold in respect to members of other states.<sup>65</sup>

The third argument sees the right to immigrate as the necessary completion of the right to emigrate. The latter is enshrined, once again, in the Declaration of Human Rights as “the right to leave any country, including his own”.<sup>66</sup> Cole denounces this as a manifest moral asymmetry: how can there be a right to emigrate if there is no corresponding right to immigrate?<sup>67</sup> This seems a reasonable objection, nevertheless it does not take into account that a right to immigrate would have different implications from the right to emigrate so that they cannot be conceived in pair. The right to emigrate is necessary to guarantee an exit route to individuals who feel oppressed or cannot lead a decent life in their country and curtailing it would heavily limit their freedom, coercively trapping them within their borders.<sup>68</sup> On the contrary, the right to immigrate would consent individuals to move into another country of their choice and this liberty would be too extensive since it would invade the liberty of the inhabitants of the chosen country by forcing them to accept any kind of incomer and in indefinite numbers.

The last argument considers the right to immigrate to be instrumental for the guarantee of other rights. The appeal to this justification is very common since the importance of certain rights is given for granted, therefore it is easy to claim that if a right of immigration guarantees their fulfillment it must be recognized. Miller points to the vulnerability of this position for it seems to ignore the fact that immigration is not the only way to fulfill such rights.<sup>69</sup> When this is the case, it is an exception and it should be treated as such.

None of the arguments appears to have the strength to qualify immigration as an absolute right not because its importance is denied in an abstract sense, but because its concrete application is controversial. I take Miller’s position on this matter to be the most interesting because it tries to

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<sup>64</sup> Freiman and Hidalgo, “Liberalism or Immigration Restrictions, But Not Both.”.

<sup>65</sup> Blake, “Immigration, Jurisdiction, and Exclusion,” 103-30.

<sup>66</sup> Universal Declaration of Human Rights. 1948, Art. 13, part 2 : “*Everyone has the right to leave any country, including his own, and to return to his country.*”

<sup>67</sup> Wellman and Cole, *Debating the Ethics of Immigration*, 56.

<sup>69</sup> Miller, “Is there a human right to immigrate?”, 13.

reconcile morality with practice. He does recognize that a right to immigration may be desirable in ethical terms but that in practice it must necessarily be based on the consent of the receiving community.<sup>70</sup> As already discussed in the first chapter of this dissertation, this consent can be put under pressure by moral concerns for the individuals applying for entry. Even if the existence of a right to immigrate is discarded, the claims of immigrants have a heavy weight on admission decisions. Let's examine them more in depth in the following sections.

## II.II A fair share

Since a global scheme of redistribution of resources and opportunities is unviable at present due to the lack of international institutions capable of enforcing it, the only feasible solution seems to allow the disadvantaged to seek opportunities in wealthier countries.<sup>71</sup> This is the theoretical backup of the claims of the so-called "economic migrants".

Borders affect the distribution of resources among individuals in two ways: they concentrate opportunities in some countries and they exclude the individuals of other countries from access to those opportunities.<sup>72</sup> The cosmopolitan view is that states have obligations of redistributive justice towards the least well-off of the world. The underlying assumption behind it is the conception of justice propelled by luck egalitarianism - i.e. that life-chances should depend on individual choices rather than uncontrollable circumstances. The implication is that inequalities arising from circumstances that prevent individual empowerment should be remedied. The modern welfare system is based on the recognition that equality implies the guarantee of social and economic rights to the members of society, regardless of their "original position"<sup>73</sup>. In "A Theory of Justice", Rawls outlines two principles that should be applied to achieve fairness in society:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

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<sup>70</sup> Miller, "Is there a human right to immigrate?", 25 ; Miller, "Justice in Immigration", 5.

<sup>71</sup> Cavallero, "An immigration-pressure model", 100-101.

<sup>72</sup> Ibid. 98.

<sup>73</sup> Rawls, *A Theory of Justice*, 136-42.

2. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society.<sup>74</sup>

Analyzing the two principles in depth is not the point of this discourse, but it is worth pointing to their intrinsic purpose: remedying to the “accidents of nature and social circumstance” to pursue the general interest in a society of men<sup>75</sup>. This means remedying to the disparities in living conditions of individuals that deny them equal opportunities of self-realization from the start. States that adopt welfare schemes give importance - more in some cases, less in others - to social needs and accept as a moral requirement that the naturally impaired and the least-well off in society should be provided with social assistance. Cosmopolitans argue that the same reasoning should be applied in consideration of the least well-off outside national borders: why should one’s country of origin be any different from the “original position”? After all, one cannot choose his nationality at birth. Carens is one of the major supporters of the view that “we should adopt a global, not a national, view of the original position”<sup>76</sup>. According to some, if Rawls’s principles of justice and his idea of the original position were not thought to apply worldwide, the core ambition of eliminating “morally arbitrary” differences would lose its true meaning.<sup>77</sup>

However, Rawls himself denied the possibility to transpose his scheme of social justice to the global level.<sup>78</sup> First of all, it is hard to imagine that inequalities can be completely offset by redistributive schemes in a closed context; it is even harder to imagine such an achievement worldwide. In practice, the aim of redistributive justice is to reduce them and, first and foremost, to guarantee a basic allocation to everyone. What is condemned internationally is “real deprivation”<sup>79</sup>: the lack of the necessary material means to lead a human life.<sup>80</sup> International practice assesses poverty on the strength of an established poverty line that sets the minimum income - adjusted for purchasing power in each country - under which basic living standards are not guaranteed, with the idea that development should aim at reducing the number of people

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<sup>74</sup> Ibid. 53.

<sup>75</sup> Nathanson, *Economic Justice*, 102.

<sup>76</sup> Carens, “Aliens and Citizens”, 256.

<sup>77</sup> Woodward, “Commentary: Liberalism and Migration”, 80-1.

<sup>78</sup> Maffettone, *Rawls: An Introduction*, 293-318.

<sup>79</sup> Miller, “Justice and Global Inequality”, 189.

<sup>80</sup> Ibid. 198.

below that line.<sup>81</sup> On a second account, conceding that justice requires more than the bare minimum for people and that the gap in standards of living matters, it should be reminded that individuals live in societies that impose on them civic obligations in regards to their co-citizens and that states have special obligations in regards to their poor. It follows that the moral requirement of guaranteeing a fair share and take care of the worst-off cannot be fulfilled through the same mechanisms at the national and at the global level. The poor of the world are entitled to assistance and foreign aid, but this does not entitle them to the exact same treatment awarded to nationals.<sup>82</sup> More than anything, free immigration is not an effective solution to the problem of global poverty since it would only benefit the few individuals that are able to move<sup>83</sup> and it would have a negative impact on the lower strata of the receiving country.

### **II.III Reparations and rewards**

While the claim to a just redistribution is general, some immigrants claim to be admitted to a specific state with which they have special ties. These can either be the result of long-term historical relations or of a time-limited interaction for contingent purposes. Miller calls them “particularity claimants” and distinguishes their claims in two typologies: claims of desert and claims to reparation.<sup>84</sup>

The case of desert claims is more circumscribed: these are claims of people who have served a country somehow and demand their service to be rewarded. Let’s consider the case of an Iraqi man who translated for the British Army in the Gulf War. Is he morally entitled to a reward and, specifically, is he entitled to a right to immigrate in Britain?<sup>85</sup>

Certainly, our public conscience attributes to justice the role of punishing wrong actions and praising good ones. In the words of Mill:

It is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which

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<sup>81</sup> <http://www.worldbank.org/en/topic/poverty/brief/global-poverty-line-faq>

<sup>82</sup> Macedo, “The Moral Dilemma of U.S. Immigration Policy”, 63-8.

<sup>83</sup> Bader, “The ethics of immigration”, 341.

<sup>84</sup> Miller, “Justice in Immigration”, 11-13.

<sup>85</sup> Miller, “Selecting Immigrants”, 4.

he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind.<sup>86</sup>

Notwithstanding this statement of the common view of justice, Mill himself did not agree with it<sup>87</sup> and even if one accepts a theory of just rewards, it does not follow that the type of reward is at discretion of the recipient. Usually rewards are prearranged: if it is established *ex ante* that the reward of a service will be free access to the country, then the agreement must be complied with. But if the only reason behind the immigrant's claim to entry is desert, without prior agreements or further specifications, then it is not peremptory for a state to admit him since there may be other ways to reward him - e.g. payment and other benefits.<sup>88</sup> The case in which there is an immediate need to immigrate for compelling reasons (civil war, famine, natural disasters, etc.) may strengthen the claim of the immigrant in question, but the ethical dilemma in his situation would be centered on the evaluation of such compelling reasons rather than his past service.

Under the umbrella of the claims to reparation fall those advanced by immigrants that perceive themselves as victims of past injustice on the part of a specific state and therefore believe to be entitled to a compensation. Wilcox points to the effects of economic globalization, which has profited some countries at the expense of others. He supports this claim insisting on the negative impact of some programs of economic integration initiated by the US - NAFTA and BIC - on the Mexican population. Identifying the US as the responsible for the consequences of these exploitative programs, he argues that the country should compensate by opening its borders to Mexicans if aid is not enough.<sup>89</sup> However, the idea that a commonly agreed program between two nations imposes special obligations of reparation in case one party is disadvantaged is highly disputable. Firstly, it would question the authority of the disadvantaged party in signing the agreement at the outset; secondly, it would discourage wealthier countries to engage in free agreements with poorer countries for fear of having to bear obligations towards them in the future. The fact that economic relations decrease the well-being of some countries may raise moral questions on their fairness and call for their reconfiguration, but it does not create the necessity of authorizing immigrant flows to profiting countries.

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<sup>86</sup> Mill, *Utilitarianism*, 65.

<sup>87</sup> Feldman, Fred and Skow, Brad, "Desert", *The Stanford Encyclopedia of Philosophy* (Winter 2015 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2015/entries/desert/>>.

<sup>88</sup> Miller, "Justice in immigration", 12-13.

<sup>89</sup> Wilcox, "Do duties to outsiders entail open borders?", 123-132.

A more compelling moral question is raised by the claims of people from some countries on their past colonizers, since it is often argued that colonial empires have prevented the development of the populations that they have forcibly placed under their rule. Not only is the imposition of a country on another an act that impairs the self-determination of the latter, but in the case of colonies it is recriminated as an act of exploitation against a collectivity that has effects on its members and therefore can ground individual claims. A leading principle in reparation cases in International Law is restitution as *restitutio ad integrum*, meaning that a reparation should try to recreate the situation that would have taken place in the absence of the “illegal act”.<sup>90</sup> However, the feasibility of recreating the same conditions is doubtful since it involves working on a counterfactual - i.e. on what *would* have occurred.<sup>91</sup> Even if it is ethically and legally compelling to provide some sort of remedy for past injustice, allowing free entrance to immigrants is by no means related to reestablishing a pre-exploitative situation in the country of origin of the immigrant.

#### **II.IV The moral minimum**

The most powerful claim to back up immigration is the appeal to strong violations of human rights as a plausible reason to seek shelter. Human rights are a set of rights that provide the conditions for a decent human life, either by protecting from inhuman states of affairs or by imposing the fulfillment of certain needs. Their special character rests on their universality, which means that they not only regulate the relationship between state and citizens, but any kind of relationship that involves human beings. The relationship between states and (potential) immigrants is one of them.<sup>92</sup>

As for the moral relevance of human rights, it is not dependent from the recognition of governments and therefore lies above cultural differences and national claims.<sup>93</sup> These essential rights include, among others, the right to life, safety, and personal freedom, but also protection from inhuman treatment, like torture or slavery.<sup>94</sup> States are overwhelmed by applications for entrance: there are millions of people for whom leaving their country and settling in another state

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<sup>90</sup> The principle has been clearly stated for the first time in the proceedings concerning the Factory of Chorzow: “reparation must, as far as possible, wipe out all consequences of the illegal act and reestablish the situation which would, in all probability have existed if that act had not been committed.” PCIJ, Series A, No. 17, 1928, p. 47.

<sup>91</sup> Miller, “Justice in Immigration”, 18.

<sup>92</sup> Miller, *Border Regimes and Human Rights*, 4-5.

<sup>93</sup> Nickel, *Making Sense of Human Rights*, 11.

<sup>94</sup> Di Pascale, “Italy and Unauthorized Migration, 281-282.

is the only chance to lead a decent life, in some cases to have a life at all.<sup>95</sup> It is undeniable that the receiving state has the moral duty to assess these desperate claims, but not all of them have the same degree of urgency and, moreover, distinguishing them from claims for a better living is not an easy task. Human rights set the limits of tolerability, the “moral minimum”<sup>96</sup>, and providing sanctuary is a matter of avoiding the terrible, rather than fulfilling aspirations.<sup>97</sup> How is this viable in practice? How is it possible to make a distinction among people engaging in deadly trips to arrive to another country’s shore?

The UN Declaration of Human Rights grants to everybody the right of “asylum from persecution”<sup>98</sup> and the 1951 Geneva Convention has clarified this right in giving priority to refugees among immigrants, defined as those who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion are outside the country of their nationality and are unable to or, owing to such fear, unwilling to avail themselves of the protection of that country”.<sup>99</sup> This definition has been criticized for being too restrictive by many philosophers, practitioners and NGOs. In his newly published book, “Strangers in our midst”, Miller draws three categories of immigrants that are considered eligible to refugee status in current debates:

- (1) Those fleeing from (fear of) persecution by the state or towards which the state is compliant, who would fall under the definition of the Geneva Convention;
- (2) Those fleeing natural calamities or threats against which their state cannot provide them with the adequate protection;
- (3) Those whose human rights are under threat but may be helped by migrating or by other interventions.

He then argues that morality would require a definition that englobes the first and the second category, identifying the refugee as someone who can safeguard his human rights *only* by migrating,<sup>100</sup> but going beyond the narrow requirements of the Convention.

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<sup>95</sup> Singer, *Practical Ethics*, 251.

<sup>96</sup> Miller, “Border Regimes and Human Rights”, 10.

<sup>97</sup> Nickel, *Making Sense of Human Rights*, 53.

<sup>98</sup> UN Declaration of Human Rights 1948 art 14: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

<sup>99</sup> 1951 Geneva Convention Relating to the Status of Refugees. The original text is expressed in the singular form. Here the definition has been converted to the plural form for sentence fluency.

<sup>100</sup> Miller, *Strangers in our midst*, 82.

Given that forced migration involves paramount problems from the outset to the end results, to what extent should a state carry this burden?

If a state turned down a refugee, it would not be liable of direct infringement of his human rights but, in consequential terms, it would carry a moral guilt for consenting to their infringement through inaction.<sup>101</sup> A more stringent responsibility for the refugee's plight on the part of a state is its involvement in the internal affairs of his country through activities of lobbying, financing, foreign policy, industrial habits, and so on. It is similar to a case of reparative justice like the ones examined in the previous section of this chapter, but it can be considered under this heading because it involves human rights violations *strictu sensu* and because it consists in a more immediate concatenation of events rather than addressing past injustices. If this is the case and there is no possibility of helping those inhumanly affected by its actions on site (or in a third country), the state seems to be morally compelled to host them.<sup>102</sup> But if a causality linkage of this sort cannot be established, the responsibility of providing sanctuary for refugees falls upon the whole international community, not on a particular state.<sup>103</sup> For the same reason, it is hard to consider open borders as an alternative to humanitarian intervention - i.e. military intervention against a state that commits human rights violations -, as some have argued<sup>104</sup>, since the two actions have a different impact on the country engaging in them and also on the victims of violations themselves. Opening borders has greater impact on the population of the receiving states, for the duration of asylum usually extends beyond a period of time that would reasonably consent refugees to return to their home country and therefore requires a process of long-term integration. In addition, it helps only a small fraction of the oppressed population, those who succeed in fleeing their country. Finally, it does not address the violation itself, trying to heal the pain - i.e. the dispersion of people- without curing the disease - i.e. the reason that caused the dispersion. This does not want to be an argument in favor of armed intervention, but other forms of assistance on site and a stronger mechanism of global enforcement may be more effective in bending the arc of the moral universe towards justice.<sup>105</sup> Conversely, if all alternatives are explored and migration is really the only way of protecting the refugees from being expropriated of their human rights, then the ethical requirement (apart from the present international ruling of asylum) is for a state to give them shelter. Nonetheless, this must be done intelligently and since it

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<sup>101</sup> Miller, "Border Regimes and Human Rights", 10 and 13.

<sup>102</sup> Wellman, "Immigration restrictions in the real world".

<sup>103</sup> Miller, "Justice in Immigration", 5.

<sup>104</sup> See: <http://openborders.info/blog/open-borders-and-liberal-interventionism/>

<sup>105</sup> M. L. King. Keep Moving From This Mountain. Sermon at Temple Israel of Hollywood (25 February 1965)



is a matter of global justice, the burden must be shared among all the states that can offer help. The main challenge for each state is to engage in this humanitarian mission of hospitality without impairing its national unity in terms of identity and well-being. A proper balance must hold between protecting human rights and controlling borders.<sup>106</sup>

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<sup>106</sup> *“The challenge for the state is to strike a proper balance between protecting the rights of all those who are inside or at its borders, and maintaining control of the borders”*. Council of Europe Commissioner for Human Rights, ‘The Human Rights of Irregular Migrants in Europe’, CommDH/IssuePaper(2007)1, 17 December 2007; available at: <<https://www.wcd.coe.int/wcd/ViewDoc.jsp?id=1237553>>.

## CHAPTER III

### Selecting Immigrants

On the strength of their right to exclude, in principle states are free to take in as many or as few immigrants as they choose. However, justice requires the claims of immigrants to be awarded the right care when being assessed since in some cases they may be so strong that they will trump the prerogative of exclusion held by states. This is certainly the case of refugees in the narrow sense established by the Geneva Convention, whose extreme emergency condition imposes a duty of immediate assistance on states. In practice, the challenge in this respect is to allocate refugees in host countries, respecting both their and these countries' needs. Having ascertained their refugee status, states have a moral and legal obligation to take care of this fraction of immigrants. For all the immigrants that fall outside the narrow definition of refugee the moral question is different and implies a different response. Broadly speaking, these cannot expect their claim of access to be inevitably fulfilled and allow more discretion to states in determining their entrance policy. Nevertheless, the process of sorting in admittance still needs to respect moral standards, since some forms of discrimination are permissible, while others are not.

In Miller's view, liberal democracies should design their immigration policy in compliance with four values: weak cosmopolitanism, national self-determination, fairness and social integration.<sup>107</sup> These values are equally relevant but should be assessed in relation to the path that each society chooses for itself.<sup>108</sup> In such a perspective, the concerns for immigrants are inserted in a social democratic picture that gives a great deal of importance to social cohesion and social justice. This implies a trade off between contrasting moral commitments towards individuals and collectivities, towards outsiders and insiders. In practical terms - and even in political theory it is growingly accepted -, it is hard to sustain a position favoring completely open or fully closed border regimes. Instead, solutions in between are those under discussion. There is a widespread acknowledgment that policies must be determined and adjudicated with a realistic approach.<sup>109</sup> Holding on this position, this chapter will enlist the major selective criteria used by states, as well as academic proposals, in order to deal with migration flows.

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<sup>107</sup> Miller, *Strangers in our midst*, 157.

<sup>108</sup> Ibid.160-61.

<sup>109</sup> Carens, "Realistic and Idealistic Approaches to the Ethics of Migration", 156-70.

### III.I Quotas

An immigration model that is adopted by nearly all immigration countries at present is fixing admission quotas. These set a numerical limit to the number of immigrants that the country is willing to welcome. Quotas can be set indiscriminately, deciding a ceiling of acceptable immigration and denying access to all applicants after that number has been reached. However, this kind of policy, though not explicitly discriminating, results in the unfair treatment of the individuals who are denied entrance just because they have attempted it later than others, without any consideration for the motivations behind their departure. Professor Cavallero has proposed an immigration-pressure model with the purpose of meeting the requirements of global distributive justice. Without delving into the algorithms structuring the proposal, it is possible to appreciate it as an ethically optimal revision of the quota system. It would base the immigration quota on an index number that takes into account the receiving country's situation (economy, culture, territory, population, etc.) as well as the background of the sending countries. The resulting index would work so as to achieve a balance in the flow of migrants among countries. The optimum between two countries would be reached when the same proportion of individuals in both countries wants to migrate to the other. The plausibility of this solution depends on the achievement of fairly equal conditions among states, which is morally desirable and is the aim of development aids in poor countries for instance, but which does not seem a concrete alternative for the moment being.<sup>110</sup>

The European Union is an interesting example of an attempt to apply the quota mechanism since quotas have been proposed in order to redistribute the total number of immigrants among the member states to prevent some states to be overwhelmed by a large influx while leaving others almost untouched. This redistribution of immigrants is not focused on dealing with regular applications for entry, but aims at attenuating the impact of refugee flows, as well as the concentration of large numbers of illegal immigrants already present in the Union's territory and claiming asylum, on some states (those that for their geographical position provide an access route to the Union). In ideal terms, establishing quotas by pondering the needs of immigrants and the capacity of each state to host them is a just solution.<sup>111</sup> In practice, when states are not left free to determine them, they perceive them as an infringement of their sovereignty and they stress the point when they do not agree with the quota assigned to them. This may be true, but if each state is assigned a share of the incoming immigration that accommodates its situation and at the same time agrees to take part into sharing the burden according to its real capacities, this solution will be more fair than many others.

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<sup>110</sup> Cavallero, "An immigration-pressure model", 97-127.

<sup>111</sup> Miller, "Selecting Immigrants", 4.

Well-designed quotas recognize the equal status of states relieving the ones that are most affected by immigration flows, preventing poor welcoming states to carry all the burden under insufficient financial assistance by wealthier states and, finally, taking care of the needy immigrants. Arguably, immigrants usually have a preference for a destination country in particular and may claim this to be heard. Nevertheless, if it is accepted that, as discussed in chapter two, there is no full right to immigrate, then the claim of immigrants to choose where to be allocated does not hold. Moreover, I am assuming that states have a right to exclude outsiders and that this right can be superseded only to meet moral requirements towards the needy. It can be presumed that someone who is in desperate need and asks to be sheltered will not complain about the shelter offered to him, provided that it grants a human treatment and conceives proper politics of integration.

### **III.II Ethnic selection and racial discrimination**

The most controversial policies of immigrants' selection are those that are based on ethnicity - i.e. selection by origin. The controversy arises from the blurred line that distinguishes ethnic from racial considerations. Racial discrimination, indeed, is banned under international law, as codified by the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Nevertheless, Article 1 of the Convention sets a derogation as regards its application in cases that concern the citizens/non-citizens distinction and the states' regulation of nationality, citizenship and naturalization:

1(2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

1(3) Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.<sup>112</sup>

Therefore, under the UN system, some forms of racial discrimination are allowed and usually the legitimacy of certain selective criteria is assessed by examining the purpose that they want to achieve. Following this reasoning, it is possible to identify four typologies of racial criteria, in ascending order of legitimacy:

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<sup>112</sup> The International Convention on the Elimination of all Forms of Racial Discrimination (1965)

1. Racial criteria with a racial purpose.

They discriminate on racial grounds in order to maintain the ethnic make up of the state. It is the case of the Chinese Exclusion Act of 1882, which forbade the entrance of Chinese workers in the United States, therefore explicitly excluding a whole ethnic group.

2. Facially-neutral criteria with a racial purpose.

These are criteria that appear to be neutral but have the purpose of discriminating a racial group, for example by excluding a nationality sometimes amounts to excluding a race since the two happen to be deeply interlinked. Denying entrance to Israeli citizens, for instance, basically amounts to denying entrance to Jews since the two identities in most cases coincide.

3. Racial criteria with a non-racial purpose.

Sometimes a racial selection may be enacted in order to pursue national security, as preventing contamination from a country that is affected by a contagious disease.

4. Facially-neutral criteria for non-racial purpose.

Some criteria are absolutely free of a racial connotation and have different goals, as the skills-based selection in the pursuit of economic growth. Nonetheless, they may still result in racial discrimination.<sup>113</sup>

In his book “Selecting by Origin”, Joppke deals with the issue of ethnic immigration policies and sets some guidelines that could be used to evaluate it in its multiple dimensions. A relevant dimension consists in examining the justification behind the choice to select on ethnic terms, as in the classification of selective criteria presented above. In particular, he distinguishes between a selection justified in the interest of the hosting state - in line with arguments favoring ethnic similarity to ease the process of integration in the domestic society - and a selection that protects the interest of the migrants themselves. The second justification is perceived as more legitimate, especially with the spread of multiculturalism and with the growing pluralism of contemporary societies. Indeed, he stresses the importance of considering “discriminatory directions” as another dimension of immigration policies. Discrimination can take a positive direction, - privileging a specific ethnic group -, or a negative direction - discriminating against an ethnic group. It is true that the two are usually specular, since preferring some means excluding others and vice versa, but he argues that positive discrimination is more accepted in contemporary societies.<sup>114</sup> Joppke cites the deliberation of the American Court of Human Rights in a court case concerning the Ley

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<sup>113</sup> Orgad and Ruthizer, “Race, Religion and Nationality in Immigration Selection”, 282-84.

<sup>114</sup> Joppke, *Selecting by Origin*, 22-29.

Organica of 1985 privileging Ibero-Americans and Spaniards to support the thesis that positive discrimination is allowed in some situations. The Court stated that these immigrants would be “more rapidly assimilated within the national community and [would] identify more readily with the traditional beliefs, values and institutions of Costa Rica, which the state has the right and duty to preserve”.<sup>115</sup> In addition, negative discrimination conflicts strongly with the regime of human rights, while positive discrimination is already adopted when addressing issues of reparative justice reserving entrance to the inhabitants of ex colonies. Similarly, under the universal doctrine of affirmative action, ethnic groups that have been denied self-determination can adopt a temporary policy that favors the reconstitution of ethnic communities.<sup>116</sup> A claim of this sort is advanced by Israel to support its Law of Return, which restricts the right to enter and settle in the country to Jewish people and their descendants.

On the whole, ethnic and racial criteria of selection are highly debatable in terms of justice towards the conditions of immigrants worldwide. They may be beneficial in some situations since they favor the integration of the immigrant and consider special links between ethnic groups. But at the same time, they need to be evaluated contextually, more than any other selective criteria. In many cases ethnic considerations hold a second order position in the framework of justice.

### **III.III Skilled-migration**

Some jettisoned countries of immigration with advanced economies adopt a selective scheme that awards entrance based on the skills possessed by the applicant in order to maximize their productivity when admitting immigrants. An emblematic case is that of Canada, whom immigration policy sets education and skills provisions favoring migrants who have work experience, higher education, know English and French and who, in general, meet the job market’s needs.<sup>117</sup> A similar approach is followed by the European Union in granting entrance permits (Blue Cards) to highly-qualified workers of non-European countries.<sup>118</sup> The reasoning that backs up this kind of admission policy is that economic development is at the heart of the well-

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<sup>115</sup> Ibid. 221-222.

<sup>116</sup> Kasher, “Justice and Affirmative Action”, 101-12.

<sup>117</sup> see: <http://www.immigration.ca/en/skilled-worker-immigration-overview.html>

<sup>118</sup> see: [http://ec.europa.eu/immigration/who-does-what/what-does-the-eu-do/coming-to-the-eu\\_en#highlyqual](http://ec.europa.eu/immigration/who-does-what/what-does-the-eu-do/coming-to-the-eu_en#highlyqual)

being and freedom of a country and therefore states act legitimately when pursuing policies that enhance it.<sup>119</sup>

It is clearly profitable for the receiving countries to embrace policies of this sort, since they do not harm the lower strata of their society and create competition only at high income levels, which is bearable and can be disregarded if compared to the overall advancement accrued. This seems to be a selfish resolution that only focuses on onesided gains and therefore a misconduct on a global justice's account. The opponents of skill-selective immigration policies argue that they run counter the fulfillment of humanitarian duties by wealthy countries. On the one hand, it is argued that this system favors those who are already privileged in their country of origin because they have been able to study and train, while it disregards the real poor, who become victims of a double-injustice: the injustice of being denied the opportunities for a decent life-standard in their home society and the injustice of being prevented to seek those opportunities abroad.<sup>120</sup> On the other hand, the brain drain argument points out that incentivizing the emigration of educated professionals with high-skills, host countries deprive the country of origin of the immigrants of human capital and, as a result, harm the rest of its population. While skilled immigration provides human resources that bolster economic growth in the receiving country, it denies those same resources to the sending country.<sup>121</sup> A response to the brain drain position has been offered by Wellman, who points to the fact that skill-based policies of wealthy countries respect the qualified immigrant's choice to leave his country and invest his abilities in another labour market with more opportunities for improvement. It is the immigrant's decision that may be considered immoral, as he renounces to serve his country with his talents. Nevertheless, he also notices that the host country selecting him by acquiescing to such decision, does not seem to be acting righteously. A compromise may be found in the host country's provision of a compensation in economic aid to the sending country.<sup>122</sup> Whether the impact of this decision at the macro-level should count more than the individual freedom of the immigrant in question is a matter that involves broader philosophical considerations.

In opposition to the whole discourse on brain drain, some studies have focused on the gains of poor countries from the emigration of their highly-educated. A benefit that accrues to sending countries is the reception of the remittances that the emigrated workers send home when they start

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<sup>119</sup> MacKay, "Are Skill-Selective Immigrations policies just?" , 126-134.

<sup>120</sup> Ingram, "Immigration and Social Justice", 403-413.

<sup>121</sup> Higgins, "The ethics of immigration and the justice of Immigration Policies".

<sup>122</sup> Wellman and Cole, *Debating the Ethics of Immigration*, 152-53.

earning. For instance, after the enlargement of the European Union and the outflow of skilled workers from Eastern to Western European countries, about 5 percent of the GDP of Bulgaria and Romania hinged upon remittances.<sup>123</sup> Another advantage is the development of linkages that facilitate investments in the sending country thanks to the expansion of networks.

The most desirable outcome is for the talented to enhance their skills while contributing to the host country's progress and then return to their country to bring new knowledge and innovation channeled into development projects. With this perspective in mind, immigration selection favoring certain skills may indirectly favor justice.

### **III.IV Taxing immigration**

One more way of dealing with immigration is addressing its costs directly through the imposition of immigration tariffs, enacting a reformation of the visa allocation scheme. This approach aims at establishing a liberal market for immigration that would autonomously regulate itself, as the market for any commodity: individuals would just pay a fixed entry tax, which would become part of the hosting government's revenue. The idea is to balance the willingness to enter of immigrants and the willingness of locals to defend their welfare. The price of entrance must be set at a level that disincentives illegal immigration (it cannot be too high), but at the same time serves as a means of limiting the influx of people (it cannot be too low). They would become an additional cost in the cost-benefit calculation of immigrants when deciding whether to embark in the process of leaving their country and a marginal benefit for the country accepting them.<sup>124</sup> If tariffs are equally applied to all immigrants, irrespective of their origin, age, income, reasons of the migration, they will meet the liberal assumption of equality among men. An additional advantage advanced by their proponents, is that they would encourage an economically active and truly committed immigration.<sup>125</sup> The opponents of immigration tariffs, instead, hold that they would be discriminatory towards poor migrants (the majority) and that it is unconceivable to adopt a system that fails to take into account the different humanitarian concerns behind their choice to move. For this reason, the imposition of tariffs seems to be a morally empty solution.

A similar proposal is taxing immigrants *after* entrance, imposing on them a heavier fiscal burden compared to the expanses faced by nationals. In terms of justice, such solution would not only reproduce the same problems of tariffs, it would also produce second-class citizens. It would postpone the problem of defining a selective criteria at the time of entrance by spurring social

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<sup>123</sup> Dietz (2009), cited in: Kahanec, "Skilled Labor Flows", 98.

<sup>125</sup> Becker, *The Challenge of Immigration*, Intro.



inequality afterwards. Moreover, it would create further issues through time: would such difference in taxation hold for an unlimited length of time? Would it decrease or be abolished with the naturalization of the immigrant? Would it take into account the level of income of the immigrant before and after entrance? These and other questions need to be answered before deciding to apply this sort of taxation. An attempt is offered by the scheme elaborated by the economist Nathanael Smith, whose purpose is clearly deductible from the name of the scheme itself: DRITI (“*Don’t restrict immigration, tax it*”)<sup>126</sup>, which does not need further explanation.

Systems of regulation like tariffs and surtaxes opt for the use of financial means, avoiding formal discriminatory selection. Nonetheless, they discriminate in substance. It may be true that they would gradually increase the acceptance of immigrants in host countries by rendering them contributors of the well-being of the state and therefore drawing on them as resources in the mind of locals.<sup>127</sup> However, from the point of view of the host country, a major drawback of tariffs would be not knowing whether the immigrant will effectively be a resource for the country or if the cost of inserting him in its social system will be higher than the benefit accruing from his initial one-time contribution for entrance. Likely, a pitfall of surtaxes would be the impossibility of predicting if the income of the immigrant after entrance will be high enough to allow him to pay for his additional contribution. What is more, in ethical terms, the contribution asked needs to be weighed against the motivations behind the request of entrance to be compliant with the requirements of justice. It cannot apply to cases of harsh human rights’ violations since it would tax people who are forced to flee their country and therefore cannot be counted in the demand-and-supply driven market logic. This would limit it to the case of economic migrants, those seeking better opportunities, but even them can be distinguished along a wide range of situations, differing for their initial condition, for the degree of necessity behind their decision to move (whether it is a preference or is it a matter of survival), for the extent of responsibility for their economic situation (whether it hinges upon personal decisions and habits or it depends on the policies adopted by their state of origin and other macro-variables). If the tax is progressive - i.e. based on income - it can be considered more attentive to the immigrant’s original situation, but it does not solve the problem of desperate economic conditions, which is the most impelling and regards the majority of people traveling from Third World countries.

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<sup>126</sup> Smith, “Freedom of migration”..

<sup>127</sup> see: [http://www.chicagobooth.edu/news/2007-04-02\\_Becker-bb.aspx](http://www.chicagobooth.edu/news/2007-04-02_Becker-bb.aspx)

### III.V First-admission policies into perspective

None of the policies covered in this chapter is exempt from criticism. None of them succeeds in achieving the perfect outcome for the receiving state, for the immigrants and for their country of origin at the same time. I have presented examples of qualitative selection on the basis of ethnicity and skills, quantitative selection enacted through quotas, alternative methods of pre-selecting through tariffs or post-entrance differentiation through surtaxes. There is no general golden rule. Whether to embrace one or the other is a matter of attentive evaluation for states, which should consider the characteristics of their own society, along with the goals it wants to achieve for itself.<sup>128</sup> A first evaluation may simply be of a territorial nature, with large countries being more apt to welcoming than small countries, and demographic, giving more incentive to host to declining populations. They may prefer to establish quotas or impose tariffs. Not to mention the impact of the cultural background, with weaker or smaller cultures favoring restrictions in an attempt to preserve their identity. These may be more satisfied with ethnic selection. Conversely, prioritizing the economy makes states more conscious about skills and the consequences of incomers on the labor market.

None of the policies is just in the sense that it provides a remedy for the unfair conditions that pressure people to emigrate. But, charging a state with the responsibility of hosting everyone indifferently would be equally unjust in respect to a long process of state building. Therefore, selecting is just when it tries to achieve a balance between the state's interests and the moral call of global justice. "Alleviating the terrible conditions that make them want to [leave]"<sup>129</sup> is the only final solution and it requires a more elaborate scheme of world-wide collaboration and development of truly effective supranational institutions; it cannot be found in first-admission policies.

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<sup>128</sup> Miller, *Strangers in our midst*, 160-61.

<sup>129</sup> Bader, "The Ethics of Immigration", 353-54.

## CONCLUSION

The purpose of this thesis was to provide a short insight on the moral dilemma surrounding the debate on immigration. Through the words of authors like Miller, Wellman, Carens, Kukhatahas, and many others, I have had the chance to grasp the deeper ethical questions surrounding an issue that today is frequently discussed by media and newspapers, has mobilized political parties and social movements and has gained relevance at the round table of the vertices of global governance institutions. Overcrowded with news about refugee camps, sinking boats, people smuggling, migration pacts among countries and so on, the public opinion runs the risk of being caught into intolerant discourses towards new incomers or to fall for naïfs talks depicting border regulation as a monstrous crime against humanity.

A more attentive and informed analysis of the issue through the lenses of the academic debate over the morality of closing borders shows that both positions are to be condemned. Even Miller and Carens, the major representatives of two opposing camps, find a common ground in the idea that justice in immigration requires a consideration for all the actors involved and a contextual analysis of the pros and cons of any policy. Leaving immigration unlashd, up to the decisions of individual migrants, would be detrimental for everybody, immigrants included. The governments of receiving countries are vested with a remarkable responsibility. I do not agree with the assertion once made by the Times magazine that in reference to the US immigration policy stated that it should be “less emotion and more reason”.<sup>130</sup> I think both play a role in designing policies, at least in liberal democratic states, since policies determine what the country wants to be in the future and therefore need to consider both the voice of the citizenry and the expert opinions in drawing a scheme that safeguards the local culture while opening the door to new contributions, that serves the purposes of the welfare state while maintaining a commitment to humanitarian assistance towards would-be immigrants. Through my readings, I found particularly inspiring Arendt’s reflections on the meaning of membership, of which I cite an extract here:

If there is something we must call a ‘human right’ (in singular form), that would be the right to be a member of a political community, or, the right to have rights. Those who have lost the so-called rights of Man (deprived of the right to life, liberties or the pursuit of happiness, etc.) are not completely rightless. Rather, absolute rightlessness means the loss of that ‘one’ human right; means that one no longer belongs to any community whatsoever.<sup>131</sup>

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<sup>130</sup> see: <http://time.com/4048840/us-immigration-policy/>

<sup>131</sup> Arendt, *The origins of Totalitarianism*, 296.

This passage helped me make sense of the double meaning of membership in a political community, which I found to be a focus point in the discussion on immigration. In recognizing membership as a human right, I think it may be reinterpreted in this context to convey the idea that people care about the community to which they belong and are rightly worried about preserving as well as the desperate condition of those who renounce their membership due to a malfunctioning or lacking political community.

In my view, a just immigration policy can only be just in relative terms until it is carried out by individual states, who are bound by their obligations towards their members and are constrained by their limited capacities and resources. None of the policies proposed at present can be exempted from criticism. Attempts towards strengthening cooperation at the international level and addressing the issue of migrations at the roots rather than keeping on considering it a temporary emergency move in the right direction. Nevertheless, the road ahead is long: while countries like Lebanon, Pakistan, Iran, are crowded with refugees, the spotlight is stuck on Europe, which still does not have an efficient common framework of action; the US are in a moment of stasis after witnessing the consequences of some ill-thought practices and interventions; the UN does not have a system of enforcement that is strong enough in providing the world with a guidance towards fair dealings and development goals are far to be met. Bader is right in saying that “declaring universal basic rights to security and subsistence without adequately allocating the corresponding duties is ‘hypocrisy and fraud’”<sup>132</sup>. An immigration policy based on growing coordination among states seems to be the last opportunity to build a sense of justice in the approach to a phenomenon that calls into question all the constructions of the present reality.

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<sup>132</sup> Bader, “The Ethics of Immigration”, 347.

## BIBLIOGRAPHY

Allievi, Stefano and Gianpiero Dalla Zuanna. *Tutto quello che non vi hanno mai detto sull'immigrazione*. Editori Laterza, 2016.

Allievi, Stefano. "De-finire il con-fine", *Servitium*, n.133 (5-18), 2001.

Arendt, H. *The origins of totalitarianism*. New York: Harcourt Brace Jovanovich, 1976.

Kasher, Asa. "Justice and Affirmative Action: Naturalization and the Law of Return". *Israeli Yearbook of Human Rights* 15, 1985.

Audinet, Jacques. *The Human Face Of Globalization*. Lanham: Rowman & Littlefield Publishers, 2004.

Bader, Veit. "The Ethics of Immigration". *Constellations*. Volume 12, Number 3 (331-361), 2005.

Banerjee, Abhijit V. and Esther Duflo. *Poor Economics*. New York: PublicAffairs, 2011.

Blake, Michael. "Immigration, Jurisdiction, and Exclusion". *Philosophy & Public Affairs*. 41: 103-30, 2014.

Benhabib, S. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press, 2004.

Carens. Joseph H. "Aliens and Citizens: The Case for Open Borders". 49 REV. POL. 251, 1987.

Carens, Joseph H. "Who Should Get In? The Ethics Of Immigration Admissions". *Ethics & International Affairs* 17 (01) (95-110), 2003.

Carens, Joseph H. "Realistic and Idealistic Approaches to the Ethics of Migration," *International Migration Review* 30 (156-70), 1996.

Cavallero, Eric. "An Immigration-Pressure Model Of Global Distributive Justice". *Politics, Philosophy & Economics* 5 (1) (97-127), 2006.

Centro Studi e Ricerche IDOS. Dossier Statistico sull'Immigrazione. 2015.  
[http://www.dossierimmigrazione.it/docnews/file/Scheda%20Dossier%202015\(3\).pdf](http://www.dossierimmigrazione.it/docnews/file/Scheda%20Dossier%202015(3).pdf)

Diener, Alexander C. and Joshua Hagen. *Borders: A Very Short Introduction*. New York: Oxford University Press, 2012.

Di Pascale, Alessia. "Italy and Unauthorized Migration: Between State Sovereignty and Human Rights Obligations". In *Human Rights and Immigration*. Ruth Rubio Marín. Oxford Scholarship Online, 2014.

Drake, Michael S. *Political Sociology for a Globalizing World*. Cambridge, UK: Polity, 2010.

Fine, Sarah. "The Ethics Of Immigration: Self-Determination And The Right To Exclude". *Philosophy Compass* 8 (3) (254-268), 2013.

Freeman, Samuel. "The Laws of Peoples, Social Cooperation, Human Rights, and Distributive Justice", *Social Philosophy and Policy* 23 (29-68), 2006.

Freiman and Hidalgo, "Liberalism or Immigration Restrictions, But Not Both.", *Bleeding Heart Libertarians* (blog). Last editing: May 23, 2016.  
<http://bleedingheartlibertarians.com/2016/05/liberalism-or-immigration-restrictions-but-not-both/>

Fulcher, J. and Scott, J., *Sociology*, Oxford: Oxford University Press, 2011.

Giddens, Anthony. *The Nation-State and Violence*. Oxford: Polity Press, 1985.

Habermas, J. *The Postnational Constellation: Political Essays*. Cambridge, MA: MIT Press, 2001.

Held, David and Anthony G. McGrew. *Globalization/anti-globalization: Beyond the Great Divide*. Cambridge: Polity, 2007.

Hirst, Paul. *Space and power*. Cambridge: Polity, 2005.

Kapur, Devesh and John McHale. *Give Us Your Best and Brightest: The Global Hunt for Talent and Its Impact on the Developing World*. Washington: Center for Global Development, 2005.

Becker, Gary S. and Diane Coyle, "The Challenge of Immigration: A Radical Solution" (April 13, 2011). *Institute of Economic Affairs Monographs Occasional Paper* No. 145. Available at SSRN: <http://ssrn.com/abstract=1846567> or <http://dx.doi.org/10.2139/ssrn.1846567>

Burton, John W. *World Society*. Cambridge: Cambridge University Press, 1972.

Higgins, Peter. "The ethics of immigration and the justice of Immigration Policies". *Public Affairs Quarterly*. Vol 29 N. 2 April 2015.

Ingram, David. "Immigration and Social Justice". *Peace Review* 14:4, 2002.

Joppke, Christian. *Selecting by Origin. Ethnic Migration in the Liberal State*. Cambridge, MA, London: Harvard University Press, 2005.

Kahanec, Martin. "Skilled Labor Flows. Lessons from the European Union". IZA Research Report No. 49. World Bank ASEAN Labor Market Program. Feb 2013.

Kratochwil, Friedrich. "Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System." *World Politics* 39, no. 1 (27-52), 1986.

Kymlicka, Will and Keith G. Banting. *Multiculturalism And The Welfare State*. Oxford: Oxford University Press, 2006.

Kymlicka, Will. *Contemporary Political Philosophy. An Introduction*. (2nd edition) London and New York: Oxford University Press, 2002.

Lægaard, Sune. "What Is The Right To Exclude Immigrants?". *Res Publica* 16 (3): (245-262), 2010.

Macedo, Stephan. "The Moral Dilemma of U.S. Immigration Policy". *Debating Immigration*. Swain, Carol. 63-81. Cambridge: Cambridge University Press, 2007.

MacKay, Douglas. "Are Skill-Selective Immigrations policies just?". *Social Theory & Practice*. Vol. 42 Issue 1, Jan 2016.

Maffettone, Sebastiano. *Rawls: An Introduction*. Cambridge: Polity, 2010.

- Mill, John Stuart. *Utilitarianism*. Oxford: Oxford University Press, 1863.
- Miller, David. "Justice In Immigration". *European Journal Of Political Theory* 0(0) 1–19, 2015.
- Miller, David. "Border Regimes and Human Rights". CSSJ Working Papers Series, SJ02. University of Oxford: September 2012.
- Miller, David. "Immigration: The case of limits". In *Contemporary Debates in Applied Ethics*. 193-206. USA, UK, Australia: Blackwell Publishing, 2005.
- Miller, David. "Is there a human right to immigrate?". *CSSJ Working Papers Series*, SJ033, University of Oxford: April 2015.
- Miller, David. "Selecting Immigrants". *CSSJ Working Papers Series*. University of Oxford: April 2015.
- Miller, David. *Citizenship And National Identity*. Cambridge: Polity Press, 2000.
- Miller, David. *On Nationality*. Oxford: Clarendon Press, 1995.
- Miller, David. *Strangers in Our Midst. The political philosophy of immigration*. Cambridge: Harvard University Press, 2016.
- Nathanson, Stephen. *Economic Justice*. US: Prentice Hall, 1998.
- Nickel, James W. *Making Sense of Human Rights*. Rev. Ed. Washington: Georgetown University Press, 2004.
- Oberman. "Immigration as a Human Right". *Migration in Political Theory: The Ethics of Movement and Membership*, eds. Sarah Fine and Lea Ypi. Oxford: Oxford University Press, 2016. available on Academia: [https://www.academia.edu/2046116/Immigration\\_as\\_a\\_Human\\_Right](https://www.academia.edu/2046116/Immigration_as_a_Human_Right)
- Orgad, Liav and Theodore Ruthizer. "Race, Religion and Nationality in Immigration Selection: 120 Years after the Chinese Exclusion Case". *Constitutional Commentary*. Vol. 26: 237. 282-84, 2010.
- Paasi, Anssi. "Territory". In *A companion to political geography*, 109-122. Oxford: Blackwell Publishing, 2003.
- Pevnick, Ryan. *Immigration and the Constraints of Justice: Between Open Borders and Absolute*



*Sovereignty*. New York: Cambridge UP, 2011.

Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971. Revised ed. in PDF Reason Foundation, “Should America Open Its Borders?”. Reason Presents a Debate on Immigration”. *The Drew Carey Project*. YouTube video, 36:49. Posted by “Reason TV”, May 11, 2014. <https://youtu.be/yUrJkweaw34>

Rosenau, JN. *The study of Global Interdependence. Essays on the Transnationalization of World Affairs*. London: Pinter, 1980.

Schmitt, Carl. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. Translated by G. Ulmen. New York: Telos Press, 2003.

Schuck, Peter H. “The Disconnect between Public Attitudes and Policy Outcomes in Immigration”, *Debating Immigration*. Swain, Carol. 17 – 31. Cambridge: Cambridge University Press, 2007.

Sidgwick, Henry. *The Elements of Politics*, 3e. London: MacMillan, 1908.

Singer, Peter. “Insiders and Outsiders”. In *Practical Ethics*. Cambridge: Cambridge University Press, 1993.

Smith, Nathaneal. “Freedom of migration”. In *Principles of a Free Society*. Ch. 9. Oxford: The Locke Institut, 2010.

UNSC. Geneva Convention on the Status of Refugees. 1951.  
Available at: <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

UNGA. *International Convention on the Elimination of All Forms of Discrimination*. 1965.  
Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

UNGA. *Universal Declaration of Human Rights*. 1948.  
available at: <http://www.un.org/en/universal-declaration-human-rights/index.html>

Walzer, Michael. “The Distribution of Membership.” In, *Global Justice: Seminal Essays*. Pogge, Thomas and Moellendorf, Darrel, eds., St. Paul, MN: Paragon House, 145-177, 2008.

Watts, Arthur. “State/Nation-State”. In *Enciclopedia Princetoniensis*. Accessed: 11.05.16 11:33.

<https://pesd.princeton.edu/?q=node/269>

Weber, Max, Hans Gerth, and C. Wright Mills. *From Max Weber*. New York: Oxford University Press, 1946.

Wellman, Christopher Heath and Phillip Cole. *Debating the Ethics of Immigration: Is There a Right to Exclude?*. Oxford University Press, 2011.

Wellman, Christopher Heath. "Immigration Restrictions In The Real World". *Philos Stud* 169 (1) 119-122, 2012.

Wilcox, Shelley. "Do duties to outsiders entail open borders? A reply to Wellman". In *Philosophical Studies. An International Journal for Philosophy in the Analytic Tradition*. ISSN 0031-8116 Volume 169 Number 1. *Philos Stud*, 2014. 169:123-132. Published online: 25 March 2012. DOI 10.1007/s11098-012-9902-y

Woodward, "Commentary: Liberalism and Migration", in *Free Movement: Ethical Issues in the transnational migration of people and of money*. Brian Barry & Robert E. Goodin eds., 1992.

## UN APPROCCIO ETICO ALL'IMMIGRAZIONE

Il fenomeno dei flussi migratori ha interessato l'uomo sin da tempi antichissimi. Ciò nonostante, continua a presentarsi come una problematica per gli stati che si trovano al capo ricevente dello spostamento. I dati dell'IDOS relativi al 2014 indicano un flusso migratorio internazionale pari a 240 milioni e stime più recenti non sembrano discostarsi di molto da cifre di tale portata. Seppure l'ospitalità sia un valore in molte culture, quando gli stranieri al confine raggiungono numeri elevati e costanti, è necessario fare i conti con una serie di problematiche di natura pratica e morale. Perfino il Mediterraneo, la culla dell'Antica Grecia, nota come la genitrice della filosofia dell'accoglienza, è pienamente coinvolto in questa crisi migratoria. I *media* non parlano d'altro e l'argomento è degenerato in uno scontro nell'opinione pubblica tra posizioni xenofobe ed ingenuo perbenismo. Mossa dal desiderio di avere un'opinione più fondata in merito, ho deciso di informarmi più approfonditamente e ho rilevato una situazione molto più complessa di quella che veniva presentata, prima di tutto sul piano etico. In questa tesi ho voluto sollevare le domande che io stessa mi sono posta. Per cominciare, mi sono chiesta se fosse giusto per uno stato porre dei limiti d'accesso ai suoi confini. In secondo luogo, se questo controllo del territorio potesse essere illimitato o dovesse essere soppesato rispetto a più ampie considerazioni morali e alle esigenze dei migranti. Infine, mi sono domandata se tra i criteri di selezione adottati da diversi stati ad oggi davanti all'impossibilità di accogliere chiunque, fosse possibile identificarne uno più prossimo ai nostri canoni di giustizia.

Il primo capitolo di questa tesi esamina il concetto di confine e il ruolo che quest'ultimo ha acquisito nell'era moderna nel corso della formazione degli stati nazionali. Tra le diverse interpretazioni del significato attribuito alla delimitazione del territorio, emerge la controversa tematica dell'identificazione tra stato e nazione, che è all'origine della volontà di preservare l'identità nazionale attraverso la salvaguardia del territorio. La fonte d'ispirazione per questo pensiero, come di tanti altre riflessioni nel corso di questo lavoro, è il filosofo contemporaneo David Miller. Egli, come la maggior parte dei sostenitori della necessità di limitare l'accesso ai confini, sostiene che i principi liberali di libertà e uguaglianza possano esistere solo all'interno di una comunità i cui membri percepiscano un senso di appartenenza alla stessa realtà culturale e si identifichino in un destino comune. Per tale ragione, la nazionalità risulta un privilegio rispetto al resto della popolazione globale, soprattutto nel caso delle democrazie liberali, che basano il loro funzionamento sul consenso della popolazione e attribuiscono all'entità statale un ruolo di salvaguardia del benessere degli individui che vivono all'interno dei suoi confini. Inoltre, a

seguito dei soprusi perpetuati durante la seconda guerra mondiale e dello sfruttamento coloniale perpetuato fino alla seconda metà del novecento, il sistema internazionale ha riconosciuto l'importanza dell'auto-determinazione dei popoli, a sostegno dell'idea che un popolo abbia il diritto di stabilire autonomamente il proprio corso. Poiché la grande maggioranza dei popoli presenti nel mondo ha carattere sedentario, regolare l'accesso al proprio territorio si traduce in un atto di auto-determinazione. In quest'ottica il confine diventa la manifestazione effettiva tanto del raggruppamento in una società di valori condivisi quanto della distinzione tra chi ne è parte e chi non ne è estraneo. Ne consegue il diritto di negare l'ingresso, il diritto di escludere chi non è già membro. Inoltre, l'esclusione solitamente è giustificata da preoccupazioni che riguardano gli effetti del protrarsi di ingenti ondate di immigrazione: sull'economia del paese, sul mercato del lavoro, sulla pubblica sicurezza e sulla composizione etnica e culturale della popolazione. Dunque si può concepire la volontà e/o la necessità di uno stato di esercitare un controllo sui propri confini.

Il secondo capitolo si sviluppa in contrapposizione rispetto al primo, ponendo l'accento sui limiti che la giustizia globale impone al diritto di esclusione che gli stati si attribuiscono. In primo luogo, viene presentata la posizione di stampo cosmopolita di chi sostiene l'esistenza di un diritto individuale ad immigrare, in antitesi al diritto collettivo di escludere. I sostenitori della libera circolazione e dell'abbattimento dei confini, come Kukhatas, fanno del diritto ad immigrare un baluardo delle loro teorie. Questo diritto solleva dei dubbi: possiede quelle caratteristiche proprie di un diritto umano che possano supportarne l'invulnerabilità? In ultima analisi, le argomentazioni a favore di una risposta positiva sono soggette a diverse critiche che portano a negare l'esistenza di tale diritto a carattere assoluto. Tuttavia, le circostanze in cui questo viene rivendicato sono disparate e in certi casi possono essere talmente rilevanti da imporre un dovere morale di accogliere. Con l'obiettivo di identificare queste circostanze, vengono presentate tre situazioni tipo: quella dei migranti economici, quella dei migranti che hanno un legame particolare con lo stato a cui chiedono accesso, e quella dei rifugiati. La problematicità della regolamentazione dei flussi non si fonda su casi che riguardano una migrazione temporanea, agiata, ben regolata; al contrario, interessa la migrazione in grandi numeri di persone che scappano dalla povertà, dalla fame, dalle catastrofi naturali, dalle guerre, dall'oppressione. Le rivendicazioni di questo tipo di migranti si appellano a tre tipi di giustizia riconosciuti a livello statale dal pensiero liberale. La prima è la giustizia distributiva, che richiama ad un'equa distribuzione di risorse ed opportunità. La seconda è la giustizia riparativa, che pone rimedio alle azioni del passato e premia il merito. La terza è la giustizia naturale che accorda a tutti gli uomini, senza distinzione, dei diritti inderogabili e ne punisce la violazione. Uno stato che si trovi a confrontare richieste d'ingresso basate su tali

principi di giustizia, che al suo interno esso stesso applica, deve fornire giustificazioni ben fondate per rifiutarle. Nel corso della trattazione di ciascun caso, vengono considerati diversi aspetti, quali l'urgenza della situazione, la responsabilità o meno dell'individuo soggetto ad essa, l'inevitabilità della migrazione per risolvere il problema.

La migrazione dettata da necessità di natura economica, come quella della tratta che collega le coste africane a quelle europee o quella che dal Messico risale verso gli Stati Uniti, può avere un alto carattere di urgenza e nella maggioranza dei casi è dovuta all'inefficienza dei governi degli stati da cui provengono i migranti. Tuttavia, sarebbe più auspicabile una soluzione a lungo termine per queste popolazioni in difficoltà, come un sistema di aiuti più mirato, centri di accoglienza in loco e politiche di sviluppo che ne facciano crescere le economie anziché favorire lo sfruttamento e la corruzione.

Allo stesso modo non si può considerare inevitabile la migrazione direzionata verso alcuni stati in virtù di esperienze passate. L'accesso non è l'unico risarcimento possibile per i danni subiti né per i servizi prestati, dunque può essere negato. Ne è esempio emblematico il privilegio concesso dalla Francia agli abitanti delle sue ex colonie, che ha prodotto nel paese una disparità sociale tale da portare questi "cittadini di seconda classe", gli immigrati della *banlieue*, a un malcontento pericoloso.

L'eccezione universalmente riconosciuta è quella dei migranti a cui è attribuito lo status di rifugiato secondo la definizione della Convenzione di Ginevra del 1951. Infatti, davanti al trattamento inumano, alla persecuzione, alla fuga forzata, i diritti naturali dell'uomo prevalgono su quelli artificiali del cittadino e gli stati non possono che prestarsi al soccorso.

Si conclude che tutti gli immigrati che non rientrano nella definizione di rifugiato non hanno un diritto imprescindibile ad essere accolti e il criterio di selezione all'accesso resta a discrezione dei singoli stati, che, tuttavia, devono attenersi a dei canoni universalmente riconosciuti di moralità: non tutte le forme di discriminazione si possono considerare accettabili.

Partendo dal presupposto che è necessario trovare un terreno comune tra il diritto riconosciuto agli stati di auto-determinare la propria composizione e regolare l'accesso al proprio territorio e le rivendicazioni dei migranti, il terzo capitolo prende in esame alcune delle politiche di accesso adottate da alcuni stati interessati da ingenti flussi migratori. Dall'analisi di queste politiche emerge che sono state pensate per effettuare una scrematura tra gli immigrati di tipo numerico (imponendo delle tariffe d'accesso o stabilendo delle quote), ma anche di tipo qualitativo (effettuando una selezione su base etnica o culturale, oppure privilegiando gli immigrati più qualificati). Ognuna presenta delle contraddizioni dal punto di vista etico. Poiché si deduce che non è possibile, al momento, concepire una politica migratoria che garantisca un esito ottimale per

tutte le parti coinvolte (gli stati riceventi, i migranti e i loro paesi d'origine), ciascuna deve essere sottoposta ad un'attenta valutazione che ne soppesi le implicazioni concrete. In quest'ottica, la giustizia si relativizza, deve essere basata su considerazioni contestuali.

Lo scenario auspicabile per il prossimo futuro è che si superi l'approccio emergenziale al fenomeno migratorio e si stabilisca una politica pronta a gestirlo con sistematicità, incentrata sul coordinamento tra i singoli stati tanto nel distribuire i flussi, attribuendo uguale considerazione a tutte le parti coinvolte e rispettando le esigenze particolari, quanto nell'offrire soluzioni alle macro-variabili e alle problematiche locali che spingono le persone a spostarsi.

Nella realtà in cui ci troviamo a vivere, all'internazionalità si affianca la transnazionalità, le distanze si accorciano e il tempo sembra perdere di linearità. In un contesto di questo tipo non è più possibile pensare di portare avanti politiche che non tengono conto di ciò che avviene nel resto del pianeta, indipendentemente dal fatto che abbia su di noi delle conseguenze dirette o no. Così i problemi che affliggono una realtà locale a lungo-termine arrivano ad influenzare tutti: non è possibile per nessuno stato esimersi dal confrontare l'esodo dei migranti e le sue ragioni. Queste sono le riflessioni che mi portano a ribadire che intervenire e cooperare è la migliore politica di gestione delle migrazioni: la giustizia che non si riesce a trovare nelle politiche di accesso, può essere costruita con le politiche di assistenza che da sempre si sono auspicate ma mai sono state effettivamente realizzate.

Ho voluto concludere il discorso con una citazione di Hannah Arendt che, seppur riferita ad un contesto diverso da quello preso in esame, mi ha aiutato a trovare nell' "appartenenza" il desiderio che coloro che difendono strenuamente i loro confini e coloro che disperatamente tentano di valicarli hanno in comune. Nel primo caso, rappresenta la voglia di salvaguardare un'identità in cui riconoscersi, quella di una comunità politica e culturale che si tramanda da generazioni; nel secondo caso, la ricerca di un rimedio ad un'identità negata dalla cattiva sorte o da uno stato che abbandona o opprime.