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The Human Right of Freedom of Movement: A comparison between the Anglo-Saxon models and the European Union model.

An analysis of the immigration restrictions

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Introduction

The broad issue of immigration has always been a place of discussion among theorists. As the outcome of some of these debates, there are some significant perspectives over this argument developed by different scholars. My thesis aims to examine the challenge of how different philosophical theories answer the questions connected to the concept of the issue of open and closed borders strictly related to the human rights of immigration restrictions and the human right to immigrate. This wide issue includes, as consequence, an internal debate among the theorists on how the immigration restrictions established by states, affect the freedoms of people.

For this reason, I will start by introducing the point of open borders view with the fundamental concept developed by Oberman which supports that freedoms that are present within a state, should be equal even outside borders through the human right of immigrate. What has been emerged analysing all the different perspectives of the philosophical thinkers is a common thread: the different opinions on the immigration restrictions issue. This topic indeed brought scholars to develop different viewpoints on the central role of the rich host countries towards poor ones. On one hand will be discussing the *egalitarian view*, supported by theorists as Oberman and Carens, who criticised the immigration restrictions consider as a limit of freedom. While, on the other side will clarify the *choice view* position of the theorists who defend the latter, as Miller and Wellman who outline the importance for a state to control its borders and assumed that rich states are free to manage migration as an alternative in order to help poor people to the assistance they require to stay in their home states, or to help them for the assistance they require in order to migrate.

Moving forward, I will analyse the counterpart of the closed border point of view of Miller. The fundamental concept developed by the latter and deep analyse mainly focuses on the national self-determination of states to protect their boundaries. Then, will be discussed two main arguments that are in contrast among the open and closed borders supporters: the equality of opportunities developed by Carens and the human right to immigrate based on Oberman's perspective. What will be outlining is how freedom might be restricted by the strong determination of the state to protect their borders. Indeed, in order to understand better the concept of immigration restrictions, I decided to implement it practically in the second part of the thesis which outlined

sovereignty of the states as a fundamental concept in order to be free to decide who should be admitted and who should not.

In the second part I will deeply explore the theme of immigration restriction, already discussed in the first chapter, giving two significant case studies with Canada and Australia in their management of Highly Skilled Workers immigration. The main aim is to underline the positions, on one hand, taken by Carens, who criticised the position of rich states to consider Highly Skilled Workers as “potential economic contribution”. On the other hand, I will also analyse the concept of *merit based system* developed by Shachar that will mostly concentrate the power of the state which can influence the migration flows through this system and also increase the tension between a limiting closing for many and a selected opening for few. The aim to examine Canadian and Australian migration policies that use the “*selecting by merit system*” is to show how these countries play a central role in deciding who to give the permanent resident to highly skilled workers with precise criteria. Eventually, on the base of immigration restriction for some scholars' theories, there is the idea that in some way, countries are allowed to protect their own sovereignty, legitimating them to use several systems as criteria of exclusion, that might be lawful in order to avoid threats to their national security. However, what has been highlight in this second part is how these Anglo-Saxon models based on the merit system are in practice consider by some, efficient because governments can maximize their utility at the economic, social and cultural level through highly skilled migration. While on the ethical perspective, the most significant on a human level, as it will point out: would that be morally permissible in accordance with the human right to immigrate? Would it be morally permissible to consider people not as such but as a mere economic potential for a host country? Thus, through the deep analysis of these models, I will show how states are continuing to prioritize their economic ambitions rather than implement their immigration policies in order to give the possibility to people to have the equality of opportunities supporting the open borders.

In the last chapter, continuing the topic of highly skilled workers, I wanted to go into more detail on how the European Union and its Member States have organised their migration policies in this specific case. I am going to analyse the creation and implementation of the 2012 EU Blue Card instrument and how it has been managed by the European Member States. I chose the European Union because the political and

governmental structure is different from Canada and Australia described above. Hence the interest in comparing these different realities and how, however, in the European Union the creation of the EU Blue Card has not given great results except for Germany, which will be analysed in detail. The main aim of this chapter is to understand why on the one hand, the Anglo-Saxon models are considered successful while in the European Union, after a long process of integration, it is still difficult to find common policies. In this case on migration, there are always disagreements because each national government adopt a different European regulation not allowing to migrants to move more freely between the different Member States.

As might be assume after this deep analysis starting from the broad issue of open and closed borders to the failure of the establishment of the EU Blue Card, the debate on the ethical perspective is still open both of the theoretical levels with scholars and political philosophers and both for the States which have to face and implement different migration policies related to the different time and governmental circumstances. What emerged examining the theory and then the practice in this dissertation is the concept that migrants nowadays, are not consider anymore as people but as economic instrument useful for both Anglo-Saxon and European models to maximize their economic position and to increase their competition in order to find the best and highest skilled workers. Doing so, it will be put in second place the human aspect of people who only want to improve their living conditions and be free to move across borders without being selected only for their skills and experience. Find an equal balance between theory and practice it is always complex but if cooperation in particular between governments to converge into a single migration policy occurs, in the case of European Union and a selection criterion not so drastic for the Anglo-Saxon models for the highly skilled workers would give more people the chance to improve their living conditions and not be deprived of the freedom of movement.

Chapter I

The relation between open and closed borders with Human Right of Freedom of Movement and the Human Right to Immigrate

1.1 The Concept of Freedom of Movement and Right to Immigrate

As Article 13 of the 1948 Universal Declaration of Human Rights states “everyone has the right to freedom of movement and residence within the borders of each state” and “everyone has the right to leave any country, including his own, and to return to his country”.¹ This article outlines the right to internal freedom of movement and the human right to immigrate. On the one hand as Declaration explains, freedom of movement within states permits people to access to a free series of “life options” such as which job they take, which association they join or which religion they choose. This right protects people against the internal application of any type of restrictions on where people live or work as happen in the past and is still happening nowadays in some states. The basic unifying idea of the human rights to internal freedom of movement is the personal interest that has people in order to be free to “access the full range of exciting life options when they make important personal decisions” what Oberman means to life options are those like family, civic association, religion, jobs, issues that give “meaning and purpose.”² Thus, regarding the definition of personal interest Oberman argues that the basic interest in order to live autonomous lives not only necessitate adequate options that individuals may choose and also the possibility to realize their choices, but also requires to be free from coercion: “we have an essential interest in not having others, and in particular states, determine our options when we make basic personal decisions.”³ (Oberman, 2016: 2)

¹ Assembly, United Nations General. “*The Universal Declaration of Human Rights (UDHR)*.” 10 December 1948

² Oberman, Kieran. “Immigration as a Human Right.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

³ Oberman, Kieran. “Immigration as a Human Right.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016. :2

On the other hand, the human right to immigrate, has to be seen as a moral right and due to this right have been elaborated two claims. The former is the “*interest claim*” based on the idea that people have the interest to be free to immigrate. The latter is the “*duty claim*” in which the decision of people to immigrate generates duties on the part of others in order to respect this freedom. Furthermore, Oberman recalls that the human right to immigrate is a “*non-absolute right*”,⁴ means that sometimes it may be restricted in some circumstances in order to playing with moral values. Moreover, it is also a right that people have to enter in foreign states for as long as they like. In such a case, the right does not imply a right to citizenship. Following the assumption of the relation between the human right to internal freedom of movement and the human right to immigrate, there shall be equal support between these two rights until the fact that in the traditional view, people do not have the right to political participation abroad. Indeed, he outlines the idea that there should be an interaction between citizens of different countries through the freedom to talk, to learn from to give contributions to the political process in one’s own country. What happens is, because of closed borders the political activity is limited and as consequence it restricts the free exchange of ideas.⁵ Moreover, another point of analogy that is outlined, occurs in the Article 13.1⁶ that defines that freedom of movement is addressed to foreigners as well as citizens, this means that people have several interests as being free to associate, visit religious institutions and to pursue in love affairs in order to be able to access to the “*life options*” available in foreign states, assuming that this explains why people have a right to immigrate in those states, showing that the human right to internal freedom of movement has the same ground of the human right to immigrate.

From another point of view there are several arguments, regarding the restriction issue, that support the idea that states have the right to exclude foreigners from their boundaries. Two of them are particularly significant for Oberman and are the “*distributive justice*” and “*culture*”.⁷ The former is strictly linked with the idea that

⁴ Oberman, Kieran. “Immigration as a Human Right.” In *Migratiom in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

⁵ Oberman, Kieran. “Immigration as a Human Right.” In *Migratiom in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

⁶ Assembly, United Nations General. “*The Universal Declaration of Human Rights (UDHR)*.” 10 December 1948

⁷ Oberman, Kieran. “*Immigration as a Human Right*.” In *Migratiom in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

exclusion may be justified in order to avoid an increase in distributive injustice that consequently would reduce wages for the poorest citizens. Concerning this argument, some theorists point out that exclusion, as well as restriction, can be legitimate not only for the fact that immigration threatens to bereave poor citizens to the basic needs but also dealing with the distribute equality. Nonetheless, the freedom of movement within a state can weak distributive justice affecting the local welfare with the new applicants but except for extreme cases in which basic needs are threatened and distributive justice cannot justify internal restrictions. The latter argument that Oberman objects to theorist refers to culture. What they claim is that exclusion can be justified on one hand in order to maintain the host's state culture otherwise without any restrictions culture would be changed by immigrants culture on the other hand they also state that exclusion can be justify simply to avoid an important change. On this argument Oberman reclaims the issue that for the human right freedom of internal movement restrictions cannot be justified and that immigrants are entitled to enjoy on that. He suggests also that a way in which a state can manage this issue is to encourage immigrants into the host state culture.

In practice, those who are the real characters involved in this issue are rich states.⁸ They would have reasons to exclude from their territory a large part of the population. Nonetheless, if restrictions were abolished there would be an increase of a number of people ready to immigrate more than rich states that can accommodate. Assuming that human rights are expected to imply duties, if is considered a human right to immigrate why there would no duties from rich states to admit people that want to enter? In the case of the human right to immigrate, the significant background duties are duties to improve policies that reduce the costs of raise immigration restrictions. For example, the creation of great opportunities in poor countries could be an important policy to do and as consequence if poor states achieve structural reforms as fighting against corruption and in the meanwhile rich states cancelled debts, give more foreign aid so, the migration could be reduced and rich states could let their borders open. Rich states

⁸ Oberman, Kieran. *"Immigration, Global Poverty and the Right to Stay ."* *Political Studies Association* , 2011: 253-268.

are free to decide whether to admit poor people as immigrants in their own state or help them in their home state.⁹

1.2 Relationship between open borders and the Human Right to Immigrate

“Citizenship in Western democracies is the modern equivalent of feudal class privilege. To be born a citizen of a rich state in Europe or North America is like being born into the nobility. To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Age. Like feudal birth right privileges, contemporary social arrangements not only grant great advantages by legally restrict mobility [...] Like feudal practices, these contemporary social arrangements are hard to justify if one thinks about them closely.”¹⁰

The similarity made by Carens with feudalism is used to give a pause about the conventional view that immigration restrictions are justified by democratic states. Indeed, these liberal democratic states could only legitimize a migration system based on open borders. Supposing there is no natural social order and institutions and practices that govern human beings are ones that these latter have created, thus all human beings have equal moral value and open borders can express equality. That is why if are not adopt open borders in Carens’ view liberal democratic states would lose their legitimacy and lose their normative right to rightfulness if they apply immigration regimes that exclude immigrants.

Nevertheless, this does not mean that there should not establish legal distinctions between different group of people, but this means that is necessary to ask for principles and reasons that take into consideration everyone’s interests. Indeed, in relation to this presumption, there are three assumptions that support the idea of open borders. The first reason is connected to the state control over immigration limits of freedom of movement. If the right to go where everyone wants is a human freedom, the freedom of movement is also a requirement for other freedoms. So, freedom of movement contributes to individual autonomy and liberty in which migration systems should

⁹ Oberman, Kieran. “Immigration, Global Poverty and the Right to Stay.” *Political Studies Association*, 2011: 253-268.

¹⁰ Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013. : 226

reflect the fundamental importance that all individuals should have the possibility to move and relocate to find what they are looking for. Nonetheless, freedom of movement cannot be uncontrolled, but on the other hand, restrictions on freedom of movement demand some moral justifications; that is why the restriction on freedom is in the interest of whom are subject to it.

Justifications must take in consideration the interest of people excluded as well for who is inside. There are restrictions that encounter standard of justifications but give to states the right to exercise control over immigration does not.

The second reason is based on the idea that freedom of movement is fundamental for equality of opportunity so, that is why borders should be open.¹¹ Indeed, this concept is strictly connected to the perspective that all human beings have the same equal moral value and that there are no natural hierarchies of birth that might advantage some people instead of others. Thus, following the analogy of feudalism explain before, it is possible to assume that in this modern world, has been created a social order in which there is a duty to equality of opportunity for people within democratic states but no possibility to have the equality of opportunity for those who across states. Due to the state's control over immigration it is evident that the opportunities for people are different as it is described in the feudal system, in which the social circumstances of one's birth will define one's opportunities. For those who defend restrictions is to justify the outcome of inequality of opportunities. Last reason is principally focus on that, equal moral value requires duties on the economic, social and political level in order to give a meaning of both equal freedom and equal opportunity. In fact, there are millions of people that are looking for a solution to their situation risking their life. But this would not happen if borders were open and prevail the assumption that all individuals are free and equals.

Concerning the issue of open borders there has been developed two elements, that are equality and freedom. Following the egalitarian view, the main point outlined is the great inequality that occurs between rich states and poor ones and obviously because

¹¹ Carens, Joseph H. "OpenDemocracy." *The case for open borders The discretionary control that states exercise over immigration is unjust. People should normally be free to cross borders and live wherever they choose.* 5 June 2015 . <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/case-for-open-borders/>.

of desperate poverty, people are driven to leave from their poor country. One of the most important priority should be to modify these conditions in order to help poor people to come out from their extreme poverty. Indeed, what is the demand by global distributive justice is to move resources from rich states to poor states and focusing on the change of international economic order instead of open borders. On the one hand, there is no conflict between open borders and global distributive justice that have the necessity to reduce inequalities among states. On the other hand, an important decrease of inequalities between states would change open borders “from a critical but perhaps unrealizable ideal into a feasible arrangement”, this would mean that decreasing inequality would reduce the need to move and remove the fear of open borders developing dislocations.

Those who reject the importance of open borders do not consider two aspects that are on the base principle. Firstly, the issue of open borders contributes to the critique of international inequality because it creates a difficult position to rich states to affirm that they do not have responsibility for the continued existence of inequality in poor countries. In the second instance, in a condition of international inequality, freedom of movement became an important moral aim because of its contribution to equality of opportunity, away from its effects on the overall level of inequality.¹² The ongoing division between rich and poor countries continues because rich states feel allow to limit the entry of people from poor states and this behaviour shows the modern state system.

1.2.1 Consider freedom of internal movement equal to human right to immigrate

What Carens wonders on this matter is, “if it is so important for people to have the right to move freely within a state, isn’t it equally important for them to have the right to move across the borders?”¹³ By assuming this, the existing human right of free movement is recognized in the important international documents it should be

¹² Carens, Joseph H. “OpenDemocracy.” *The case for open borders The discretionary control that states exercise over immigration is unjust. People should normally be free to cross borders and live wherever they choose.* 5 June 2015 . <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/case-for-open-borders/>.

¹³ Carens, Joseph H. *The Ethics of Immigration.* Oxford , 2013 .: 239

acceptable to extend the free movement across borders, because the reasons why people want to move from one place to another will be apply in both cases. This does not mean that these reasons for moving represent the vital interests that domestic freedom of movement is important enough to be recognize as a human right. Indeed, the main aim is to change the duty of why freedom of movement within a state should be as consequence a human right for people that want to oppose the idea of dealing with freedom of movement across borders as a human right. ¹⁴

The first challenge is that freedom of movement within state works for a nation-building function, useful for citizens in order to encourage a sense of common national identity and in this circumstance, it has no analogy with freedom of movement across borders. So, the objection arose is that it provides no normative justification to establish freedom of movement within a state as a human right. Sometimes, the internal freedom of movement may not be favourable from the view of political elites, in fact there could happen that a state may want to avoid an excessive pace urbanization or promote social programs.

Nevertheless, domestic freedom of movement has been established as a basic human right that all states must respect, even if they have interests against it. The second challenge deals with the similarity among internal freedom of movement and free movement across borders that attempts to demonstrate that internal freedom of movement is linked to citizenship while freedom of movement across borders is not. In light of this, consider this argument is not easy to describe why the right of internal freedom of movement should be a membership-specific human right rather than a general human right. Dealing with this latter right, what can be deduced is that also in the Article 13 UDHR¹⁵, previously seen, is not mentioned nothing about membership-specific, otherwise in Article 12 of ICCPR¹⁶ the right is quite scrupulous, indeed it establishes the “lawfully within the territory of a state” implying that even people who are only in a state on a temporary basis as visitors should be granted the freedom of movement and residence within a state during the time they are present even if the

¹⁴ Carens H. Joseph *The Ethics of Immigration*. Oxford , 2013 .

¹⁵ Assembly, United Nations General. “*The Universal Declaration of Human Rights (UDHR)*.” 10 December 1948

¹⁶ General Assembly, United Nations. “*International Covenant of Civic and Political Rights (ICCPR)*” 16 December 1966

conditions of their admission limit their activities in other ways. Moreover the “lawfully within” seems to mean to elude providing irregular migrants with a legal endorsement in order to move within a state once they enter. The membership-specific human right for citizens is mentioned in both 1948 Declaration and 1966 Convention and specify that the state is authorized to restrict entry for those who are not citizens and as consequence takes in consideration the open border issue. Another challenge to the cantilever argument is linked to the aim of the human right internal freedom of movement is to prevent discrimination against within a state. If the right of freedom of internal movement might provide protection against some forms of discrimination, nonetheless it is too wide a right for that to be its primary goal. Indeed, if the main aim of the right of internal freedom of movement is to prevent forms of discriminations so, there would be more reasons to accept a right to free movement across borders as there would be adopting a right to internal freedom of movement. The final challenge to the cantilever issue is the statement that there is an essential difference among the interest of a person to move within its own state and the interest of a person to move across borders. The first, is considered a vital interest and so valuable to be protected as a human right; the latter instead, is considered something as a question of preference. Indeed, pausing at a first glance this assumption, might be credible, considering that most people tends to develop connections, understand the informal norms and identifying themselves in their own society. Thus, it might be plausible to convey that is more important for people to be able to move freely around their territory rather than to be able to move to some other states.

Considering the differences between states and the consequences of these differences for the lives of human beings. Nevertheless, put in practice this latter assumption, if are considered two states as Fiji, a small and poor island, inhabited by less than a million people and the United States, a huge and rich state inhabited by three hundred and thirty million people. “From which point of view would it make sense to say that every American has a vital interest in being able to move freely within the entire territory of the United States, but that every Fijian only has a vital interest in being able to move freely within the territory of Fiji?”¹⁷ considering this last question, who could be allowed to claim that the Fijian has no vital interest to move freely within its

¹⁷ Carens H. Joseph *The Ethics of Immigration*. Oxford , 2013 .

own state that instead the United States provide? Someone might object that this brings back to the open border issue and global justice, indeed it is linked from the perspective, deal with the moral assertion of individual human beings to human rights that protect their vital interests. Here, the complainant is focus on distinguish between freedom of internal movement and freedom of movement across borders based on the view that the former, defends the vital interests and on the other side there are no vital interests in the latter.

Thus, none of the endeavours to challenge the analogy between the internal freedom of movement and the freedom of movement across borders might resist to a closed examination. So, until freedom of movement within a state is considered as a human right, as consequence freedom of movement across borders should also be considered as a human right.

According to Carens, the issue of open borders consists of two arguments, the first is that open borders will contribute to the decreasing of international economic inequality by eliminating the barriers that prevent people in poor states from coming to rich states in order to improve their situation. The latter is that free movement should be considered as a basic human right due to its fundamental importance as a human liberty. Although several critics argue about these two components of open borders, the main goal of this argument is that there are important and independent reasons to recognize freedom of movement a human right. Thus, it can be assumed that, in a world made up by few rich states and many poor ones, the state's right to exercise a non-compulsory control over immigration have a crucial role in order to maintain the privileges of those who live in rich countries. Indeed, those who live in rich states are also involved in a system of inequality that can maintain only because are establish and decide limits of freedom over poor people.

1.3 Liberal views on migration

According to Bauböck, liberal theorists have formulated two kinds of arguments deal with freedom of movement across international borders.¹⁸ On the one hand,

¹⁸ Bauböck, Rainer. *“Global Justice, Freedom of Movement and Democratic Membership .”* Cambridge University Press , 2009 : 1-31.

immigration is considered as a reparative right that can be affirmed by those who lack sufficient of protection, resources in their countries residence. On the other hand, is considered geography mobility instead as a primary right the restriction of which must be justified. Indeed, these two arguments go in different directions. The first view appears to ask for open borders since there is global injustice in a way that be part of a country determines one's opportunities. In fact, once a country gives to its citizens' basic opportunities, these can no longer claim a right to immigration into another state's territory. Contrary, the second approach seems to use better in an ideal way in which countries have no more reasons to limit entrances because the economic and political disparities between them have been levelled out.

Nevertheless, both views have been criticized by the third group of theorists that defend the basic right to the community to control immigration. They assert that this right is entailed in political self-determination or is necessary to uphold domestic institutions of equal citizenship. Whereas, the first two views sustain a duty of liberal states to open their borders, they dissent from if this duty occurs under non-ideal or ideal circumstances. The third view highlighted the self-determination, the necessity to protect the democratic citizenship and protects the legitimacy of immigration control under both ideal and non-ideal circumstances.¹⁹

Regarding the issue if the open borders could be a solution for the global injustice, there are many, but not all liberals, that support the view that open borders are an idea that countries should fight to achieve in the future, but however accept that in a non-ideal world immigration will have to be controlled. From another point of view, the remedial view seems to take another conclusion. Indeed, closed borders cannot be recognized in this unjust world but would be unproblematic in a better world. In light of this perspective, have been outlined three problems. The former regarded if open borders would be a solution against global injustice. The latter problem deals with the domestic perspective of liberal democracies immigration control should be maintained under conditions of global injustice. If open borders would compromise the conditions of social justice and the last problem deals with is still allow for states to restrict free movement under conditions in which there is not any justification for doing so. Thus,

¹⁹ Bauböck, Rainer. *“Global Justice, Freedom of Movement and Democratic Membership.”* Cambridge University Press, 2009 : 1-31. A detailed study if “Are open borders a remedy for global injustice?”

assuming this, there are objections against the open border issue but, they are based on a controversial empirical hypothesis that is difficult to test. If open borders are suggested as a remedy for global injustice, then they should demonstrate that they would improve the situation by replacing the alternative policies of international distribution always used.

Nonetheless, it also could be affirmed that now, open borders would help to contribute to a just world in which there would no more reason to limit free movement across borders. So, at this point libertarian defenders in a situation in which a state is blocked to any power to close borders then, could be part of the cosmopolitan egalitarians that support social justice across states and, in this case egalitarians will promote a migration policy that offers priority to the globally worst-off.

There is also a strong link between freedom of movement and individual autonomy from the liberal view.

According to this theory individuals should be free concerning their choices of occupation or life, but opportunities to make such choices are not evenly distributed across geographic space. Furthermore, be able to move in places is important for individuals to establish the conditions of their lives. But, if it is considered that individual autonomy is something that has not to be necessary maximized, then people who wish to move elsewhere seem to be driven by ambitions that no longer amount to an equitable claim for rights. In fact, as David Miller suggests “liberal societies in general offer their members sufficient freedom of movement to protect their interests that the human right to free movement is intended to protect.”²⁰(Miller, 2005, p.195; 2007,p. 206). Regarding this assumption, Bauböck argues that the first problem is that it is far from evident that the geographic spaces in which individuals can find basic chances for free movement correspond with liberal states territories. As example could be for citizens of US that might find many opportunities inside their territory whereas citizens of Andorra or Lichtenstein might not. So, the “sufficiency view”²¹ of free movement does not allow good reason why large country and liberal states should maintain the rights of emigration and of free internal movement in liberal societies should be limited for the interest of provide better opportunities for outsiders who live

²⁰ Miller, David "Immigration" in Cohen Andrew | Christopher Wellman, 2005 :195- 206

²¹ Bauböck, Rainer. "Global Justice, Freedom of Movement and Democratic Membership." Cambridge University Press, 2009 : 1-31.

in a worst condition. Nevertheless, the real aim of Bauböck's objection is that from a liberal view, freedom of movement should be combined by both instrumental value *for* autonomy and an intrinsic value *of* autonomy.²²

The right of freedom of movement is not only an instrument for other freedoms but, it must be seen a fundamental aspect of what the meaning is of be free. So, because of the intrinsic value that exists in the right of freedom of movement, liberal states have to justify restrictions not only when they deny the access of opportunities and resources to people but also when people want to move because they wish to get away.

1.3.1 Development of two different perspective among individual and collective interests

Dealing with the free movement argument have been developed two views. On the one hand the political theorists formulate that there is a contrast between individual and collective interests. Indeed, individuals could have strong interests to cross borders, but these could be revoked by collective interests of citizens in receiving societies that might see, for example their domestic welfare weaken.

On the other hand, liberal theorists focused too much on trade-off between individual liberty and collective self-determination and have also often ignored the positive effects of open borders on political system. Regarding this perspective, sending societies could gain from emigrants' strong links of their countries of origin that consequently these links could be favourable to the economic development and democratic consolidation. The second assumption is based on the principal response to the question deals to why liberal hosting countries need to control immigration and the response is that they act in this way to protect their national cultures and welfare regimes.²³

Nevertheless, welfare regimes could be undermined by decision on bordering immigration and some types of universalistic welfare regimes can maintain their borders open without attract many immigrants. Can be considered the case of Sweden,

²²Bauböck, Rainer. "*Global Justice, Freedom of Movement and Democratic Membership*." Cambridge University Press, 2009 : 1-31. :7

²³ Bauböck, Rainer. "*Global Justice, Freedom of Movement and Democratic Membership*." Cambridge University Press, 2009 : 1-31.

that was one of three of European Union members since 2004, to open its market border to citizens from the new European Union members and also was the only one to do so for states like Romania and Bulgaria that became a member of European Union in 2007. This case highlighted the aspect of cultural issue. Several authors emphasize that a policy that exclude immigrants on cultural grounds is unfair for internal cultural minorities that are indicated as equal citizens in the criteria for the new arrivals. It can be supposed that a cultural homogeneous state could become more liberal internally thought culturally diverse immigration, because national cultures that are sustained with closed borders are more close to be less liberal rather than those who have been transformed through agreeable diversity as a result from immigration. Thus, open borders, under certain conditions, could encourage cultural liberalization of democracies without in the same time became weak the welfare regimes of the host countries.

Last assumption is based on the idea that freedom of movement is allowed by peaceful and friendly relations between states so, political theorists consider only what justification liberal states have to individuals that they decided to exclude from their borders. Nonetheless, justification is even allowed to state of which citizens the would-be immigrants are. Indeed, states should have reciprocal duties in order to open their borders for migration from other states when there is no reason to suppose that free entrances could transform a country weak. What it is also emphasized by Bauböck are the combination of right to exit, right of entry and a right to stay that all together constitute freedom of movement. Freedom to leave is considered a more fundamental right instead of freedom to enter. The reason why Bauböck argues this view is that in a world in which there are several destinations for migration, if occurs a prohibition of exit from the polity in which a person lives it would entail a freedom of movement while “being denied entry at any several possible destinations does not curtail freedom in the same way as long as there remain alternative destinations that are not closed.”(Bauböck, 2009). Thus, in a situation in which there is no justification for restricting immigration, then freedom of exit and entry become symmetrical and linked. Indeed, this bring to the issue of borders that is often misunderstands. Political borders have the essential function of delimit the jurisdiction of political authority, secondly it is a place in which is possible to control flows of people and goods. It can be assumed that in a world in which free movement is observed consequently there should not be borders in the world and neither in a strong federal government. Nevertheless, as

Wesley Hohfeld argues that “where free movement has become a universal right for anybody residing within the jurisdictions involved, it becomes a liberty seen as a privilege.”²⁴ On the contrary, where free movement is used at a border as at the same time for migration control, living the liberty does not imply the complete absence of control but a right immune. Indeed, in the light of this certainties for free movement across borders could be achieved through joint government of the interest area or through mutual agreement between independent governments.

According to Bauböck, on the one hand there are those who benefit free movement rights across international border that still have to deal with controls when they enter, on the other hand there are those who are used to be subjected by immigration controls even if enjoying free movement rights.²⁵ In a world with open borders, freedom of exit entails in the absence of administration in order to avoid people to leave moreover, in a world in which states control immigration, governments of sending countries have a positive duty to allow their citizens to leave. Moving forward, the citizenship issue is not only a meaningless legal status but represent a group of mobility rights and for this reason citizenship is the only legal status that leads all states to an under unconditional obligation to allow a right of immigration.

From the starting point that the liberties of internal movement within a state or to exit are human rights, but this is not the case for the right to return that is reserved for citizens. Whereas democracies cannot be forced to allow their expatriates voting rights, they should have no discretion in admit again their citizens. Indeed, the right to return for external stakeholders seems to get narrow the circle of beneficiaries but is important to remember that first generation of migrants are stakeholders in both their countries of origin and settlement. Thus, there is the creation of dual citizenship that creates individual place of free movement with both symmetric exit and entry rights in several states.

²⁴ Hohfeld, W. “*Fundamental Legal Conceptions as applied in juridical Reasoning*” 1919

²⁵ Bauböck, Rainer. “*Global Justice, Freedom of Movement and Democratic Membership*.” Cambridge University Press, 2009 : 1-31.

1.4 Miller on the Human Right to Immigrate

From another point of view, the human right to immigrate acquires a different perspective. In fact, if it would be recognized as “right” there should not be accept that states can show their control over their borders, being free to decide who should be admitted and who should not.²⁶ A human right to immigrate means a “universal right to cross the borders of any state and remain within them for as long as one chooses”(Miller, 2016:3). This obviously would mean that this right would deny states on their border policies, giving to the right, the power to decide who admit to its territory. Nonetheless based on this assumption it may be noted that in the most significant documents, ratified by states, in which human rights are encoded this right is absent. For example, neither in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 1950²⁷ is mentioned the issue of immigration.

In light of this, the human right to immigrate “is to be understood as a universal right held against all states not to prevent those who wish to settle on their territory from doing so”²⁸, based on the concept that someone has the right to be a resident in the territory in question in order to break the possibility that a state may impose no barriers to entry. Therefore, as Miller conceives the human right to immigrate “as a right not to prevent the immigrant from entering, and not as a right to assist the immigrant in travelling to her new homeland”²⁹. What he also highlights are an important obstacle linked to the financial cost of migrating. In fact, the reasons used to sustain the human right to immigrate could be seen in the financial contribution from the receiving states but on the other hand it might be assert that the weight to give support to migration should be share equally between all states, whether or not they are attractive to immigrants. Then occurs the controversial issue regarded to the right to leave. Indeed, human right to immigrate has to be understood to the possibility to migrate in *any* state and not just too few ones. But this underlines the fact that the right to immigrate cannot

²⁶ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

²⁷ Council Of Europe. *European Convention for the Protection of Human Rights and Fundamental Freedom.* 1950

²⁸ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016. : 3

²⁹ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

be derived from the right of exit, included in UN Declaration. For this reason what is assumed by Miller is that on an analytical point of view “the right to leave one particular state does not entail the right to enter any state of one’s choosing”, he also deepens the argument of how the right to leave can be used to justify a universal right to immigrate.

There are three justificatory strategies that might be used when an attempt is being made to add a new human right in the established list.

1.4.1 Direct, Instrumental and Cantilever strategies by Miller

The *Direct strategy*,³⁰ in which the issue is moved from the basic feature to the right. This means that human rights are justified because they represent basic human interests and consequently it will be justified for the human right to immigrate as existing rights to freedom of speech, subsistence and so on. Second, the *instrumental* strategy, in which “the right is justified by showing that its recognition is instrumental to other human rights that have already found a place on the canonical list”³¹. In this case is useful in order to show that democratic rights are necessary to guarantee other rights. The third, *cantilever* strategy that demonstrate the right to move free across borders as a human right, that should be the logical extension of the right of freedom of movement within states. This latter right is widely recognized as a human right, as shows before in the Article 13 of the 1948 Universal Declaration of Human Rights. Moreover, in Article 12 of the 1966 International Covenant on Civil and Political Rights “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence” it is possible to see a similarity with Article 13 of UDHR. These two Articles, strictly linked with the right to domestic freedom of movement, open the way to the cantilever argument.

³⁰ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

³¹ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016. : 8

The main aim of this strategy is to avoid research into the grounds on which the right is claimed but instead focusing on the sustained of “recognize A as a right without at the same time recognizing B.”³²

Once that the strategies have been asserted, the purpose is to apply them on the human right to immigrate. Thus, it is possible to distinguish two aspects of migration. The first one is based on the idea that there is the necessity to move into a society whose physical features that may be different from the society left. An example here made by Miller is of the Member of Sami people that annually follow the migration route. Nonetheless in this case the human right to immigrate could not be justified on this basis because it is linked to a culturally specific way of life. Thus, the second aspect may be more plausible. In fact, it is based on the reason that people move across borders to find features that were not available in the old country. On one hand migration may be seen as an “essential interest” that the new country can satisfy; on the other hand migration may be seen as the only way to satisfy the essential interest even at minimal level, this usually happen from very poor countries to richer ones. In this case, the argument is based on instrumental strategy and for this reason in order to set up migration as a human right it would be applied in the compatibility test “asking which way of realizing the primary rights involved least interference with the other rights of those who would bear the corresponding obligations”. (Miller, 2016)

As Miller wants to show is the that if the human right to immigrate is more than an instrumental argument, then it is needed to demonstrate that there are essential interests that “cannot be fulfilled except by establish such a right.” In the light of this assumption there could be a relation between the instrumental argument in favour of the human right to immigrate. For the majority of people that across borders is the only way to leave their situation in order to find at least a minimum level of decent life. Accepting as true the right to immigrate, this argument became limited in different ways. First, it is valid until it is assumed that other human rights that provide the conditions for a minimal level of decent life cannot be declare certain without immigration.³³ Second, it is necessary to be alive to give the possibility that

³² Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

³³ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

immigration may provide the route to a decent life for some people while making conditions worse for those who remain behind. Third, the instrumental argument cannot be used to justify migration between societies that offer to their citizens an adequate range of opportunities and instead for those who do not that, it justifies a more limited right to move to some societies that provide that range.

An example might be Canada, that opens its doors to everyone interested to move from societies that because of poverty or political repression fail the decency test, would satisfy the instrumental argument without recognizing a human right to immigrate. Reconnecting to the three strategies explained before, the cantilever strategy also begins with the internal freedom of movement, that as seen previously is included in the UN Declaration. Although the domestic freedom of movement is a human right this does not mean that there is not some limitation on it, as concerning property or traffic regulations and so forth. Nonetheless, for reasons of efficiency it is positive if people are allowed to move at domestic level in order to find work or houses, so, states have little incentive to use coercive measures in order to reduce the scope of freedom of movement under normal circumstances. On the negative side there are some policy instruments of taxation and welfare provisions that do not incentivize to move to obtain a higher standard of health care. On the positive side instead, states are able to create employment opportunities to counterbalance the migration pressures in areas that are at risk to lose jobs. All those restrictions on freedom of movement have been put for political reasons. Indeed, restrictions might also be placed on people that are not agreed on a political issue, to avoid them associating with like-minded others. Thus, to prevent these policies there is the need to have a human right to free movement to support the rights mentioned before. If considered political rights the right of domestic freedom of movement might be essential to support the right to associate at political level and also to express one's views to a wide audience. Moving forward, although it might be asserted that the economic and also other benefits of free movement collected much as they do in the domestic level, in this field are available fewer instruments to states in order to manage flows of people without enforcing borders controls. One can imagine favourable circumstances in which few people wished to migrate and in the meanwhile similar number of people wished to move in and out from a state and in that moment, there would be a cost to states in recognizing a human right to immigrate. Nonetheless, on the other side restrictions concerning international movement, differently to restrictions on domestic movement, are not

targeted at specific groups to underprivilege them with the aim to put their human rights at risk.³⁴

On this field the immigration policies are clearly discriminatory because they typically privilege some categories of immigrants and in some instances they do so on indefensible grounds. Nevertheless, the excluded groups are not made vulnerable in the way that targeted insiders are. Therefore, the responsibility to protect their human rights remain to the states that they are seeking to leave.

1.4.2 Reasons to control Immigration

The idea against the human right to immigrate is also support to the assumption that states have good reason to control movement towards the inside across their borders and for this reason concede this right would have significant costs. Indeed, are presented three considerations that might provide a reason.

First, “overall number.”³⁵ In this assumption it is clear that immigration will increase the number of people within the state’s jurisdiction; this will interest when a state adopted a population policy aims to limit that number but also in the absence of this policy a state is probably that set targets for employment or health and services for example, which are dependent on the number of people who are under its jurisdiction. The interest for a state is to be able to control the number to increase, decrease or maintain the policy goals required.

Second, “cultural shift.” Immigration from the outside may change the culture in a marginal way and for this reason states can decide to prevent this situation. This could happen because they might do not want to see existing cultural divisions into society or because they are closed to their inherited culture. In the light of the latter assumption, what is highlighted about this issue is to the possible effects of institutionalize the human right to immigrate even if, on the other hand there are

³⁴ Oberman, Kieran. “Immigration as a Human Right.” In *Migratiom in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

³⁵ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

authors like Carens and Dummett³⁶ that recognize the relevance of open borders. Indeed, as Dummett explains, he acknowledges the fact that nations have the right to be “submerged” by invading culture and this consequently shows why for Dummett there cannot be an unqualified right to immigrate, but what Miller objects as a consequence of this view is that could bring citizens may have some resistance to external cultural change.

The last consideration is the “Composition of the citizens body”. This affirmation considers that if immigrants will be able to apply to a full citizenship rights, so their admission will change the political complexion of the citizens body and this will matter in the democratic systems that are balance between the rival ethnic or religious groups. Moreover, this seems to be a part of a self-determining in which if a democratic body is empowered to take decisions on policies whose impact will be felt in years to come.

Due to this issue the argument based on the idea that open borders would affect the economy concerning the influx of newcomers. Has been assumed that the domestic economy might support only a certain number of workers and as consequences some of the potential immigrants would be excluded because of the cultural or the lack of requisite work ethic differences among citizens and outsiders. So, the inclusion of the potential immigrants would not be favourable for the economic growth of the host country. Although the most common reaction to this perspective is to contest that accept immigrants would have negative consequences on economy but it seems evident not for all in the domestic economy might be damaged especially due to for the less skilled workers but the economy could benefits as “ (1) firms are able to hire cheaper labour (and pass along correspondingly lower prices to consumers), and (2) there is an increased demand for various goods and services. More generally, even if a given domestic economy might suffer if it did not restrict immigration, economists tend to agree that the global economy would profit from fewer restrictions on who can work where.”³⁷

This perception will be created net winners and losers whenever a market restriction is raised points toward the important moral question as to whether anyone has a moral right to the economic benefits of the status quo. “As an example, would be that less

³⁶ Dummett, *On Immigration and Refugees* pp.15-21; Carens, *J Migration and Morality* pp.36-40

³⁷ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship , 2016.

skilled American laborers would be harmed, instead American firms and consumers along with Mexican immigrants would benefit if the current restriction on Mexican immigration were lifted. If so, then immigration would be impermissible in this case only if the potentially displaced American workers have a right not to face the increased competition for their jobs”³⁸.

Therefore, it is not presumed that the domestic workers lack such a right, but neither should we assume that they have it. What is more, even if these workers have a right not to be harmed, it does not follow that opening the economy to foreign workers must be impermissible, at least if there were some way the workers could be adequately compensated for the costs that they disproportionately bear. To be successful, then, the economic argument must be much more sophisticated than it might initially appear; in addition to establishing that at least some people will incur economic losses, proponents of this approach must demonstrate that these victims have a moral right to be spared these costs, a right for which they cannot be adequately compensated in other ways.

1.5 Different theoretical perspectives on Immigration restrictions

On this issue there are theorists that reject the immigration restrictions that based their assumption on two arguments: poverty and freedom. Concerning the poverty argument, rich states have the duty to assist people in poor states and immigration restrictions conflict with this duty since they deny poor people means to improve their situation. A premise about this argument is based on the ground that rich states have a duty to assist people although theorists’ dissent over how extensive this duty is. From the egalitarian point of view, supported by theorists who criticised immigration restrictions, rich states have the responsibility to help poor states reaching some form of equality with their own citizens and the sufficiency view which they have to assist poor states in order to give them the basic needs for food, medical care and so on. Even so, theorists point out that rich states failed to fulfil on their duties because of problems of misgovernment in poor states or also a lack of political intention to provide the basic assistance. Thus, what highlight is that if rich states are unable to fulfil their duties to

³⁸ Macedo, S., 2007, “The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?” in *Debating Immigration*, C. Swain (ed.), New York: Cambridge University Press, 63–81.

assist people in poor countries then they have to admit the latter as immigrants. On this argument some theorists go further and support the choice view arguing that “rich states are morally permitted to admit poor people as immigrants instead of offering them assistance in their home states in circumstances in which both policies would prove effective at relieving global poverty.”³⁹ Stating that, theorists support the choice view in which rich states are morally free to decide between assisting poor people or accept them as immigrants. The choice view is supported by many theorists as Miller, who defends immigration restrictions, writing: “The lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the place where they live- by aid, by intervention, or by some other means- or they must help them to move to other communities where their lives will be better.” (Miller, 2005: 198).⁴⁰ With this assumption, Miller declares that rich states are free to manage migration as an alternative in order to help poor people to the assistance they require to stay in their home states, that is different to argue to help them for the assistance they require in order to migrate. Also, Wellman argues: “No matter how substantial their duties of distributive justice, wealthier countries need not open their borders. At most, affluent societies are duty-bound to choose between allowing needy foreigners to enter their society or sending some of their wealth to those less fortunate.”⁴¹ In this assumption Wellman highlights that aid might be a more effective means of assisting the global poverty rather than immigration.

On the other side, Michael Blake, has argued that: “We can allow that a state will have some discretion[...] it will face demanding obligations, but can determine how much of these obligations will be met through immigration and how much will be met through alternative means”.⁴² What he draws attention to is that, states that limit

³⁹ Oberman, Kieran. “*Immigration, Global Poverty and the Right to Stay*.” *Political Studies Association*, 2011: 253-268.

⁴⁰ Miller, David. *Is there a human right to immigrate?* Oxford Scholarship, 2016.

⁴¹ Wellmann, C.H. “*Immigration and freedom of association*” *Ethics*, 2008

⁴² Blake, Michael. *Discretionary Immigration*. Harvard University, 2002.: 281

immigration do not fully use their natural resources violating the principle that earth is a common property of humankind.

The other argument focus on freedom, is strictly linked to the restriction of freedom of movement, precisely deal to freedom of movement within states. This right has an important value because it permits people to access a free range of options regarding several matters as which job people take, which religions or association they join and so on. Thus, relying on the assumption that these latter rights are part of the human right of domestic freedom of movement this also be recognize also in the human right to immigrate. Therefore, the freedom argument represents a fundamental challenge dealing with immigration restrictions. For this reason, theorists that defend immigration restrictions reject the freedom argument because they argue that states have the right to control their borders while international freedom of movement has an insufficient value to override.⁴³ They also support the right to stay that, by definition, is linked with the freedom of movement. Indeed, these theorists criticize the idea that the right to stay is even more important than the human right to immigrate. This is affirmed because the options that are important for us are into our home state. From the other point of view, theorist that defend the immigration restrictions should also support the right to stay, because this latter right is entitled by values as cultural membership and territorial attachment. These arguments are important for a state's right to its control border. Starting with the presumption that in the sphere of cultural membership, culture plays an important role for people that are empowered to live in a territory in which enjoys natural status. Assumed that immigration restrictions were raised, people that live within the host states could find the national status of their culture under risk, as immigrants that have different backgrounds. So, as consequence to protect the value of a cultural membership, states have the right to exclude foreigners. Theorists also add is unrealistic to demand that an immigrant's culture be awarded national status by the state to which they immigrate. Thus, if people are empowered to live in a territory in which their culture enjoys national status, then they must have the right to stay in their home state. Indeed, restrictions might also be placed on people that are not agree on political issue, to avoid them to associating with like-minded others. Thus, to prevent these policies there is the need to have a human right to free movement to support the rights mentioned before. If are considered political

⁴³ Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013

rights the right of domestic freedom of movement might be essential to support the right to associate at political level and also to express one's views to a wide audience. So, regarding the statement of Oberman in relation to the fact that for him political rights include the right to associate and communicate with anyone as he said: "political life is not fully free if people are prevented from meeting, organizing and protesting as they wish".⁴⁴

On the other hand, dealing with the territorial argument sustains that people have an important connection to the environment of their home state and they feel a sense of belonging with it. Nonetheless, have an unlimited immigration could lead to important changes to a host's state territory and because of that fellow-citizens are entitled to protect and prevent their own territory avoiding that foreigners enter.

Hence, what can be deduced from the analysis of immigration debate is that, on one hand rich states have to allow to entry poor people as immigrants whether they failed to help them. On the other hand, dealing to the substantial disagreement affects states that have to admit foreigners even if they provide them assistance.

⁴⁴ Oberman, Kieran. "Immigration as a Human Right." In *Migrations in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea . Oxford University Press, 2016.

Chapter II

Immigration Restrictions and the Anglo-Saxon Models

2.1 From the selection by origin to selection by merit

In order to understand the above mentioned theorist positions on the relation between the immigration restrictions and the alongside human right to immigrate is necessary to come back to the admissions issues on migration. There are different views from liberal states of how to manage this matter. It is important to remember that until the 1960s racial discriminatory criteria were existing in countries like Canada, Australia and United States. On this matter Christian Joppke assumed that “The state may consider the individual only for what she does, not for what she is [...] The individual is selected according to ‘achievement,’ not ‘ascription,’ that is, according to her agency rather than according to what she is immutably born with.”⁴⁵ Indeed, according to Joppke, at that time there was the so called “*selecting by origin*” which is strictly linked with position of some critical legal scholars that have showed some situations in which immigrant admissions reflect systematic group prejudices on the base of cultural and ethnical bases. After 1960’s racial discriminatory criteria have been developed with the transformation from “selecting by origin” to “selecting by merit”. This change is extremely significant for Shachar⁴⁶ who stated that the so called global race for talent, which reflect the logic of selecting by merit, give the possibility of admission to those who have developed specialized skills and human capital that nowadays is valued by states as one of the main important aspects in a competitive global system based in economy.

Indeed, it could be curious to say that states “are morally free to exclude immigrants altogether but not free to exclude immigrants on the basis of race, ethnicity, or

⁴⁵ Joppke, Christian. “Selecting by Origin: Ethnic migration in the Liberal State”, Cambridge. 2005

⁴⁶ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

religion.”⁴⁷ From this point of view, criteria of exclusion might be legitimate because all states use several security systems to avoid threats to their national security but, should this be morally permissible? For some people, the answer to this question would be clearly affirmative because for them the protection of national security is one of the main essential duty of every state. Indeed, the concept of national security have a broad meaning that consequently can be used to justify prohibiting the entrance to anyone. Nonetheless as consequences, the national security rationale has been limited in practice by NGOs and other civil society’s actors that have deepened the issue of exclusion. What Carens⁴⁸ argues is if allow that every state have the final decision to decide what can be the risks of its security this does not means that states are free to decide whatever they want. In fact, it can be quite evident that immigrants cannot be played a potential danger for a states’ national security but for some people a democratic state is also allowed to reject potential immigrants only because they think that these latter would not accept the democratic norms and values of the host state.

Another important criterion of exclusion is the financial need. Once that states admit immigrants one of their first requisite is that immigrants have to be able to be “self-sustaining economically”⁴⁹ and will not try to ask the host political community to help them. From this point of view is not neither in this case morally admissible that potential immigrants could be exclude because are unable to support economically themselves. Nevertheless, the issue that is morally permissible decide to reject the financial needy immigrants is, however, still based on the traditional idea that a state has always the right to exercise its control over immigration.

2.2 The economic advantage of Highly Skilled Immigrants

⁴⁷ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

⁴⁸ Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013.

⁴⁹ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

From the point of view of the criterion of selection the potential economic contribution of immigrants is another issue arose by Carens. This kind of criterion seems like the others, “morally permissible”⁵⁰. Assuming that states are free to choose their own policy there is however a significant objection linked to this issue, that is dangerous to poor states when rich democratic states accept immigrants basing on the criterion if they can contribute economically in their state. Indeed, the immigration from poor countries to rich ones implicates a movement of human resources as a damage for poor people that consequently implicates a loss of people with the ability to contribute to the transformation of their country’s condition.

An example can be seen in Canada, where the immigration process for the potential immigrants is based on a series of indicators that can calculate if a potential immigrant can be an economic success in the country. According to Carens, the criterion based on the knowledge of the official language of a society, in this case for Canada⁵¹ for English and French, the reason why this country decided to use this standard is because the knowledge of the society’s language will permit a better economic and social inclusion, but this decision creates inequalities for those who do not know these languages. Nonetheless, due to this issue there is no reason for states to base their selection of immigrants also based on linguistic competence. Additionally to this criterion there is also the “potential economic contribution”, indeed in the Canadian immigration program in order to consider a potential immigrant are used some numbers of factors (age, education, work experience) to be indicators “of the immigrant’s potential for economic success in Canada.”⁵² Thus, as seen before all these criteria seems “morally permissible”. What Carens wants to highlight is that these host countries are not acting selflessly implementing these immigration policies, they select immigrants in relation of their national interests.

Regarding this issue, there are some scholarship that argue that the movement of people has not to be a dangerous matter but beneficial. Nevertheless, what could happen as a complication due to this criterion is that “a fair amount of the migration of highly skilled professionals involves movement from one rich state to another rather

⁵⁰ Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013 .

⁵¹ Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013 .

⁵² Carens H. Joseph *The Ethics of Immigration*. Oxford, 2013 : . 183

than from a poor state to a rich one.”(Carens, 2013) So, this kind of migration would seem as a prohibited discrimination. By the way there are accounts of global justice that sustain that rich states have extensive obligations to poor states. May be rich states could understand that their approach the selection of potential immigrants has a negative effect on poor states and would decide to modify this approach. Nevertheless, the empirical analysis outlines that not all guest worker contracts are same, in fact they depend on the types of jobs that guest workers are working. Regarding this issue some theorists documented the difference between “primary and secondary” labour market, so highly skilled immigrants are employed in primary market sector indeed qualified immigrants have more choices to choose the potential host countries rather than people that do not cover the criteria decided by host countries⁵³. Two examples are from Canada and Australia in which they are focus on the selection of skilled workers and require them similar rights to those who have the permanent residence.

From another point of view there is also a “*skilled based selection criteria*” endorsed by host countries towards immigrants. This issue is developed and deepened by Ayalet Shachar which argues the differences that host states create in order to admit or not potential immigrants basing on their “extraordinary talent”. Currently, what attracts very much countries are the highly skilled migrants. Indeed, immigration policymakers together with countries looking for invest on talented individuals in for example sciences, sports, technology and innovation in order to gain a comparative advantage and as consequences every country want to obtain economic, cultural and reputational benefits and “associated with the infusion of immigrants with abundant human capital to their respective jurisdictions.” This paradigm has been identified by Shachar as “*selecting by merit*”.⁵⁴

According to the opinion of the political economist it would assume that talent is distinctive, indeed it cannot be move from on individual to another. It can be

⁵³ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

⁵⁴ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

considered as “the human in human capital” that gives to the person an irreplaceable factor of production in the knowledge economy.

Whereas, from the empiricist view, countries do not “lost control” over their ownership boundaries but they considerably changed how the control is demonstrated determining which to admit and which to turn back. It can be noticed through the legal strategies used by countries in order to employ highly skilled immigrants that have a vital role in the new process of redesign membership categories and re-establish control over borders. By doing this, countries are going to imitate one another in the international competition of highly skilled immigrants and because of this selective and mobility market, membership goods are changed to “incentive packages” created by governments to entice new immigrants. Choosing the “human capital criteria” generates consequently a preference for a specific class of immigrants, nevertheless this approach would obscure the less convenient “gatekeeping” ramifications that come with selecting by merit defined by sociologists’ social class advantage.

2.3 Competition between the potential immigrants

Although are given new opportunities to the mobile knowledge immigrants, no country depends on skilled-based selection programs. Nonetheless there should be critics that could outlined that the competition to attract people that have talent would guarantee the new political economy of welcomed migration. Obviously, the preference is given to viable skills and talent over the moral claims of those with needs. What can be outlined is that in the new world made by stratified mobility, the explicit discrimination is prohibited but, this does not entail that all immigrants are equally welcomed. Thus, if the human mobility will remain regulated it is necessary to be aware not to assume a link among the instrumental and strategic considerations that encourage the issue of immigration’s talent that consequently imposed severe measures with the mobility of migration. Indeed, an example might be seen with the drastic policies that several European countries have enacted that later have led them to constricted family admission, intercept asylum seekers at open sea and place culturally infused barriers on some third countries. So, can be evident that this is a paradigm shows the long history of immigration that cannot be the outcome of the rise of global race for talent. Due to the increasing of the anti-immigrant feeling, members of the category of “*l’immigration subie*” are submitted as a culture-free zone that is considered functional

and technically as a way in order to improve the country's economic and scientific advantage so, it can be assumed that policymakers and politicians are involved to skills-based migration programs as a solution for what they see as the disappointment of previous policies.

2.4 Selecting by merit system

From this perspective the point outlined by Shachar⁵⁵ is that many of the highly skilled workers who are moved by the promise of permanent residence, rule of law society welcome from the poorest and less developed country for those country like Asia and Africa. From the point of view, it looks unfair that countries that are already trying to fulfil their basic duties in relation to their own citizens should invest their limited resources to help their smartest citizens “only to see those potential institution builders, innovators to the greener pastures of more affluent recruiting nations.” Nevertheless, some protectionists react endorsing a restriction regarding the mobility of highly skilled migrants to improve their home countries instead of moving in an already developed country but, this kind of response remains in tension with the issue of individual freedom of movement because “locks up” people in the polity into which they have been born. Due to this issue Anna Stilz⁵⁶ argues that the Shachar's contribution that outlined how rich countries contend for the talent professionals in areas as science, engineering, and healthcare, suggesting lucrative bundles in order to employ highly skilled workers from poorer places.

Indeed, what is emerged from a study is that the highly skilled immigrants have less inclination to migrate in countries like Brazil in which there is a high-income inequality because there is a lack of liability to redistributive duties provides them to an equal standard living to what they might gain by moving to a richer society. So, free movement for skilled workers creates a “race to the bottom” as hosting countries as been expressed before, compete for talent by suggesting to the highly skilled workers attractive income packages.

⁵⁵ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Sarah Fine and Ypi Lea. Oxford University Press, 2016.

⁵⁶ Stilz, Anna. “Is There an Unqualified Right to Leave?” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Sarah e Ypi Lea Fine. Oxford University Press, 2016.

Nevertheless, the main participants in this multiplayer game such as countries of origins and knowledge immigrants, became complicated and the competitive challenge now involves different tiers and was created the so called “talent pyramid”⁵⁷ of skilled migrants who are enrolled at different stages of their professional occupations. The “talent pyramid” shows that on the top there are the high-achieving immigrants with a result of international successes. Indeed, those have a privileged position in the today’s global race for talent, so, they are perceived to know where they are wanted. For this reason, the talent pyramid can be seen to indicate a “scale of attractiveness” depending on which the more required the immigrants is.

All these patterns can be demonstrated by the example of Canada.⁵⁸ This country used the “point-system rubric”, a mechanism for the so called selecting by merit. Below this point system the applicants are given “a cumulative numeric value determined by assessing a set of predefined factors, such as the applicant’s highest educational degree, professional experience, linguistic proficiency and adaptability.”⁵⁹ This kind of system was established in the 60’s that reversed the old system of “selecting by origin” in order to introduce new criteria based on different skills in order to choose immigrants on the basis of their educational and professional achievements with the purpose of participate to the country’s economy and labour markets. This was in contrast with the previous system that distinguished between “potential entrants” basing on national origins in which the applicants were no longer to be judged in determining their eligibility to be welcome to Canada.

2.5 Canada immigration policy – Point System

⁵⁷ Shachar, Ayelet. “Selecting by Merit: The Brave New World of Stratified Mobility.” In *Migration in Political Theory: The Ethics of Movement and Membership*, by Fine Sarah and Ypi Lea. Oxford University Press, 2016.

⁵⁸ Shachar, Ayelet. “Introduction: Citizenship and the “Right to Have Rights” .” *Citizenship Studies*, 2014.

⁵⁹ Shachar, Ayelet. “Introduction: Citizenship and the “Right to Have Rights” .” *Citizenship Studies*, 2014.

Canada's Immigration System has been established in 1967 with the so called "immigration point system"⁶⁰ developed by the federal government.⁶¹ This type of system characterized the introduction of a very well-structured program to immigration policy that is still ongoing nowadays involving three different classes of immigration: economic, family and refugees. What can be assumed due to this policy is that it does not change the number of entrance of immigrants, but it modified the method used in order to select them in the economic class.

From economic point of view, immigration research is divided in three categories: "economic impacts on the receiving country, economic impacts on the sending country and the economic integration of immigrants in the receiving country."⁶² Nevertheless, there is a broad Canadian research literature focus on the economic integration of immigrants into the labour market, whereas Canada's popular media claims that immigration have economic advantages in hosting people if it is well managed. Canada's migration system is a supply or immigrant driven system. All potential economic immigrants that want to settle permanently to Canada are subjected to the points test, a category that today makes up for almost 70 percent of all migration into Canada (69,3 % in 2010) (Citizenship and Immigration Canada, 2011b)⁶³. In the point system as it is used today for the acceptance of permanent immigrants, a total of 100 points can be gained. Although the structure of the point test has not changed a lot since its birth, the pass mark can change and the job occupations that are mostly in demand can be awarded with higher points, adjusting it to the current skill gaps (Citizenship and Immigration Canada, 2010a).⁶⁴

⁶⁰ Sweetman, Arthur. "Canada's Immigration System: Lessons for Europe?" *Intereconomics Review of European Economic Policy*, 2017 : 277–284.

⁶¹ Canada, Departemental Plan. "Immigration, Refugees and Citizenship Canada ." 2018-2019 .

⁶² Sweetman, Arthur. "Canada's Immigration System: Lessons for Europe?" *Intereconomics Review of European Economic Policy*, 2017 : 277–284.

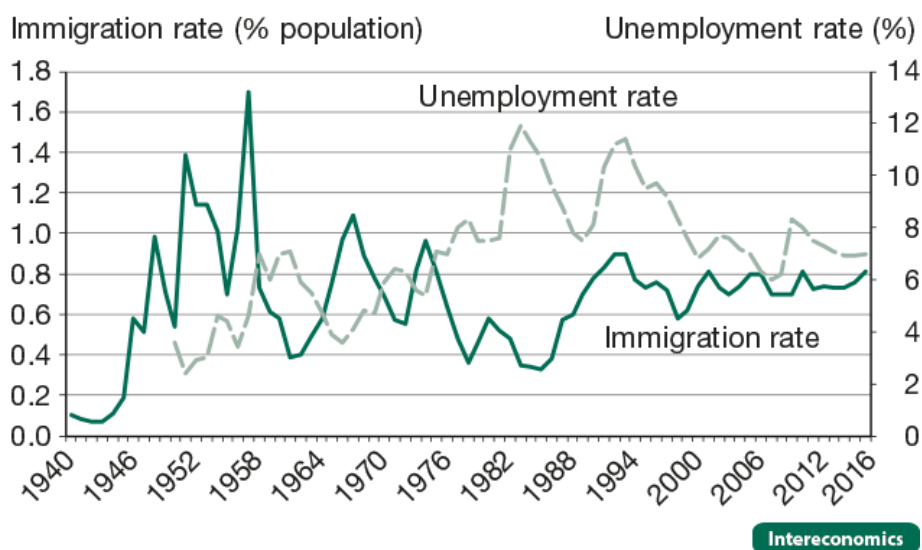
⁶³ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card ." *Thesis* . Radboud University Nijmegen, 31 August 2012 .

⁶⁴ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card ." *Thesis* . Radboud University Nijmegen, 31 August 2012 .

Canada uses a points system to promote transparency. Potential migrants and other can directly see on what grounds people are accepted or not. It is thus more transparent than for instance the criteria and quota that EU member states set that be more subjective. It is furthermore anti-racist, and shows that the government is investing in the economic benefits of migrants (Yale-Loehr & Hoashi-Erhardt, 2001)⁶⁵, an asset, as probably considered by most of the public opinion who tend to be more and more negative about migration. However, it discriminates on other grounds, such as age and education.

EXPLANATION OF CANADA IMMIGRATION SYSTEM

Canadian immigration and unemployment rates, 1940-2016



The graph shows⁶⁶ the immigration flow express in percentage of the existing population from 1940 until 2016 and by contrast the unemployment rate. At the end of the World War II immigration started again and the flows were procyclical and large, indeed in this range of period the Canadian immigration rate was three times higher than in United States. Admission levels that were vulnerable to the business cycle has

⁶⁵ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card." *Thesis*. Radboud University Nijmegen, 31 August 2012.

⁶⁶ Sweetman, Arthur. "Canada's Immigration System: Lessons for Europe?" *Intereconomics Review of European Economic Policy*, 2017 : 277–284.

been abandoned in 1990's, what economic analyses outline are two countervailing effects of this policy: the state of the business cycle on arrival has a small impact on immigrants' long-run labour market success, arriving as part of a large support has small negative effect. What can be seen is that before 1960's, immigration went primarily from a determined "preferred" source country consequently discriminating against individual somewhere else. Later, in 1967 when was introduced the "points system" this was an attempt in order to end this practice and widen entry to set of individuals, whatever of source country. But what emerges was that, after this change, market results of new immigrants started to decline, nonetheless in the mid-1990's were established several reforms to develop the labour market results of new immigrants.⁶⁷

As previously written, were established three different classes. The first "family class" in 2016 contained more that 25% of all new permanent residents and it is composed of four subclasses: "spouses and partners, sons and daughters, parents and grandparents and other", what is emerged is that the subclass of "parents and grandparents" is the most costly for the society, in particular for the healthcare service. Second is related to the "refugee class" that because of the Syrian refugee crisis the movement increased refugee numbers from 32,000 in 2015 to 59,000 in 2016 and this shows 20% of the annual permanent resident flow 0.16% of the Canadian population in 2016. In this situation, government aids refugees are supported by federal government which support them with resettlement.

On the other hand, refugees are chosen between individuals identified as refugees by UNHCR by parties of Canadian that sign formal sponsorship deals together with the federal government.⁶⁸ The last category is defined as "economic class". This is the largest immigration class and it is composed by different subclasses. The first one is the "skilled worker program" that is the largest and oldest of Canada's economic immigration subclasses; what has been evidenced is that the main applicants are exposed to the point-system, in which is settled their characteristics in an effort to

⁶⁷ Sweetman, Arthur. "Canada's Immigration System: Lessons for Europe?" *Intereconomics Review of European Economic Policy*, 2017 : 277–284.

⁶⁸ Sweetman, Arthur. "Canada's Immigration System: Lessons for Europe?" *Intereconomics Review of European Economic Policy*, 2017 : 277–284.

expect their labour market success, indeed these points could be appointed for their language ability, education, age and other characteristics, nevertheless, in 2015 only the 11% of all Canadian immigration was adjudicated by the “point-system”. Another subclass category is the “Canadian experience” treated in 2009, in this subclass there are also two subdivisions: high skilled temporary foreign workers or foreign post-secondary students, in this situation what was granted for these groups a special way which is supposed to improve their labour market success after that they are registered as permanent residents. Moreover, there is also a subclass made by self-employed, investors and start up business program and entrepreneurs that nonetheless there are no clear the successful that they could give to the country.

2.5.1 The Express Entry Program

This program was introduced in Canada in 2015, this brought a radical change in the process for many economic class immigrants. What emerged was that before, a fundamental administration inherent in the regulations established permanent selection practices prior to *express entry* was that there was no mechanism to select applications or to reject them without processing each to completion. In the previous years, before the reforms there were received more or less 450.000 individuals that exceeds the target set to 250.000.⁶⁹ There were several implications follow from these substantial delays, instead from the economic perspective a central consequence was that it prevented the matching of new immigrants with immediate labour market needs. The *express entry* changed significantly the economic class immigration, indeed the more affected are the new applicants in the skilled workers, territorial nominee and the Canadian experience subclasses that still need to meet the minimum criteria set in the programs that are in contrast with the former program.

Whereas, potential immigrants who make it through the initial screens of these programs enter in the “*express entry pool*” in which sponsors (that are employers that offer jobs and the federal government)⁷⁰ might select individuals and families that want to immigrate in Canada. Nevertheless, encounter the minimum level is no longer

⁶⁹Sweetman, Arthur. “Canada’s Immigration System: Lessons for Europe?” *Intereconomics Review of European Economic Policy* , 2017 : 277–284

⁷⁰ Canada Government, Immigration-Refugees-Citizenship. 2019

sufficient, indeed immigrants have also to attract an employer or have high points or characteristics that lead to nomination by the institution before mentioned. Can be assume that this new type of system gives to the employers a significant role in the selection of immigrants that as consequence could have a medium or long-run analytical power for the positive labour market outcomes. Therefore, it can also increase the competition between immigrants and Canadians and promote substitution rather than complementarities in production.

Dealing with this issue there have been several studies that highlighted the importance of immigration selection of the economic category and even family and refugee ones. These studies were developed by Sweetman and Warman that noticed that at six months the: “other” immigration class and the “provincial nominee subclass of the economic class” have their outcomes of labour market that exceeds those of the skilled worker program “in terms of both employment and earnings”⁷¹, these outcomes can be ascribe to high numbers of these three groups that resided in Canada for a protracted period before being approved the permanent residence. What can be assumed is that after four years after the arrival of skilled workers, some scholars as Picot, Hou and Qiu ⁷²demonstrate that these skilled workers would have higher earnings than the other immigrants ‘categories previously showed. Nonetheless, there is a high percentage of immigrants created connections to Canada that simplify their integration in the labour market and in terms of long run benefit after fifteen years of the skilled workers arrival, their education and language abilities give them an advantage.

The main evidence that can be assume is that Canada’s immigration flow is selected though the economic immigration class that will bring a significant economic advantage in terms of market outcomes. Even the integration service shows a positive impact in the selection of refugee for their entrance in Canada boundaries, for this reason Canada immigration system might be seen as an example for other countries.

⁷¹ Sweetman, Arthur. “Canada’s Immigration System: Lessons for Europe?” *Intereconomics Review of European Economic Policy* , 2017 : 277–284.

⁷² Sweetman, Arthur. “Canada’s Immigration System: Lessons for Europe?” *Intereconomics Review of European Economic Policy* , 2017 : 277–284. : 282

2.5.2 Reasons to become a permanent and temporal resident in Canada

Having the benefits of permanent residence in Canada can be considered as those of Canadian citizens. In fact, those who are in possess of permanent residence card can live, work and study anywhere in Canada, they receive most of the social benefits, health care coverage as citizens. It is even allowed to them to apply for Canadian citizenship and must pay the same taxes as citizens.

Can be assumed that the permanent resident's rights are similar to those of permanent resident in other states, but very different from the right of temporary visa possessors enjoy. Indeed, temporary visa possessors can work and live in Canada if their visa is valid with a maximum of four years (Citizenship and Immigration Canada, 2011c)⁷³.

Canada, an immigration "success story", is a developer of the 'points-based' selection model for labour migration under the Federal Skilled Worker Programme. The model has seen a continual fine-tuning with an increasing emphasis on selecting people with higher education, skills and experience. After the Federal Skilled Worker Programme, the second largest economic immigration stream is provided by the Provincial Nominee Programs in which provincial authorities nominate individuals who meet local/regional labour market needs. Introduced in the 1990s, they have prompted a gradual shift from a centralised model of immigrant selection towards devolution of federal authority to provinces. In addition, Canada has seen a significant expansion in its temporary labour migration since 2000 under the Seasonal Agricultural Workers Program, Live-In Caregiver Program, Low Skilled Pilot Program and Other Temporary Workers category. Employers have first to obtain a Labour Market Opinion demonstrating that there is a genuine job, demonstrate a labour market need and that an attempt was made to first hire Canadians or permanent resident.

The reason why the state selects the migrants is strictly correlated to the history of Canada's migration policy. In fact, Canada has long attracted migrants for broader purposes than filling acute labour insufficiency (Chaloff & Lemaitre, 2009)⁷⁴. The fact

⁷³ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card." *Thesis*. Radboud University Nijmegen, 31 August 2012 .

⁷⁴ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card." *Thesis*. Radboud University Nijmegen, 31 August 2012 .

that it concerns mainly permanent visas also counts to the selection by the state, as they take into account broader concerns than employers would do. A specific aim of the Canadian government is then also to attract migrants that both contribute to the economy, but also, that are likely to integrate in the Canadian labour market and society. As Canada's government states in a strategic document, key determinants for successful integration include factors like language fluency, higher levels of education. So, the reason why the state decide to select on those factors is important for '*ensuring that newcomers to Canada are integrated into the society is essential if Canada is to benefit from their full potential*' (Prime Minister of Canada, 2002, p. 51)⁷⁵.

This declaration identifies the nationalist and consequentialist focus of Canada's immigration discourse. The state-led selection makes sure Canada selects the 'right' migrants for the state for a longer time span and for more general labour force consideration instead of acute needs for specific occupations by employers.

2.6 Australian immigration policy

Concerning the immigration policy in Australia it is considered as the major nation building approach, in which the government had a central role in order to manage the issue of entry and selection process to offer financial aid to promote immigration. Since 1800^s there has been an intensifying importance in relation to the economic selection criteria and also, in the first part of 20th century a change from the preferential treatment of British migrants and toward a non-discriminatory selection policy. Although in the second half of the 19th century were established some regulations deal with hostility to non-Europeans creating the basis of the well-known "White Australia Policy"⁷⁶ that created restrictions for the non-Europeans, after World War II some of these policies restrictions were abolished in order to consent an increase number of non-Europeans immigrants to set in the country and consequently the "White Australia Policy" has been substituted in the 1970s by selection without orientation to ethnicity

⁷⁵ Broek, Marjolein van den. "Europe on the quest for global brains A critical discourse analysis of the EU Blue Card." *Thesis*. Radboud University Nijmegen, 31 August 2012 .

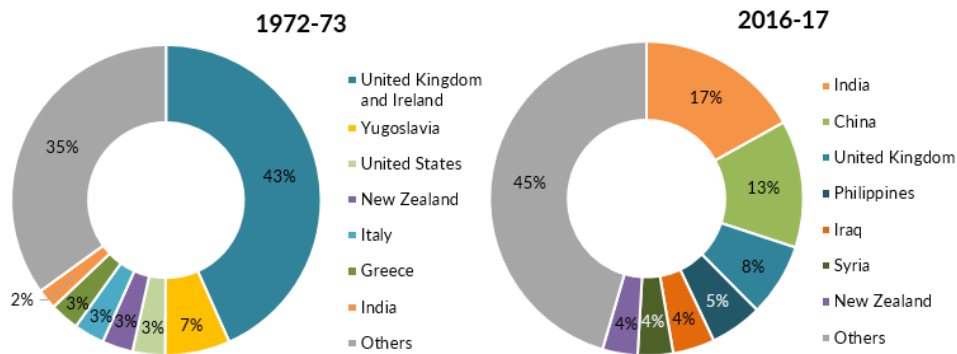
⁷⁶ Inglis, Christine. "Australia: A Welcoming Destination for Some." *Australia: A Welcoming Destination for Some*. Australia : The online Journal- Migration Policy Institute , 15 February 2018.

or religion. Indeed, as the graph below shows with the end of the “White Australia Policy”, in 1972-1973, when the White Australia Policy ended there was 43% of all permanent arrivals from United Kingdom and Ireland whereas India achieved only 2%. Whereas, by 2016-2017 there was an increase in the importance for the other non-European countries such as Philippines, Vietnam and Syria.

The residence visas allow migrants to work in Australia enduringly. With this visa the migrants can study, receive subsidized healthcare, access certain security payments, sponsor other people for permanent residence and makes migrants eligible for Australian citizenship.⁷⁷ A permanent Australian visa can be the first step to gain the status of Australian citizenship as these migrants are allowed and expected to apply for this. This visa comes with the most expanded set of rights, which are very similar to those of Australian citizens. Same as citizens, these permanent residents have right to most of the same medical and social security benefits. Additionally, they have the same right as citizens to live, work and study in New Zealand. Limitations of this visa include certain types of jobs, as in governmental work or the army, which requires workers to be citizens. Typically, this visa is for valid for five years, after which residents may extend for living in Australia longer (Department of Immigration and Citizenship, 2011c).⁷⁸

⁷⁷ Inglis, Christine. “Australia: A Welcoming Destination for Some.” *Australia: A Welcoming Destination for Some*. Australia : The online Journal- Migration Policy Institute , 15 February 2018.

⁷⁸ Broek, Marjolein van den. “Europe on the quest for global brains A critical discourse analysis of the EU Blue Card .” *Thesis*. Radboud University Nijmegen, 31 August 2012 .



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2.6.1 Discussion in Australian migration policies

In Australia both conventional prerequisites as education, occupation together with the points test are used. An important feature for Australia’s discussion regarding the highly skilled migration issue are the very strict selection methods and its active conscription.

The decision to abolish the discriminatory system to admission, improved Australian immigration approach in different ways. Indeed, today immigrants are chosen for the permanent residence on one of three groups: family reunion, economic benefit and humanitarian necessity. Australia, like Canada used the points system in order to judge applications for admission as an economic immigrant, and criteria that reflect changes on age, language, education and work experience.

Thus, since 1979 when was instituted the Numerical Multifactor Assessment Scheme (NUMAS)⁸⁰, in this condition the system advanced younger and skilled migrants with a well knowledge of English these were the types of workers that were necessary to reformed Australian economy in order to deal with the challenges of globalization, later in the 1980s were introduced other arrangements that highlighted innovation and investment. Concerning the points system, this method is used by Australia as seen before, to select people with particular skills that can improve the country’s economy.

⁷⁹ Inglis, Christine. “Australia: A Welcoming Destination for Some.” *Australia: A Welcoming Destination for Some*. Australia : The online Journal- Migration Policy Institute , 15 February 2018.

⁸⁰ Inglis, Christine. “Australia: A Welcoming Destination for Some.” *Australia: A Welcoming Destination for Some*. Australia : The online Journal- Migration Policy Institute , 15 February 2018.

What the data show is that the minimum number to gain visa is 65, but in the mid-2000s a rise demand provoked a long lasting application queue so, there was an administrative change and selection based on the idea that “more points someone has, the more likely she is to gain a visa. Now, someone needs at least 80 points to gain a Skilled Independent visa.” Indeed, what can be outline is that the points-tested visas applied in Australia, Canada and New Zealand replaced in some terms the colonial-era system classifying the potential immigrants based on race, ethnicity, knowledge, and experience. The main aim is by choosing immigrants based on these criteria, so doing this the points system visa generates competition in order to improve the quality of immigrants, to promote long term health of labour market increasing the average skill level of workers.

Once that the criteria based on culture, language and skills have been established by host countries, what occur is “if a country’s immigration policies differentiate among applicants on the basis of race, ethnicity, gender, religion or country of origin? What if a country flatly refused to even consider applications for immigration from Asians or Africans, for instance?”. Indeed, because of this issue Walzer took in consideration the example of Australia with the “White Australia” that in the past forbidding the entrance for the non-European citizens thus, Walzer writes “Assuming, then, that there actually is superfluous land, the claim of necessity would force a political community like that of White Australia to confront a radical choice. Its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only two choices. White Australia could survive only as Little Australia.”⁸¹ What Walzer wanted to assume is that Australia in a way should have the duty to share the considerable territory with those who needed but, if this country would not have this vast territory Walzer would not have moved this objection. Another point of view developed by Michael Blake shows a perspective in which he explains the “impermissibility” of excluding the outsiders basing on racist criteria and taking in account what have been stated before by Walzer concerning the refusion of Asians or Africans in Australia he assumes “To identify the purpose of the state with the

⁸¹ Altman, Andrew e Wellman, Christopher Heath. *A Liberal Theory of International Justice*. Oxford University Press, 2009. : 46-80

preservation of a cultural group is inevitably to draw an invidious distinction against those citizens who do not happen to belong to that community. In all cases in which there are national or ethnic minorities—which is to say, the vast majority of actual cases—to restrict immigration for national or ethnic reasons is to make some citizens politically inferior to others[...] Seeking to eliminate the presence of a given group from your society by selective immigration is insulting to the members of that group already present.”⁸² .

Blake, in these words explicates what is objectionable about racist selection criteria mentioning the requisite that states treat their own citizens free and equals until these criteria treat the insiders in a group as inferior and subordinate. Nevertheless, the idea of impermissibility of a racial or cultural political community exclude the potential immigrants because of their racial or culture background thus, if Australia would have no Asian citizens consequently there would not be insiders who would have a policy that prohibit the entrance of Asian immigrants so, the assumption of Blake would provide no grounds to criticize it.

Permanent residency and citizenship are thus sought after features a potential migrant looks for in a potential destination. The preferential treatment of the highly skilled is outcomes of the high value that is accounted to their skills. In order to attract these, states will go far in offering incentive, what Shachar calls the ‘citizenship-for-talent exchange’⁸³. If migrants are indeed attracted to states which offer them the best ‘incentives package’, citizenship, or at least permanent residence becomes a tool for states to attract the migrants it wants. This will lead to smaller states trying to ‘outbid’ the larger states, offering greater incentives (Shachar, 2006). This, in turn, gives rise to an increased difference in the way lower and higher skilled migrants are treated by states.

This system proved successful in the early years, at least in the eyes of Australian policy makers, as it led Australia to introduce a point system similar to Canada in 1973. In Australia, in contrast to Canada, the points test was designed only for migrants that applied for a ‘skills visa’, and not for all economic migrants (Hawthorne, 2005). The Australian test assesses roughly the same skills as its Canadian counterpart, such as

⁸² Blake, Michael. *Discretionary Immigration*. Harvard University, 2002.

language proficiency, education and work experience. The Australian system was designed to be transparent and objective. Australia offers a whole range of visas for skilled migrants and this variety of visas makes room for a flexible and mostly demand driven system (Department of Immigration and Citizenship, 2011c)⁸⁴.

2.6 Consideration on Anglo-Saxon models

The *merit-based system* established and implemented by Anglo-Saxon countries is the outcome of a long process of regulations and policies adopted through the years by host countries that have to face the ongoing migration flows. It is necessary to consider in this issue both features that this system involves: on one hand the host countries and on the other immigrants. From the point of view of the host countries their main aim is to maximize their own utility at economic, social and cultural level with a reasoned selection of those who can enter and those who cannot. For this reason, various programmes and policies have been established over the years to allow both skilled and unskilled workers to enter in their territories. However, despite the critics arose by some scholars, the host countries sovereignty is always taken into account because of their role, so it is their right to decide who has access and who does not. Thus, at practical level these Anglo-Saxon models are seen as successful ones from some theorists because due to its different policies adopted give the possibility to work, live or study temporarily to millions of people and especially because this system is adopted by the whole governmental system.

On the other hand, on ethical level once that a state can decide and select people only for its economic advantage, we are no longer talking about immigrants as people but as human capital. For this reason, as several scholars object to the *merit based system*, what emerged in this Anglo-Saxon models is to maintain a system in which governments, because of their competitiveness with each other's, with a system of strict selection will create as consequences, specific preferences of class of immigrants. Instead of trying to overcome obstacles of the past and create equality of

⁸⁴ Broek, Marjolein van den. «Europe on the quest for global brains A critical discourse analysis of the EU Blue Card.» *Thesis*. Radboud University Nijmegen, 31 August 2012.

opportunity between people and states, the strong idea of sovereignty and inequality continued to persist.

Chapter III

Management of the Highly Skilled Workers policies in EU

3.1 How is managed freedom of movement in Europe for Highly Skilled Workers

Continuing to analyse the Western developed economies, below in this chapter will be examine how the European Union tried to adopt a similar migration pattern to the Anglo-Saxon one previously described. The main aim for the EU Member States was to develop a system to attract highly skilled workers as many as possible. Indeed, in order to achieve to this objective has been established in 2009 the EU Blue Card system. During the chapter will be take in consideration the role that the Member States had and how the EU Directive has been adopted into the national legislations by EU Countries. What will be emerge is the deep and ongoing problem after a long process of integration, it is still difficult to find common policies. In this case on migration, there are always disagreements because each national government adopt a different European regulation not allowing to migrants to move more freely between the different Member States.

As above-mentioned in the previous chapter, since 1960's in Canada and then in 1970's in Australia these developed industrialised economies started to adopt selective migration system for the highly skilled workers. Later, from the 1990's this selective system moved in the Europe with the UK as the first European country that developing a high skilled migration policy. In order to be competitive with the other industrialised Western countries also the European Union decided to establish and create a system to attract professionals skilled workers from non-EU countries.⁸⁵ So, in 2009 has been created the EU Blue Card system aimed to incentivise this type of migration.

⁸⁵ Triandafyllidou, Anna- Isaakyan, Irina. "EU Management of." European University Institute- Robert Schuman Centre for Advanced studies , december 2014.

According to experts, the EU has an economic need for immigrants, especially high-skilled immigrants.

Moreover, in order to contrast the lack of Highly Skilled Workers even outside the EU borders, Europe adopts the question of labour-market lacks with two approaches. The first approach is focus on free movement of labour between EU member states, that can increase the productivity of European labour markets and as consequence, is an advantage for emigrants to the countries for which their skills will be most productive.

The second approach concerns inflows of emigrants from countries outside the EU. Regarding the criteria of accession in European Union for highly skilled workers category from third countries, the EU needs to attract more highly skilled workers to be competitive in a world where international competition for talent is increasing. In the light of the increasing competitiveness among the states of the world to maximize their economic potential, also the European Union has decided to create, following the Anglo-Saxon patterns to create the “EU Blue Card” (Council Directive 2009/50/EC) aimed just for highly skilled immigrants with a work permit valid throughout the EU.

A Program like the “EU Blue Card”, aims to select immigrants for a possible long-term residence but force them to pass through “a probationary stage during which their right to stay is still temporary”⁸⁶. There have been establish an “integration tests” because of some difficulties that immigrants have to face for the temporary admission. These tests in fact, require knowledge of a dominant language or the country’s history, constitution, and values not only for naturalisation but for access to permanent residence. Doing so it may become difficult also for immigrants who are not able to understand if at the point of admission, they will stay permanently or just to have the right to enter. The admission process for migrants in Europe is similar to the Anglo-Saxon models which give them initially a temporary permits “under the various European points or quota systems do not exercise free movement, but, are selected mainly for the purpose of satisfying economic demand in the country of destination.”⁸⁷

Nevertheless, Bauböck assume that even if Canada and Australia are often mentioned as models from which Europe should learn, there are on one hand some similarities as

⁸⁶ Stiks. Igor Shaw. Jo, “Citizenship Rights”. Routledge. 2013

⁸⁷ Stiks. Igor Shaw. Jo, “Citizenship Rights”. Routledge. 2013

the fact that are liberal democracies with long traditions of immigration but there are also important differences.⁸⁸ Indeed, in Europe firstly there are regimes of international free movement and open borders within the EU combined with joint external border controls, secondly there are disparities concerning, wealth, security and democracy with Europe's immediate vicinity and especially between the Northern and Southern shores of Mediterranean.

3.2 European Union Blue Card

Indeed, in 2009, the EU put in place a specific migration scheme for highly qualified non-EU workers. An advance procedure and common admission criteria such as work contract, professional qualifications and a minimum salary level, were introduced for issuing a special residence and work permit called: the "EU Blue Card".

The EU Blue Card establish a list of comprehensive socio-economic rights and a possibility to may obtain a permanent residence in the EU. Through this system, highly skilled workers have to present: a valid work contract or a job offer with a duration of at least one year in the EU Member State concerned. Moreover, the standard period of validity of the EU Blue Card is between one and four years. Nevertheless, one of the main problem that arose in EU is that because of the different EU directive adaptation in each European Member States the highly skilled workers might find some difficulties to move among the Eu Members Stata because of the different national legislations even in immigration issues.

However, since the very beginning was clear that this migration policy adopted was not successful to achieve the goals of the EU Member Stated in order to create a model which could be use by the entire EU Community because of the structural differences. Indeed, "the number of Blue Cards remained relatively low, were very unequally issued by Member States, and the EU continued to attract a low number of highly skilled workers compared to other OECD countries."⁸⁹

⁸⁸ Bauböck, Rainer. "Temporary Migrants, Partial Citizenship and Hypermigration". European University Institute. 2011

⁸⁹ Commission, Migration and Home Affairs- European. *The EU Blue Card Directive*. n.d.

https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en.

However, after the “first implementation report” that expressed some worries about the weaknesses of the Directive, so, the Commission decided to put one of its first priorities to make a review of the EU Blue Card. In 2015 have been begun an evaluation with the aim to implement the EU Blue Card as more useful scheme for the Member States. Thus, in 2016, have been established and implemented by the Commission a new proposal for a new EU Blue Card Directive that offers a more consistent and efficient approach in order to give the possibility to highly skilled workers to apply for a more flexible admission systems, improving so the mobility and freedom of movement within the Schengen area.⁹⁰

Thus, the EU Blue Card implies the admissions of highly skilled workers from non-EU countries. The admission conditions are placed in Chapter V of the Directive.⁹¹ In order to be entitled to enter in the EU as stated in the Chapter V of the EU Blue Card Directive a person must follow all the directive established by the articles written down in the Chapter V. However, due to Chapter V of the Blue Card Directive there was debate about the salary threshold that would be required for obtaining the Blue Card in Article 5(3). The Commission proposal reads in Article 5(2): “[...] *the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national salary threshold defined and published for the purpose by the Member States which shall be at least three times the minimum gross monthly wage as set by national law.*” The second paragraph of Article 5(2) continued: “*Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens of the Member State concerned are entitled to social assistance in that Member State, or to be in line with applicable collective agreements or practices in the relevant occupation branches.*”⁹²

⁹⁰ Commission, Migration and Home Affairs- European. *The EU Blue Card Directive*. n.d.
https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en.

⁹¹ Eisele, Katharina. *Why come here if I can go there? Assessing the ‘Attractiveness’ of the EU’s Blue Card Directive for ‘Highly Qualified’ Immigrants*. Paper, CEPS, 2013.

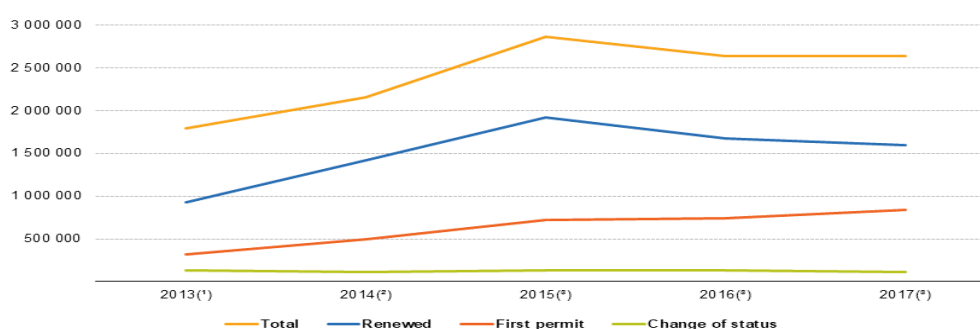
⁹² Eisele, Katharina. *Why come here if I can go there? Assessing the ‘Attractiveness’ of the EU’s Blue Card Directive for ‘Highly Qualified’ Immigrants*. Paper, CEPS, 2013.

3.2.1 Development of the EU Single Directive

Since the end of 2013 until 2015 there was an enlargement of applications by all 27 Member States in order to apply to the EU Single Directive.

What emerged analysing these three years was that in 2013 has been given about 1.8 million single permits. This number increased during the following two years reaching its peak in 2015, at 2.9 million. But, in 2016, the number of EU single permits decreased and in 2017 it remains stable at 2.6 million. As the graph above shows the number of requests and application since 2013 was in a constant increase until 2015 than, it remain steady and slowly decrease in 2017.⁹³

Single permits issued, EU, 2013-2017
(number)



Notes:
— the coverage for the EU changes over time due to the progressive transposition of the Single Permits Directive by the EU Member States;
— Belgium has not yet transposed the Single Permit Directive and Denmark, Ireland and the United Kingdom are not taking part in the Single Permit Directive;
(*) Coverage: Bulgaria, Germany, Estonia, France, Croatia, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia and Sweden.
For Germany, Croatia, Luxembourg, Romania and Slovakia - incomplete data or not available by type of decision.
(**) 2014: coverage as in 2013 plus Czechia, Italy, Cyprus, Hungary, Malta, the Netherlands, Austria, Romania and Finland.
For Austria and Poland - data not available by type of decision.
(*) 2015, 2016 and 2017: data have the same coverage as for 2014, plus Greece, Spain, Lithuania and Slovenia.
For Austria - data not available by type of decision.
Source: Eurostat (online data code: migr_ressing)

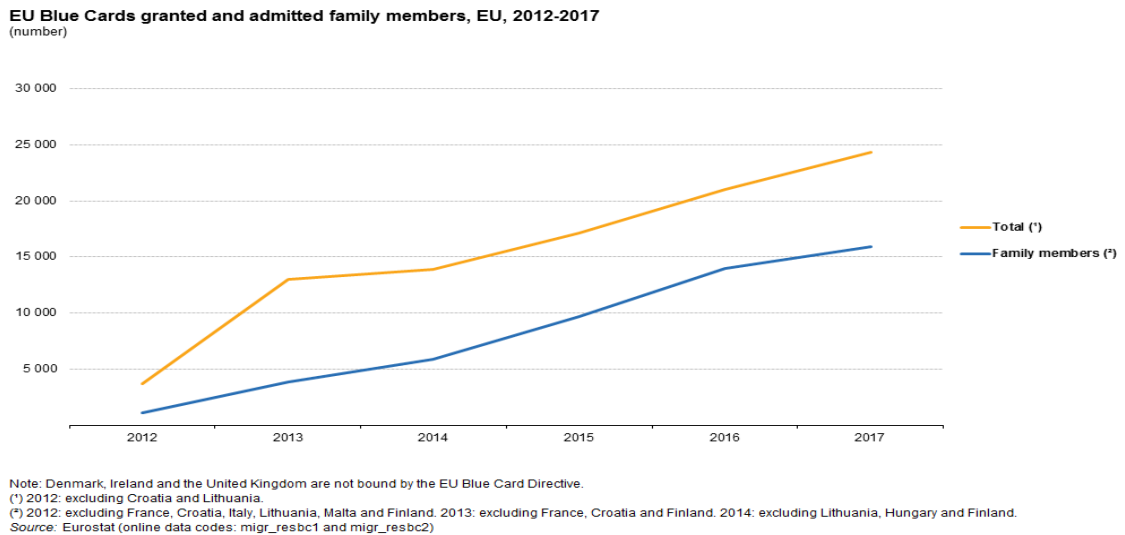
eurostat

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⁹³ Commission, European. *Residence permits statistics on authorisations to reside and work*. Planned article update, Eurostat- Statistics Explained, 2020.

⁹⁴ Commission, European. *Residence permits statistics on authorisations to reside and work*. Planned article update, Eurostat- Statistics Explained, 2020.

Figure 3 presents statistics covering the period since the start of the EU Blue Card data collection in 2012. It



eurostat 

3.3 Controlled admission for permanent residence

Traditional immigration countries outside Europe have for a longtime operated programs (the U.S. quota system, the Canadian and Australian point systems) in which immigrants are selected but enjoy immediate permanent residence status when admitted. There is also an expectation that these immigrants will adopt the citizenship of their country of settlement. Such programs hardly exist for economic migrants in Europe and the number of immigrants who fit this category has been declining also in the U.S. and Canada, where transition from temporary to permanent status is now more common. However, admission for immediate permanent residence is still very important for other types of immigrants. The USA, Canada and Australia the selection process does not exclusively refer to their refugee condition, as would be ideally the case in asylum determination procedures but is frequently driven by economic and political interests of the country admitting them. “Why should immigrants selected for permanent residence be considered as a relevant category on a normative scale of temporary migration?”⁹⁵ The answer given by Bauböck is that even those who have a right to stay for good may decide to return or move on. So legal permanence can still be combined with intended and de facto temporariness. Between those selected for permanent residence there is a possible match between their purpose of immigration

⁹⁵ Bauböck, Rainer. “Temporary Migrants, Partial Citizenship and Hypermigration.” 2011

and the receiving state's willingness to accept them as part of its future resident. But, as long as they are foreign residents, immigrants remain exposed to the threat of deportation if they come into conflict with the law, including those laws that apply specifically to foreign residents only. Permanent resident foreigners also lose their status if they spend too much time abroad, for example in order to take care of family members in a country of origin. Finally, immigrants may find conditions for settlement and integration harder than they had imagined or opportunities much better somewhere else. Just as a stay that is initially temporary may become permanent after some time, so a stay that is initially intended to be permanent may turn out to be temporary after all.⁹⁶

3.3.1 The Member States reaction

The European Commission is still presenting and working on the EU Blue Card because the area of migration remains a sensitive issue and it is necessary to achieve common policies through the MS. Nevertheless, the main problem that occurs since the beginning of the EU Integration is to reduce the sovereignty of the MS.

So, what can be assumed is that through the intergovernmental method used in EU Member States enjoy of a too much degree power to manage the application of the Highly Skilled Workers. "Discretion is not problematic per se: it becomes problematic since a significant part of the added value of the Blue Card initiative lays precisely in the harmonization of the various national policies as a means to create a common labour market, which would be more attractive in the eyes of highly skilled migrants since it would provide them with more favourable conditions"⁹⁷ (EU Blue Card: A promising tool among labour migration policies? A comparative analysis of selected countries, 2016:11)

Eventually, the final version of the Blue Card Directive was a weakened version of the original proposal, because since the beginning of its creation the conflict among

⁹⁶ Bauböck, Rainer. "Temporary Migrants, Partial Citizenship and Hypermigration." 2011

⁹⁷ Bellini, Simona. "EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries." Institute for International Political Economy Berlin, 2016 .

Member States have been always in the centre of the debate because of the opposing positions. The fundamental problem that arose in the EU is due to the intergovernmental order that give to the national governments the power to establish and especially adapt at national level their own policies in order, in this case, to manage migration policies and in particular policies of highly skilled workers migrants. Indeed, what emerged is that each Member States, once that have to adopt the Eu Directives in its own states, is free to set the rules that highly skilled workers have to follow whether they want to apply in this EU country.

“Even if every European country has some form of labour market need and some skills shortages, although different in size and type, these usually go along with public concern over the consequences of labour migration on the domestic workforce and the incentives for firms to invest in job training for natives and for the state to invest in the education system” (EU Blue Card: A promising tool among labour migration policies? A comparative analysis of selected countries, 2016:12).⁹⁸The most central theme in Eu for the MS is the fear to lose their sovereignty in immigration matter and do not be able anymore to have the power to decide and select who can enter or not. In the light of these significant conflicts between the Member States in relation to the EU Directive, the main aim of the establishment of the EU Blue Card was to create a common immigration policy, specific on the highly skilled workers issues in order to find common rules follow by all the Member States. But, as one of the main obstacle that EU has to fight often is that the recognition of adaptation “is left to the discretion of the single national governments.”⁹⁹

Thus, because of this structural problem what occurs is that an application which is accepted in one country, it might be not automatically accepted in another one, creating also problems for the non-EU applicants that may want to move within the EU.

⁹⁸ Bellini, Simona. “EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries.” Institute for International Political Economy Berlin, 2016 .

⁹⁹ Bellini, Simona. “EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries.” Institute for International Political Economy Berlin, 2016 .

Nonetheless, Germany, since the establishment of the EU Blue Card has been one of the most successful Member States that was able to adopt the European provision in its national legislation in a efficient way. Indeed, analysing deep how this European country was able to adopt and improve this patterns might be an example to follow for the other EU Member States.

3.4 German system of Blue Card

In Germany the EU Blue Card can be consider as a viable option for highly skilled migrants that want to move to the country for work purposes. The implementation of the EU Blue Card in Germany is even more workable than the provisions contained in the Directive, indeed, it has been renamed “Blue Card Plus” to indicate the useful conditions of the German 2012 Blue Card for the Highly Skilled Workers. In the German case what is required to let be admitted in the country is a necessary period lowered to 21 months if highly skilled workers have certified German language skills level B-1, in addition has been given the possibility to foreign to apply for a university degree in order to find for an employment.

Since its introduction in August 2012, there was a significant number of applications. But, once the EU Blue Card has been emitted what emerged was that this new instrument did not have an advantage to increase the number of immigration of highly qualified of non- EU country, instead since its introduction, the EU Blue Card has been used to replace the standard residence permit controlled by each European national law. (EU Blue Card: A promising tool among labour migration policies? A comparative analysis of selected countries, 2016:28)¹⁰⁰. In 2012, even if the EU Blue Card Directive came into force the number of applications were not less than 2,584. “According to official statistics, the numbers of permits issued in 2012 was 44,106, while the following years saw a dramatic decrease: 33,734 in 2013 and 34,630 in 2014. If we now compare these numbers with the number of Blue Cards issued since 2013 (2012 statistics are not significant enough since the Directive entered into force only

¹⁰⁰ Bellini, Simona. “EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries.” Institute for International Political Economy Berlin, 2016 .

in August that year), it is unsurprising to find that the number of permits issued under §18, Subs. 4 decreased roughly by the same amount of Blue Cards issued.” (EU Blue Card: A promising tool among labour migration policies? A comparative analysis of selected countries, 2016:28-29)¹⁰¹

As above mentioned, in the EU there is a strong prevail of two kinds of rationales, those supported by the European institutes, who consider EU migration policy as a necessary response to changing migration methods, and on the other side, the position of the member states, which consider much important to maintain their sovereignty rather than find common immigration policies shared with all EU States. And as consequence the immigration policies are not really take in consideration by national governments.

3.5 Limit concerning the EU Blue Card

The EU Blue Card did achieve a limited success. What can be termed the most significant achievement of the Blue Card initiative is the fact that it helped create a minimum set of conditions and rights for the highly skilled: even if it failed to create a common migration scheme, since it has remained in most of the cases in competition with the national strategies targeted at the same group of migrants, it led at least the national schemes to introduce more liberal and favourable provisions to attract the highly skilled.¹⁰² Nonetheless, as long as more favourable national policies, differing from one country to the other, remain in place, the added value of the Directive will be undermined. In this sense, another step that seems reasonable in order to increase the efficiency of the Blue Card is to give the EU scheme more exclusiveness vis-à-vis the national migration policies. Since both instruments target the same type of migrants national schemes do not serve simply a complementary function to the Blue Card, as defined by the Council at the time where the negotiations of the Directive were carried out (Council 2008), thus already modifying the proposal in favour of an exclusive nature of the Blue Card as defined by the Commission (2007a): at present the situation

¹⁰¹ Bellini, Simona. “EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries.” Institute for International Political Economy Berlin, 2016

¹⁰² Eisele, Katharina. *Why come here if I can go there? Assessing the ‘Attractiveness’ of the EU’s Blue Card Directive for ‘Highly Qualified’ Immigrants*. Paper, CEPS, 2013.

is one in which the two approaches, national and European, are competing and their conditions generally overlapping.

Some experts underlined a possible “positive competition” (EC 2015c: 5) between the Blue Card and the national schemes: however, although the EU approach could have succeeded in setting minimum standards and rights for the highly skilled, it is certainly way far from a harmonized and common scheme. NEUJOBS¹⁰³ addresses the wide-ranging issues involved with rethinking the effectiveness of EU labour migration policies (Carrera et al. 2014). It pays special attention to the Blue Card Directive for highly qualified third-country nationals. As the European Agenda for Migration admits (EC 2015: 15), this scheme has had limited success, with only 16,000 blue cards issued in the first two years of its operation. NEUJOBS research pinpoints the many reasons for the failure of the scheme to ‘take off’. There are 27 different admissions systems, since Member States individually impose their own regulations on skilled incoming workers.

In fact, there are widely differing practices regarding the recognition of degrees from outside the EU, so that a qualification deemed valid for a blue card in one Member State may be rejected by another (Eisele 2013: 25). Eisele concludes (2013: 34–37) that there is a dire need for an EU-wide scheme for the consistent recognition of qualifications. Once the blue-card holder arrives, inconsistencies persist. The validity of the card varies from 3 to 48 months in different Member States, and variable criteria apply to salary requirements and the definition of exactly what constitutes ‘highly skilled’, ‘highly qualified’ or ‘professional experience’.

A severe condition of immobility is created by the 18-month restriction placed by the EU on card-holders’ right to circulate outside the card-awarding Member State (Groenewold and de Beer 2014: 10–11). Amongst several NEUJOBS recommendations, a very important one is to treat blue card migrants and other skilled workers more in line with the EU population as a whole.¹⁰⁴ This would make it easier to match job vacancies with candidates and enhance the intra-EU mobility of non-EU nationals legally residing in a Member State, so that the EU becomes more attractive

¹⁰³ Eisele, Katharina. *Why come here if I can go there? Assessing the ‘Attractiveness’ of the EU’s Blue Card Directive for ‘Highly Qualified’ Immigrants*. Paper, CEPS, 2013.

¹⁰⁴ Eisele, Katharina. *Why come here if I can go there? Assessing the ‘Attractiveness’ of the EU’s Blue Card Directive for ‘Highly Qualified’ Immigrants*. Paper, CEPS, 2013.

to skilled migrants, students and researchers from outside. As Commissioner Malmström emphasises, this requires a higher level of trust between Member States' authorities than is currently evident (2014). While skilled migration has usually been seen as a privileged and unproblematic flow of 'wanted' migrants enjoying good public and policy support, the NEUJOBS project demonstrated how fragile these assumptions are when put to the test. The Blue Card privileges are quite limited and burdened by the regulations of individual countries; hence the take-up of this scheme has been way below expectation. Policies for highly skilled migrants need revision so that they actually serve the purpose of attracting the skilled and talented to Europe, as well as allowing for 'brain circulation' through ethical recruitment. Research has found the Blue Card scheme to be ineffective, especially regarding differing practices for recognition of qualifications, different admission criteria (e.g. salary requirements), the non-harmonised temporal validity of the card and the restrictions to the right to circulate outside the card-awarding Member State.¹⁰⁵ Research recommends reforming the Blue Card Directive, following the above points, so that it is implemented in a harmonised manner across the EU territory, especially in light of the global competition for talent.

Certainly, labour migration has been one of the most difficult policy areas to harmonise at European level, given that immigration remains primarily the responsibility of Member States. The EU should continue working towards better policies that ensure non-discrimination and equality principles for all groups of legal migrants from third countries. Challenges remain, firstly in the distinction between highly skilled workers who have the 'Blue Card' status and lower-skilled workers; secondly, the distinction between all migrant workers versus the family members of EU citizens, who stand out as the most privileged group in terms of the rights of third-country nationals residing in the EU (Cholewinski 2014: 25–26). Important research has also been conducted by OECD expert groups on migration, mapping out the policy requirements and options and drawing up concrete lists of suggestions.¹⁰⁶

¹⁰⁵ Eisele, Katharina. *Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants*. Paper, CEPS, 2013.

¹⁰⁶ Eisele, Katharina. *Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants*. Paper, CEPS, 2013.

However, the final decision on whether or not to grant a Blue Card is left to the discretion of Member States, which have the exclusive authority to determine the number of migrants they wish to admit (Art. 6), whether the application has to be submitted by the third-country national and/or by their employer (Art. 10) as well as the right to reject an application on the basis of ethical recruitment (Art. 8, Subs. 4) or their national labour market situation (Art. 8, Subs. 2): “A Member State need only set the quota at zero to frustrate the whole project”¹⁰⁷ (Guild 2007: 5). The same Article 4 also enforces the so-called Community preference clause: “Member States may verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or national law, or by EC long-term residents wishing to move to that Member State for highly qualified employment”¹⁰⁸.

3.6 Implementation of EU Blue Card

In light of all the development and implementation of the EU Blue Card though the years, what can be assumed in order to improve this European pattern it might be take in consideration some features apply in the Canadian system to have a better and workable model for the highly skilled workers.

These measures for the implementation of the EU Blue Card might be the following:

- Give the priority to enjoy the Blue Card for people that graduate in the European countries
- Reinforced the duration and the long term permit application which start with 5 years and then the possessors can apply for a EU long term permit
- “The mobility potential of the Blue Card should be increased by lowering the requirement to stay within the same MS to 12 months.” This as consequence would improve the attractiveness for the highly skilled workers to implement

¹⁰⁷ Eisele, Katharina. *Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants*. Paper, CEPS, 2013.

¹⁰⁸ Peers, S - Guild, E - Tomkin, J - Acosta Arcaza, D - Groenendijk, K - Moreno-Lax, V. *EU Immigration and Asylum Law (Text and Commentary)*. Martinus Nijhoff, 2012.

a higher mobility within EU without have the problems to move with difficulty from one EU country to another¹⁰⁹

¹⁰⁹ Triandafyllidou, Anna- Isaakyan, Irina. "EU Management of." European University Institute- Robert Schuman Centre for Advanced studies , december 2014.

Conclusion:

The sensitive argument of migration is often a place of confrontation and debate between different perspectives of states and scholars. Each one of them has their own point of view of how migration policies should be managed. The great divergence that emerges in this debate is a conflict between practice and theory. The main aim of my thesis is to show how difficult it can be to apply theory to practice in migration situations.

In my thesis I examined the different point of views among political philosophers, regarding the debate on closed and open borders that are strictly linked to the Human Right Freedom of Movement and the Human Right to Immigrate. In the development of the first chapter I chose to analyse the main opposite perspectives and outlined all the objection that scholars made among each other in order to have a clear vision of the all-pros and cons regarding the migration issue. What emerged on the one hand was the right of freedom of movement should enjoy the same degree of power with the human right to immigrate, all of us should be free to move from one country to another without limitations or restrictions. While, on the other side what arose by the supporters of closed borders was the strong idea of boundaries and sovereignty of states. Implementing this, I would highlight the significant divergence on ethical level on what is morally possible or not, assuming that freedom is sometimes not taken for granted.

Indeed, I took in consideration in the second chapter the immigration restrictions that are a point of confrontation between the scholars. During the analysis I examined the limitations made by the host countries for the potential immigrants and how these countries are very focus on highly skilled workers in order to maximizing their own utility. What I wanted to underlined is how people, in this case immigrants, are consider as a human capital instead of people. This happen because of the severe criteria that states as Canada and Australia, as I used as a case studies, applied with their immigration policies centred on *merit based system* and *point system*. As Carens rightly points out, is the immigration restriction system morally possible? Why these rich host countries prefer to see immigrants as a “potential economic contribution” rather than people that just want to improve their life condition? Why they prefer to protect their national

boundaries? I supposed that the answers on these questions are already given simply by considering immigrants in a way as a means of strengthening the host state economically. So, it would be quite difficult for a host country to follow the theoretical and ethical perspective developed by the scholars mentioned in the thesis.

In the last chapter I analysed which immigration policies concerning the highly skilled workers European Union chose. I also selected EU because of its governmental and political different structure of Canada and Australia in order to show also why EU made some difficulties in order to find a common immigration policy. I examined the 2012 EU Blue Card, that the result has been disappointing for all Member States except for Germany, which host the highest percentage of highly skilled workers in EU. The main aim of the development of the EU Blue Card is to attract as many professionals as possible to ensure the competitiveness of its economy. The only analogy with Canada and Australia is the economic issue. While in the management of the immigration policies EU has a structural problem due to the Member State sovereignty that often blocked the political process and create limits by the fact that the validity varies from country to country. Indeed, a structural problem that emerged in EU is on the implementation at national level of the Blue Card directive, because each government has recognized specific conditions.

Although the case studies analysed of Anglo-Saxon models and European one, have different political structures and policies adopted in the immigration issue a point in common that can be outlined is on two main aspects: immigration restrictions due to people that are selected in order to their highly skills that as consequences can increase the economy of the host country and the latter is focus on the strong sovereignty that host countries still wanted to maintain, especially in EU. As mention at the beginning migration issue is a sensitive subject to be analyse, manage and control particularly for countries. States must surely adapt and modify their migration policies according to the historical period in which they find all the solutions to avoid a threat of the human right to freedom of movement and guarantee the human right to immigrate. As the UDHR 1948 stated that everyone is free to move within and outside their borders. What countries, especially host countries can improve is to easing migration restrictions in order to give the possibility even to people that are not prepared with high skills to apply in their countries. Moreover, host countries can try in the future to not compare immigrants just as an economic resource but as people that want to improve their life

conditions that are guarantee within their own country but which are scarcely guaranteed outside their borders.

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SUMMARY

The Human Right of Freedom of Movement: a comparison between the Anglo-Saxon models and the European Union model.

An analysis of the immigration restrictions

In my thesis I will discuss the challenge of how the different philosophical theories answer the questions connected to the concept of the broad issue of open and closed borders strictly related to the immigration restrictions and the human right to immigrate. The aim is to analyse in the first part of the dissertation the two main perspectives of scholars who support the concept of open borders and on the other side those who support the closed borders. In the second part I will connect to the theme of immigration restrictions, already discussed in the first chapter, providing two significant case studies with two Anglo-Saxon models, Canadian and Australian patterns due to their management of Highly Skilled Workers immigration. Then, in the last chapter, resuming the topic of Highly Skilled Workers, I will compare the latter model, with another western industrialised economy as the European Union. The decision to take in consideration and chose the European Union derives from the interest to comparing the different political and governmental structure between Anglo-Saxon and European models on the management of the immigration policies. Hence the interest in focusing the analysis on the creation of the EU Blue Card and why it has not given great results except for Germany, which will be analysed in detail. The main aim of this chapter is to understand why on the one hand, the Anglo-Saxon models are considered successful while in the European Union, after a long process of integration, it is still difficult to find common policies. In this case on migration, there are always disagreements because each national government adopt a different European regulation not allowing to migrants to move more freely between the different Member States.

In Chapter I, I decided to start with the point of view developed by Oberman because of his idea to evaluate at the same ground of degree freedoms within a state to freedoms outside borders through the human right of immigrate. From Oberman's perspectives one of the main topic underline by him is the central role that rich states have thought the poor ones. Indeed, his approach is focus on object to the immigration restrictions

made by Western industrialised states. Assuming that, if restrictions were abolished there would be an increase of a number of people ready to immigrate. According to the point of view of Oberman's immigration restrictions, similarly Carens developed the same perspective which these liberal democratic states could only legitimize a migration system based on open borders. Supposing there is no natural social order and institutions and practices that govern human beings are ones that these latter have created, thus all human beings have equal moral value and open borders can express equality. That is why if are not adopt open borders in Carens' view liberal democratic states would lose their legitimacy and lose their normative right to rightfulness if they apply immigration regimes that exclude immigrants. The existing human right of freedom of movement is recognized in the important international documents as I mention at the very beginning with Article 13 of the 1948 Universal Declaration of Human Rights (UDHR) which states "everyone has the right to freedom of movement and residence within the borders of each state" and "everyone has the right to leave any country, including his own, and to return to his country". So, according to this, it should be acceptable to extend the free movement across borders, because the reasons why people want to move from one place to another will be apply in both cases. On the one hand as Declaration explains, freedom of movement within states permits people to access to a free series of "life options" such as which job they take, which association they join or which religion they choose. This right protects people against the internal application of any type of restrictions so, why this might be limited outside borders?

Regarding the question both Oberman and Carens shar the same point of view criticising the immigration restrictions consider as a limit of freedom. Going deep on the issue of open borders there has been developed two elements, that are equality and freedom. Following the egalitarian view, the main point outlined is the great inequality that occurs between rich states and poor ones and obviously because of desperate poverty, people are driven to leave from their poor country. One of the most important priority should be to modify these conditions in order to help poor people to come out from their extreme poverty. While, on the other side will be clarify the *choice view* position of the theorists who defend the latter, as Miller and Wellman who outline the importance for a state to control its borders and assumed that rich states are free to manage migration as an alternative in order to help poor people to the assistance they

require to stay in their home states, or to help them for the assistance they require in order to migrate.

Moving forward will be analyse the liberal view developed by Bauböck, who consider that liberal theorists have formulated two kinds of arguments deal with freedom of movement across international borders. On the one hand, immigration is considered as a reparative right that can be affirmed by those who lack sufficient of protection, resources in their country's residence. On the other hand, is considered geography mobility instead as a primary right the restriction of which must be justified. Indeed, these two arguments go in different directions. The first view appears to ask for open borders since there is global injustice in a way that be part of a country determines one's opportunities. In fact, once a country gives to its citizens' basic opportunities, these can no longer claim a right to immigration into another state's territory. Contrary, the second approach seems to use better in an ideal way in which countries have no more reasons to limit entrances because the economic and political disparities between them have been levelled out. Regarding the issue if the open borders could be a solution for the global injustice, there are many, but not all liberals, that support the view that open borders are an idea that countries should fight to achieve in the future, but however accept that in a non-ideal world immigration will have to be controlled.

From closed borders point of view, will be take in consideration the broad perspective of Miller especially on the human right to immigrate.

A human right to immigrate means a "universal right to cross the borders of any state an remain within them for as long as one chooses"(Miller, 2016:3). This obviously would mean that this right would deny states on their border policies, giving to the right, the power to decide who admit to its territory. Nonetheless based on this assumption it may be noted that in the most significant documents, ratified by states, in which human rights are encoded this right is absent. What he also highlights are an important obstacle linked to the financial cost of migrating. In fact, the reasons used to sustain the human right to immigrate could be seen in the financial contribution from the receiving states but on the other hand it might be assert that the weight to give support to migration should be share equally between all states, whether or not they are attractive to immigrants. Will be also analysing the three main strategy developed by Miller: *Direct, Instrumental and Cantilever Strategy* in which he demonstrates his point of view on the human right to immigrate.

Hence, what can be deduced from the analysis of different perspectives on the immigration restriction is that, on one hand rich states have to allow to entry poor people as immigrants whether they failed to help them. On the other hand, dealing to the substantial disagreement affects states that have to admit foreigners even if they provide them assistance.

In the second part I will deeply explore the theme of immigration restrictions and how these are implemented in practical ways through the Anglo-Saxon models. Nevertheless, in order to understand the above mentioned theorist positions on the relation between the immigration restrictions and the alongside human right to immigrate is necessary to come back to the admissions issues on migration. There are different views from liberal states of how to manage this matter. It is important to remember that until the 1960s racial discriminatory criteria were existing in countries like Canada, Australia and United States. Christian Joppke assumed that “The state may consider the individual only for what she does, not for what she is[...] The individual is selected according to ‘achievement,’ not ‘ascription,’ that is, according to her agency rather than according to what she is immutably born with”. Indeed, according to Joppke, at that time there was the so called “*selecting by origin*” which is strictly linked with position of some critical legal scholars that have showed some situations in which immigrant admissions reflect systematic group prejudices on the base of cultural and ethnical bases. After 1960’s racial discriminatory criteria have been developed with the transformation from “selecting by origin” to “selecting by merit”. This change is extremely significant for Shachar. That will examine deeply the concept of *merit based system* that will mostly concentrate the power of the state which can influence the migration flows through this system and also increase the tension between a limiting closing for many and a selected opening for few. The aim to examine the Anglo Saxon models Canadian and Australian migration policies that use the “*selecting by merit system*” is to show how these countries play a central role in deciding who to give the permanent resident to highly skilled workers with precise criteria. In detail then, will be examine the point-based system used in Canada and Australia. Firstly, will be analysed all the migration policies adopted through the years in Canada from the Express Entry Programme to Federal Skilled Worker Programme and which are the main admission criteria established though these policies and how

those are affected for the Highly Skilled Immigrants that wish to join first a temporary permit and may be achieve to a permanent one. Similarly, will be explain with the Australian model, which is composed by a similar point- based system, starting with the 1970 White Australia Policy until the nowadays immigration restriction policies regarding the Highly Skilled Workers. Concerning the establishment of the White Australia Policy, that in the past forbidding the entrance for the non-European citizens, will be analyse the Walzer's perspective who writes "Assuming, then, that there actually is superfluous land, the claim of necessity would force a political community like that of White Australia to confront a radical choice. Its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only two choices. White Australia could survive only as Little Australia".

In order to make some consideration what can be outline on the *merit based system* and on the immigration restriction policies is that: on the other hand, on ethical level once that a state can decide and select people only for its economic advantage, we are no longer talking about immigrants as people but as human capital. For this reason, as several scholars object to the *merit based system*.

Nevertheless, what emerged in this Anglo-Saxon models is the will by the Western industrialised states to maintain a system in which governments, because of their competitiveness with each other's, will create a, specific preferences of class of immigrants. Instead of trying to overcome obstacles of the past and create equality of opportunity between people and states, the strong idea of sovereignty and inequality continued to persist. As Carens rightly points out, is the immigration restriction system morally possible? Why these rich host countries prefer to see immigrants as a "potential economic contribution" rather than people that just want to improve their life condition? Why they prefer to protect their national boundaries? I supposed that the answers on these questions are already given simply by considering immigrants in a way as a means of strengthening the host state economically. So, it would be quite difficult for a host country to follow the theoretical and ethical perspective developed by the scholars mentioned in the thesis.

Eventually, in the last chapter I decided to examine the condition of the highly skilled workers in the European Union and how it is managed by EU and its Member States.

Indeed, I wanted to go into more detail on analysing the creation and implementation of the 2012 EU Blue Card instrument and how it has been managed by the European Member States. I chose the European Union because the political and governmental structure is different from the Anglo-Saxon models above mentioned. Hence the main aim of the creation of the EU Blue Card was to create a list of comprehensive socio-economic rights and a possibility to may obtain a permanent residence in the EU. Through this system, highly skilled workers have to present: a valid work contract or a job offer with a duration of at least one year in the EU Member State concerned. Moreover, the standard period of validity of the EU Blue Card is between one and four years. Even EU has the same idea to consider skilled workers as a “economic potential” rather than human beings that have the right of freedom of movement also across borders.

Nevertheless, one of the main problem that arose in EU, once that has been established in 2012 the EU Single Directive was that because of the different EU directive adaptation in each European Member States, every EU country adopt the directive in different ways in its national legislation. For this reason, one of the significant consequences that occurred was that the highly skilled workers might find some difficulties to move among the Eu Members States because of the different national legislations even in immigration issues. There are indeed, 27 different admissions systems, since Member States individually impose their own regulations on skilled incoming workers. Once the blue-card holder arrives, inconsistencies persist. The validity of the card varies from 3 to 48 months in different Member States, and variable criteria apply to salary requirements and the definition of exactly what constitutes ‘highly skilled’, ‘highly qualified’ or ‘professional experience’. In fact, there are widely differing practices regarding the recognition of degrees from outside the EU, so that a qualification deemed valid for a blue card in one Member State may be rejected by another. The only EU member states that can be consider a successful one is Germany. Indeed, the introduction and implementation of the EU Blue Card in Germany is even more workable than the provisions contained in the Directive, indeed, it has been renamed “Blue Card Plus” to indicate the useful conditions of the German 2012 Blue Card for the Highly Skilled Workers. In the German case what is required to let be admitted in the country is a necessary period lowered to 21 months if highly skilled workers have certified German language skills level B-1, in addition has been

given the possibility to foreign to apply for a university degree in order to find for an employment. Since its introduction in August 2012, there was a significant number of applications. But, once the EU Blue Card has been emitted what emerged was that this new instrument did not have an advantage to increase the number of immigration of highly qualified of non- EU country, instead since its introduction, the EU Blue Card has been used to replace the standard residence permit controlled by each European national law. Certainly, labour migration has been one of the most difficult policy areas to harmonise at European level, given that immigration remains primarily the responsibility of Member States. The EU should continue working towards better policies that ensure non-discrimination and equality principles for all groups of legal migrants from third countries. Challenges remain, firstly in the distinction between highly skilled workers who have the 'Blue Card' status and lower-skilled workers; secondly, the distinction between all migrant workers versus the family members of EU citizens, who stand out as the most privileged group in terms of the rights of third-country nationals residing in the EU.

In light of all the development and implementation of the EU Blue Card though the years, what can be assumed in order to improve this European pattern it might be take in consideration some features apply in the Canadian system to have a better and workable model for the highly skilled workers. Give the priority to enjoy the Blue Card for people that graduate in the European countries. Reinforced the duration and the long term permit application which start with 5 years and then the possessors can apply for a EU long term permit.

Although the case studies analysed of Anglo-Saxon models and European one, have different political structures and policies adopted in the immigration issue a point in common that can be outlined is on two main aspects: immigration restrictions due to people that are selected in order to their highly skills that as consequences can increase the economy of the host country and the latter is focus on the strong sovereignty that host countries still wanted to maintain, especially in EU.

As mention at the beginning migration issue is a sensitive subject to be analyse, manage and control particularly for countries. States must surely adapt and modify their migration policies according to the historical period in which they find all the solutions to avoid a threat of the human right to freedom of movement and guarantee

the human right to immigrate. As the UDHR 1948 stated that everyone is free to move within and outside their borders. An effort, that especially in these difficult times the states might adopt would be an equal balance between theory and practice into a single migration policy occurs, in the case of European Union and a selection criterion not so drastic for the Anglo-Saxon models in order to no longer consider immigrants as mere economic potential but as human beings entitled to have the human right to freedom of movement.