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Freedom of movement and global justice: questioning the moral duties of nation-states

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Note: As a non-English speaker, I wanted to write this work in English to challenge myself and because English is the language most used in the field of academic philosophy. However, I should mention that for the corrections and for certain parts of the text I submitted certain passages to DeepL, an online translation software.

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« *The painter wants to know what things seem to be, the practical man and the philosopher want to know what they are; but the philosopher's wish to know this is stronger than the practical man's, and is more troubled by knowledge as to the difficulties of answering the question.* »

Bertrand Russell (1912), *Problems of philosophy*

2. Introduction

In recent years, immigration has become one of the hotest topic in political discussions in Western democracies. In liberal democratic states, legislations on the tightening of asylum and immigration rights has flourished. Recently, the British Conservative Prime Minister Rishi Sunak has introduced an anti-immigration bill, including a ban on people arriving illegaly across the Channel to seek asylum in the UK (Le Temps/AFP: 2023). Later, in April 2024, the decision was also taken to send the rejected migrants to camps in Rwanda. In Switzerland - where I live - immigration is regulary subject to popular referendum, mostly - if not always - with the aim of better controlling or reducing it. On the other hand, while rich countries try to limit so-called mass immigration, many people try to leave their home country in search of a better life. More precisely, they are not so much trying to leave their country as to find a new home, synonym of new opportunities and better life prospects[1].

Among would-be immigrants, there are countless reasons for leaving, ranging from the desire to retire in the sun for retirees from wealthy countries, to people fleeing war and/or poverty. However, it is clear that people who want to live in a country other than the one in which they are citizens can face real difficulties when it comes to crossing a border and settling in another state. There is no doubt that this quest is not an easy one in a world structured by nation-states where state sovereignty over internal decisions is rarely called into question. Assuredly, in such a world, would-be immigrants - particularly from poor countries - may truly struggle to move in other states as states, by and large, do not have binding legal obligations to accept people who come to apply to enter and reside in it.

On the contrary, it is of conventional wisdom to consider that states can control their borders at will and, consequently, can accept or refuse migrants as they see fit. Few, apart from political philosophers and other academics, would be inclined to question such a view. Typically, international law would consider the questions of refugees or claims of asylum seekers, basically

[1] To be sure, some people may struggle to *leave* their country of birth. It is obviously an important issue to deal with. However, this work will be primarily focus (if not entirely) on the right to enter rather than on the right to exit.

drawing on the concept of human rights, but, as Carens notes, will « treat the basic right of states to control immigration as beyond question » (2013: 232).

In September 2023, for example, Marine Le Pen, the former president of the Rassemblement National (previously the Front National) was invited to discuss European politics on a major French TV channel. When asked about immigration, she declared: « the european commission must not assume powers that should remain with the nations, because [the states'] fundamental rights are at stake. *It is the fundamental right of a nation and a people to decide who comes to their country, under what conditions, and who must leave and when*. »[2] (my emphasis). Although Marine Le Pen is considered to be far-right and therefore generally against immigration, her position on the right of states to decide who can enter their country seems to be the mainstream position among politician leaders and ordinary citizens.

Indeed, it sounds self-evident that, as a political community with the right to self-determination and respect for its sovereignty, states should have the power to decide who may or may not enter their territory and who may or may not stay and settle there. The mainstream position, then, is that « the movement of people across national borders is seen as an anomaly to be exceptionally tolerated » (Wellman and Cole 2011: 160) and that the unconditional decision power of the states to exclude is the norm. In other words, it seems natural to think of the state as an autonomous entity, enjoying kinds of « fundamental rights » such as self-determination and sovereignty which grant it certain related rights such as the right to exclude anyone who tries to enter.

Nevertheless, as suggested above, some scholars have questioned the conventional view that the state has some sort of immutable right to control their borders. In fact, it is precisely the role of philosophy to question ideas that seem obvious at first sight. In this work, the aim will be to challenge the conventional standpoint. There are two considerations which, in my view, require us to put the conventional view into perspective.

The first is the huge inequalities between people, a determining factor of which is the country in which we are born and the force with which rich countries try to prevent the arrival of undesirable people. Famously, Joseph Carens wrote that

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2 « la commission européenne ne doit pas s'attribuer des pouvoirs qui doivent rester aux nations parce qu'il en va de leurs droits fondamentaux, il en va du droit fondamental d'une nation et d'un peuple de décider qui vient chez lui, à quelles conditions et qui doit partir et quand » (Marine Le Pen: 2023 - traduction avec l'aide du logiciel en ligne DeepL) https://www.youtube.com/watch?v=g8lCEZnJfao consulté le 10 mai 2024

> « like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely. » (Carens 2013: 226).

In light of this, we can ask ourselves whether the closure of borders - as barriers to access to certain resources - is morally acceptable from a justice point of view.

The second consideration is that there seems to be an inconsistency within liberal states. While they consider freedom of movement to be fundamental at national level, they hinder it at global level. Yet freedom of movement and other freedoms are fundamental precisely because they enable us to free ourselves from coercion and subordination to a superior entity. Restrictions on movement may be legitimate, but, as a coercive act, require at least some justification if they want to be coherent with liberal commitments. Why, then, is it considered as a basic freedom at national level and not at global level?

As a result of these questions, the topic of immigration - and more broadly the question of global justice - has recently gained significant attention in various fields of research, including philosophy, political science and sociology. In political philosophy particularly, conflicting perspectives has emerged when discussing the appropriate response of liberal democratic states towards this phenomenon.

Roughly speaking, some have claimed that a commitment to human rights, liberalism, and cosmopolitanism demands drastic changes in the way Western democracies tackle the issue of immigration. They contend that liberal democratic values, such as individual freedom, equality of opportunity, and respect for the equal moral worth of all extend beyond national borders and requires, as a result, a much more flexible open borders policy than is currently the case (for exemple Abizadeh 2016, Carens 1987, 1992 and 2013, Kukathas 2014 and 2021, Oberman 2016). Others have claimed that liberal and democratic principles are inconsistent with making unilateral decisions about the fate of prospective immigrants (in particular Abizadeh 2008).

On the other hand, the « conventional view »[3] still has many advocates. They champion a right for the states to control their borders, emphasizing concerns over political self-determination,

3. I call « conventional view » the view that states have an unconditional right to exclude would-be migrants.

political and democratic functioning and cultural preservation among others (for example Miller 2005, 2007, 2016; Walzer 1983, Wellman 2008, 2011). These authors argue especially that by virtue of the right to self-determination and the preservation of culture, democratic states have an exclusive right to decide who can enter their territory and who can become a citizen. Furthermore, they argue liberal democratic states have the prerogative to prioritize the well-being of their own citizens before extending aid to those outside their borders although they recognize that wealthy states have a duty to ensure that poorer countries receive minimal humanitarian aid.

Since there is little consensus on this field, this work seeks to navigate this complex terrain by examining the moral dimensions of the immigration debate. By critically assessing the arguments put forth by both proponents and critics, my aim is to shed light on the ethical underpinnings of immigration policies and explore whether a moral duty exists for liberal democratic states to open their borders. Another way of expressing my main question, and perhaps a more precise one, would be as follows: *is it morally legitimate for liberal democratic states to discretionary exclude would-be immigrants ?*

On the face of it, this may seem a radical question, given that state control of borders seems to be taken for granted. If one thinks about it, actually all the inhabitants of this world were born with and live in a world that divides sovereign political entities by borders. The question also seems radical because if interpreted in the wrong way, it might seem that only a dichotomous answer can be given: either the states can control their borders or they cannot. But we will see that it is not the case and I would like to reassure the reader who would jump out of his chair at the idea of a world where all borders would be open: although the answer I will give in the course of this work will be quite different from the conventional view, it will be a measured and reasonable answer in the sense that, I hope, the reader will be convinced by my well-considered arguments.

Above all, the argument I am about to put forward - as we shall see, in favour of a more open borders policy - imposes a moral duty derived from a theory of global justice, but it does not involve forcing states to accept any candidate for migration through a supranational institution. Imposing the entry of migrants into a country that does not want them seems counter-productive insofar as this practice would be detrimental not only to the inhabitants of the host country who do not want them, but also to the migrants themselves, since they run the risk of being treated poorly precisely because of the unwillingness to welcome them.

Thus, the arguments I am going to put forward should be of use above all to citizens who are asking themselves « what should I do? What kind of immigration policies should I support? ». In

any case, the answer I give will not be as radical as the total opening of borders. As a matter of fact, the debate on open borders and immigration presupposes that borders exist. Advocating a total opening of borders would be tantamount to advocating a world state or an anarchist world, which would not necessarily be desirable. Indeed, we already find in Kant's *Perpetual Peace* the idea that a world state runs the risk of being despotic. Moreover, a strong central global state also seems to run counter to the idea of a diversity of human culture (Miller 2007: 26). Consequently, I also assume that the global state system that divides the world into different political entities is not intrinsically wrong and that there are good reasons to think that it is rather beneficial. Anna Stilz, for example, has convincingly argued that access to collective self-determination for a people who share a common political will to live together gives us reason to think that the system of state division is morally desirable (Stilz 2019). Be that as it may, my starting point is that borders exist but that, insofar as they impede the freedom of human beings, excluding would-be immigrants requires justification.

Indeed, most of the fundamental freedoms, such as typically freedom of movement, can be subject to restrictions because they may, for example, interfere with other fundamental freedoms. A striking example occurred during the covid pandemic. In many countries freedom of movement was severely restricted, but the justification seemed legitimate: to avoid a huge health disaster and the death of thousands of people. But once again, such restrictions require justifications, the aim of which is to demonstrate that these restrictions make the world a better place than it would be without them or, in other words, that these restrictions are legitimate because they correspond to a shared conception of what morality requires.

I have noticed above that states, by and large, do not have binding legal obligations concerning the acceptance of would-be immigrants. However, to say that states do not have legal obligations does not entail that they do not have *moral* obligations and we can legitimately ask if they have any in a world with so many disparities. It is noteworthy to recall that what influences the laws adopted are obviously linked to what people consider as moral and just. Hence, one of the main aims of this work will be to show that *the current migration policies in liberal democracies are unjust* if we look at them carefully and that a commitment to the values that liberal democracies generally uphold requires much more open policies towards would-be migrants. More precisely, I shall argue that (i) states' coercion exerted through border controls morally imposes on states (particularly democratic and liberal states) greater flexibility with regard to the movement of people

and (ii) that the refusal to let a candidate for migration enter requires justification even if there can be cases where these restrictions are legitimate.

2.1 Plan

This work will be divided mainly into four main sections. In the first section, I propose to provide some clarification of the terms used in this work and highlight the problems that can arise from the idea of migration in a world of nation-states. In the second part, I consider an initial argument that has been put forward in favour of opening up borders based on material (in)equalities. However, I argue that it is not conclusive. In the third part, I propose another argument based on freedom. I show that a commitment to political liberalism and therefore to respect for fundamental freedoms requires a much more open immigration policy than is currently the case. In the fourth part, I look at the objections. I argue that, although these objections are well-founded and must be taken into account, they do not undermine the argument definitively. I end with a conclusion in which I argue that it is necessary to put in place a system of international laws in order to cooperate more effectively.

3. Immigration in a context of Nation States and globalization: backdrop and challenges

Although human migration is far from being a new phenomenon, it is only recently that it has begun to become a real issue for societies, bringing as much cultural and economic enrichment as concerns and fears. Before the rise of the nation-states as we know them today, Miller observed that « states were regarded as having an unrestricted right either to accept immigrants or to refuse them entry as one aspect of their sovereignty, but in practice movement was often left unregulated » (2016b: 4). It was only when immigration increased in the mid-nineteenth century that the issue of control really took on importance, embodied by the first laws in the USA in 1882 regulating Chinese immigration, whose community was seen as a moral and economic danger, and in the UK in 1906, with the Alien Act, whose aim was to limit the immigration of Jews from Eastern Europe (Ibid). These early laws were manifestly essentialist and racist, targeting certain « races » that were not only considered as competitors to the natives in the job market, but also as morally inferior (Ibid).

Where do we stand today? It is difficult to give a comprehensive overview of the state of migration regimes around the world. However, it is clear that border controls regulating immigration have taken on a new dimension. With the exception of certain contexts where borders have been partially abolished (e.g. within the Schengen area), the vast majority of countries - if not all - rigorously control entry to their state. In fact, even in the case of the Schengen area border controls have not been totally abolished. On the contrary, entry into the Schengen zone, particularly for people from poor countries, has never been so difficult. Border guards continue their work of ensuring that only those authorized to enter can do so. Roughly speaking, hence, states now have an almost *unconditional* right to exclude and no justification is needed to refuse entry to a foreigner.

Once again, we can ask whether this unconditional right to exclude non-nationals is legitimate since such restrictions seem to run counter to intuitions we have at national level, such as the fact that freedom of movement is considered a fundamental right. Neverhteless, it is true that in a world structured by a multitude of sovereign states, immigration can be a challenge for at least two reasons linked to the functioning of democracy. Firstly, it can jeopardize national cohesion and living together, insofar as immigration on too large a scale could compromise collective self-determination. Would not, for example, a massive influx of foreigners undermine a nation's autonomy to decide its own laws for and by itself? Secondly, immigration can be a challenge because an excessive cultural divergence can adversely affect trust between the inhabitants of a

country and therefore adversely affect the functioning of democracy and the desire for equal disrtibution of share (Miller 2007, Lenard 2012). However, although these two arguments are powerful, I shall argue that they are not strong enough to entail an unconditional right of states to exclude migrants. In other words, although these arguments must be taken into account in a theory of migration justice, they cannot override certain moral prerogatives. This will be the subject of a more detailed section.

A second important challenge lies in the fact that, in contemporary political philosophy - say since the Enlightenment - the question of political justice has been confined to the national level. From Hobbes, Rousseau and J.S Mill to more contemporary philosophers such as Rawls, Nozick and Dworkin the questions revolving around the form of political power, the legitimacy of the state, distributive justice and so on remained within the bounds of the state. In other words, the state was the basic central political unit from which political philosophy focused, and few questioned this assumption.

Yet as global interactions intensify, it seems increasingly necessary to widen the lens of moral considerations. Indeed, political communities are not (or no longer) isolated and the challenges affecting human beings have taken on an international dimension. Epidemics, widespread poverty, the ecology and, of course, immigration are all part of the global picture. Hence, Miller writes: « a shift of perspective is needed because political philosophy […] has largely been concerned with the internal relationship between the state and its citizens. All of the questions that we normally ask […] rest on the assumption that we already know who is to be included in the political community » (2016b: 229).

So a familiar question now concerning global justice is whether the theories of justice that have so far proved sound can be applied at international level. Even if we do not agree with certain theories of justice, can utilitarianism, marxism, communitarianism, liberalism, libertarianism, republicanism and so forth be applied at a supra-state level? Of course, these theories are supposed to be intrinsically universal. Those who defend them think that they should apply everywhere because, according to their defenders, they are the fairest theories. But they are not necessarily intended to apply *internationally* - that is, to apply to international political affairs. Ultimately, these theories are based on the premise that all citizens are equal, but equal under a single banner, the state, and that the state is somewhat necessary to implement such theories.

Whether thoses domestic theories of justice should apply internationally is what Valentini has called the *question of extension* (2011:2). In fact, this is a crucial issue for immigration. As I

said earlier, political liberalism, which in my view is the most acceptable theory today, tends to defend individual freedoms and notably freedom of movement. If we were to conclude that theories of justice apply universally and transcend the national framework, then, by analogy, reason should lead us to much more open policies of free movement than those currently in force.

The challenge, however, is that liberalism was developed precisely in the context of an approach centred on the relationship between the state and citizens. The aim of a « Rawlsian like » liberalism was to find principles of justice that were reciprocally acceptable to the *demos* and that guaranteed the equality of citizens in the face of clearly defined political institutions. Indeed, for Rawls, it was clear from the outset of his seminal work *A Theory of Justice* that his theory applies exclusively « to a closed system isolated from other societies » (Rawls 1971: 8). However, since it is clear that modern states are not isolated political entities, it is necessary to explore this question further. Some cosmopolitanists have argued, for example, that because of the ever-increasing interconnectedness between nations, theories of justice that are accepted domestically need to be extended to the international level (for example Beitz: 1979).

3.1 The problem of definition: Immigration

Before going any further and going into the details of the arguments, I think it is necessary to clarify a couple of points.

To begin with, it is essential to address the issue of definition. In most of the literature on immigration, few authors have taken the trouble to define what they mean by « immigration/ immigrant » and « borders »[4]. I suppose the main reason for this is that these terms are so deeply rooted in our commonsense that defining them could seem unnecessary. They are concepts that are used regularly and authors therefore take on their common meaning. However, it is crucial to make the effort to define them because these concepts, which seem so self-evident to us, actually hide elements that escape commonsense. Indeed, as Kukathas rightly points out

> « further reflection suggests that immigration control begins not at the border, or even beyond the borders […] but with the defnitions of immigration and immigrant—and so, by implication, of the notions of native and national. The first step in the exercise of control is to determine who is to be subject to control, and in the case of immigration it means establishing who is a native and who is a foreigner. One way of controlling the

[4] Except for Chandran Kukathas (2021) *Immigration and Freedom* ch.2, on whom I am basing this section. To avoid overloading the text, I only note the references when I am quoting or relying on another source.

movement of people is by establishing through defnition the number and type of people who need no permission to travel or to enter a territory or to exercise a variety of rights that are denied to others. Immigration control begins not with walls or fences but with *classification* » (Kukathas 2021: 27 - his emphasis)

What Kukathas is putting his finger on here is of fundamental importance. In fact, the very definition of immigrant and native is in itself a first barrier to free movement. Depending on how « the immigrant » is defined, the possibility of moving from one country to another will vary. Thus a detailed examination is necessary.

It should be noted that a first difficulty with the very idea of defining an « immigrant » or « immigration » is that « these terms do not identify « natural kinds » but are, in fact moral or normative notions » (Kukathas 2021: 12). In fact, being an immigrant is not a substantial characteristic of a person, like age, sex or hair colour. Being an « immigrant » is first and foremost a legal status and, as such, its definition can vary according to spatial and temporal contexts. The same can be said of borders.

Of course the notion of « border » can exist in a natural and substantial sense. There is nothing imaginary about a mountain preventing me from moving from one point to another. But when we talk about borders in a geopolitical context, we are of course referring to a much more specific concept. Once again, it is an artificial concept, subject to variations, which only exist because we recognise them as such. Of course, migration is nothing new in the history of humanity, but borders control requires a state apparatus that functions at a minimum, and the genealogy of border control, as we know it, cannot be studied without understanding the emergence of the modern state. The issue of immigration is part of a global political context, based on a multitude of states each claiming sovereignty.

It may be obvious that the notion of immigration refers to the movement of people from their country of birth to another land. Yet it is not always clear that movement is an essential characteristic, as it is not always clear that nationality is also a fundamental feature. Indeed, there are, in general, two ways of defining migrants: either as those living in a country in which they were not born - and thus based on the country of birth - or by nationality. These two ways of approaching the notion of immigrant are both problematic. In the first case, what about a child born in country A but whose parents are from country B and who later returns to country B? Would he or she be a

migrant in his or her parents' country? If she returns young, perhaps she will not be considered a migrant, but what if she returns as an adult?

Concerning nationality, other difficulties arise. For example, what about people with several nationalities? He or she could move from one country to another - in which he holds nationality - and yet he may not be considered a migrant even though he may never have set foot in a country where he holds nationality. In this case, movement would not be a characteristic of the « immigrant ».

Hence, as Kukathas observes « there are various other ways of defining immigrants and immigration, but all are problematic to some degree » (Kukathas 2021: 15). This difficulty stems from a number of factors. One of the sources of this difficulty is the fact that each country defines what it considers to be a migrant in its own way. The definition of a migrant varies according to time and place.

So depending on the legislation in force in your country, you may or may not be considered a migrant. At international level, organisations such as UNESCO and the UN are also unable to agree on a definition. For example, UNESCO defines the term migrant as « any person who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country » (UNESCO: 2017). The problem again, which UNESCO recognises, is that in some countries a person can be considered a migrant even though he or she was born in the country. Furthermore, note that the term migrant is not defined by international law.

The important point to stress, then, is that the term « migrant » is first and foremost a legal category, and although « migration » is a demographic concept, « immigration » or « the immigrant » are primarily political concepts. In other words, « the defnition of immigrant and immigration is not a technical matter but a normative one. Indeed, it is a political matter. Immigration law does not determine what is to be done with immigrants as a natural kind but establishes (roughly but not always clearly or precisely) who is an immigrant and, in so doing, determines how certain kinds of people are to be treated. » (Kukathas 2021: 17).

A second important point is that the status of immigrant, as a means for states to control who enters and who leaves, or who is to be treated in a particular way, is at odds with the status of citizen or « native ». Once again, these concepts are problematic in the same sense as that of immigrant. Just as migrant status depends on the laws of different countries, « natives » or « citizens » are legal categories that are defined by the laws of the country concerned. In some countries, citizenship is determined at birth by *jus soli* (i.e. it is the fact of being born on the soil of

the country that matters), while in others it is *jus sanguinis* that matters, in which case it is the nationality of our parents that is transmitted to us « by blood ». What is more, citizenship - or nationality[5] - can also be acquired, in most countries, by naturalisation.

Like immigration, then, the question of citizenship depends on the legislation of the country concerned and can therefore be subject to variation. Once again, in trying to differentiate between « natives » and « immigrants », we come up against problems. Is someone who has been naturalised still an immigrant? We have seen that we could consider a « migrant » to be someone living in a country where they were not born. But this does not seem to fit with the consideration of someone who has been naturalised and is well established in a « host country ».

This brief discussion highlights two important points to bear in mind when discussing the justice of immigration policies. Firstly, the question of the definition of immigrant and native is first and foremost a matter of policy. It is a question of defining who should be treated as a citizen or who should be treated as an « immigrant ». It is clear that in the collective imagination and in the law of most countries, citizens and foreigners do not have the same rights.

Furthermore, the « immigrant » is a social construct whose definition is rather vague and whose identification as such by the state apparatus enables it to differentiate between the interests of natives and those of « immigrants ». Consequently, it would be futile to seek a single, unanimous definition of « immigrant » or « immigration ». Does this mean that there is no point in talking about justice and immigration? Of course not. This may make the question of the link between immigration, justice and citizenship more complex, but it is clear that immigration, although it may be considered a social construct, does exist by convention. In other words, the reality of the challenges posed by immigration is not imaginary but is linked to the dichotomy between citizen/ native/national and « foreigner/immigrant ».

The second point is the following: given that immigration is above all a matter of political definition, Kukathas argues that it would be wrong for the most important form of control to be found at a state's borders. Indeed, he affirms that: « on the contrary, immigration control takes place well within those boundaries, and deep inside each society. » (Ibid 2021:27). This does not mean that territorial borders play no role. On the contrary, they are of paramount importance for modern states to be able to effectively control entry. But what Kukathas has in mind, in my view, is that if the idea of immigration and foreigners did not exist - in other words, if we lived in a « cosmopolitan » world where there were no differences between people depending on where they

[5] For the sake of simplicity, I use nationality and citizenship here as synonyms.

came from - border controls would no longer make sense because people would be considered equal in consideration and therefore in law. In this sense, immigration can fundamentally be seen as a problem of identity above all - and of the treatment of people according to this identity - even if border controls remain an essential element in maintaining this national/immigrant relationship.

3.2 Borders and the modern state

3.2.1 Modern State

A second point that deserves our attention is that of borders. It will not have escaped anyone that today's world is made up of sovereign states. The borders that surround them are an essential feature. According to international law - from the Montevideo Convention of 1933[6] - a (modern) state is characterised by the fact that it is an entity with a permanent population, a defined territory, a government and the capacity to enter into relations with other states.[7] Frontiers, of course, existed long before the modern state came into being. For example, borders existed when empires dominated the world order. What differentiates empires, from modern states, however, is that the former did not consider other political entities (tribes, other empires) as units in their own right that would have formed a territorial system (Stilz 2019). Instead, says Stilz, « their frontiers were simply the present limits of the empire's expansionary thrust » (2021: 4). Modern states also differ from the feudal system, where political authority was generally embodied by a single person such as a lord or a king. One major difference lies in the fact that, in medieval times, the legal power was not ensured by a judicial body that had exclusive jurisdiction, but was « hignly unclear » (Stilz 2019:5).

Although, as just noted, borders existed before the modern state, the state system, as a global political organisation, is characterised by the importance it attaches to them (Ibid.). As Stilz puts it:

> « unlike their internal claims, states' territorial claims have to be understood against the backdrop of the modern states system. As a mode of political organization, the states system is distinctive in the essential structuring role that it grants to geographical boundaries. Modern states exist as part of a broader global order in which autonomous units are represented as both spatially limited and coexisting side by side with rival units. […] The states system structures opportunities for individuals, since it partitions

[6] Pan-American Conference, *Convention on Rights and Duties of States adopted by the Seventh International Conference of American States*, Montevidéo, December 26th 1933

[7] To be sure, it was not the pan-American conference that « created » the modern state, but it did of course put words to what was a relatively new. Moreover, although it was a pan-American conference, most of the countries of the world accepted this definition, which has become part of the customary law in international law.

people into separate, partly closed, territorial groupings. Boundaries are markers of both the limits of state authority and the rights, duties, and statuses of the individuals who make up those states. » (Stilz 2019: 2)

Hence, an important characteristic is that modern states claim rights not only against their own population but also against foreigners (Stilz 2019: 1). That is, they claim the right to control unilaterally and independently their territory. According to Stilz (2019: 12), these rights comprise four main spheres: *a right to territorial jurisdiction* - that is, the right to arbitrate in conflicts between private individuals, but also in public matters, *the right to nonintervention* - « the exclusive right to govern an area and its population free from interference or efforts at « regime change » on the part of foreign states, individuals, or groups » (Ibid), *the right to control their borders* and the *right to use the resources* within their territory as they please. In the contemporary literature on global justice, all these spheres are the subject of debate, but here, as we are focusing on the movement of people across countries, we are particularly interested in the question of borders.[8]

3.2.2 Borders

What exaclty are borders? Although territorial borders are, like immigration, a political issue and are note « natural kinds », its definition is more consensual because it does not differ depending on where you are. Naturally, when it comes to determining territorial borders, there may be disagreements between countries. But there is consensus on the existence of borders in themselves. That is to say, no country questions this feature of the world state order: the fact that there are sovereign entities.

Kukathas defines borders as « geographic boundaries demarcating or defining political entities or legal jurisdictions. » (Kukathas 2021: 27). Notice that borders, according to this definition, are not only used to demarcate countries, but also subnational or supranational entities such as regions, provinces or cantons (in the case of supranational the typical exemple is the EU).

Since states internationally recognise the existence of borders, this means that states are free not only to exclude non-national « undesirables », but also to set the terms and conditions for entry and residence (Kukathas 2016). There are in fact a few exceptions. International law requires ratifiers of the 1951 Refugee Convention to « admit, consider and if the law after due process

[8] Note that some authors have defended the right to immigrate on the basis of a common right to the resources of the earth. For an overview of the argument, see Miller, D. (2016) *Strangers in our midst: the political philosophy of immigration*. Ch.3 and Stilz, A. (2019) *Territorial sovereignty: a philosophical exploration* Ch. 6

demands, grant residence to people seeking asylum » (Kukathas 2016: 3). In addition, states can themselves impose laws limiting their control. I am thinking here of the European Union and the signatories to the Schengen agreements, which impose an obligation on these countries to accept citizens of other signatory countries as residents or workers. Another example is the state of Israel which, according to its own constitution, must admit people of Jewish origin (Ibid).

Notice finaly that the idea for states is not to completely exclude all foreigners. For example, in the majority of cases tourists are welcome, as they stay temporarily and do not take up space on the labour market. Territorial borders essentially enable states to control who enters their territory, with the ultimate aim of controlling the number of workers and residents. As Kukathas points out « [states] want the hotels full but the neighbourhoods quiet. » (2016: 3).

3.2.3 Openness and closedness

Now, in the literature on immigration justice, most authors talk about opening and closing borders. But what exactly are « open/close » borders ? First of all, it should be noted that the advocates of closed borders are not in favour of a world made up of state entities that are completely isolated from each other. The same can be said of the advocates of open borders: for the vast majority of authors, it is not a question of blindly opening up all borders; exceptions can be made. The core of the debate, then, is about to what extent states can legitimately close/open their borders. In other words, the question of opening and closing borders is above all a question of degree (Kukathas 2016; 2021).

Kukathas stressed that borders control can be considered along three dimensions: entry, participation and membership (2021: 51). Entry refers to whether or not a foreigner can cross the border and « set foot » in the country. Participation means being able to take part in paid activities, and membership is the opportunity for non-nationals to become more deeply involved in political life, whether through being allowed to vote, working in a government job or becoming a full citizen (Ibid). Each dimension can be more or less open or closed and so the overall openness/closedness can vary greatly. These three dimensions highlight two points: firstly, no country is completely closed or open. Even countries considered to be very closed are never completely closed. It is possible, for example, to visit North Korea under certain conditions. Thus, the first dimension - entry - remains relatively open, while the other two dimensions are quite closed. Secondly, if we consider the different possibilities that a country's legislation can put in place, openness and closure can vary greatly. For example, a state might leave its borders and labour market participation completely open to foreigners, but decide never to naturalise foreigners - or to do so with great

difficulty. On the other hand, some patterns are far less plausible. For example, it seems unlikely that a country would ban entry to its territory while granting citizenship to someone outside its territory.

What these three dimensions have in common is that they are all subject to state control. Moreover, they are obviously linked. For example, Walzer has argued that once we accept the entry onto our soil of immigrants whose intention is to stay indefinitely (which obviously excludes tourists or people who only come to work for a specific period of time), states have an obligation to ensure that immigrants become members of society. He writes:

> « Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does. Democratic citizens, then, have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic market to get socially necessary work done. And those are their only choices. » (Walzer 1983: 61)

Hence, for Walzer, the issue of controlling territorial borders is ultimately no more than a logical consequence of controlling civic borders. Since the acceptance of long-term migrants on its territory implies that they ultimately have the same rights as citizens - being subject to the laws and coercion of the state just as they are - the acceptance of immigrants on a territory therefore implies, in the long term, an acceptance of the migrant as a member of the community, i.e. as a fully-fledged citizen.

As I said, in this work I am particularly interested in territorial boundaries. However, it is clear that freedom of movement across countries, insofar as it impacts on the demos, must take this factor into account. I shall come back to this point later in this work.

4. The Global Egalitarian Argument

The first thesis I am going to analyse is interesting because it is a first attempt to challenge the conventional view that claims that states have a moral duty to prioritise the well-being of their citizens. It is generally referred to in the literature as « global egalitarianism ». While the *egalitarian* aspect refers not necessarily to strict material equality, but to equality in the sense that each person deserves equal consideration as a moral person, the *global* side, insists that the scope of this ideal is not the state but the world as a whole.

The argument starts from the clear observation that global inequalities are increasingly blatant. While some countries are rich and allow their inhabitants to live a fulfilling life - very roughly speaking the Global North, others are in dire straits. A number of authors, most prominently Joseph Carens (1987, 2013), have argued that in a globalised world it is the duty of wealthy countries to open their borders in order to remedy inequalities[9].

To illustrate this point, Carens offers a particularly striking analogy. He compares the privileges of being born in a Western democracy with those of being born a nobleman in the Middle Ages, « an inherited status that greatly enhances one's life chances » (Carens 2013: 226). By contrast, according to him, being born in Africa is the modern equivalent to being born a peasant, that is, to set out in life at a disadvantage in terms of your ability to lead a fulfilling life (Ibid). What is more, he claims, just as nobilty tried to prevent the peasants from climbing the social ladder by justifying their power by the divine, the rich countries closed their borders in order to preserve their privilege. Last but not least, Carens insists that the feudal system restricted freedom, and in particular freedom of movement, preventing individuals from moving from one place to another in the pursuit of a better life, as it is the case when the wealthy Western democratic states prevent would-be immigrants to enter their territory (Ibid). In essence, Carens wants to show us just how unfair it is for wealthy, democratic countries to close their borders.

A striking difference between today's world and that of the feudal system of the Middle Ages is that today it would be difficult to consider that certain people naturally deserve their status. Moreover, no serious person would consider that the moral value of one human being is more important than that of another. Carens therefore starts from two assumptions: there is no natural order and all human beings have equal moral value. Furthermore, he assumes the liberal principle

[9] To present his arguments, I am basing myself on his work *The ethics of immigration* (2013), particularly chapter 11

that any restrictions on freedom must be justified. With these three principles in mind, Carens argues that this gives us sufficient reason to consider opening up the borders.

The three reasons Carens has in mind are as follows: firstly, closed borders prevent freedom of movement. Freedom of movement is fundamental because it is part of individual autonomy. Not only does it contribute directly, because freedom of movement is intrinsically good - as evidence of this, the most widespread legal punishment is deprivation of liberty - but it also contributes indirectly because it is « a prerequisite to many other freedoms » (Carens 2013: 227). As a result, restricting such freedom must be justified and seems to go against the idea of the state's discretionary power to exclude would-be immigrants. Of course, it can be justified in some cases, and it is important to note that all interests must be taken into account equally: those of would-be immigrants as well as those of the inhabitants.

The second reason given by Carens is that open borders are necessary to guarantee equal opportunities for all. Indeed, since every human being has equal moral worth, and since equality of opportunity is something we value[10], Carens argues, logic would require borders to be open in order to guarantee this equality. In Western democracies, we value equality of chance and opportunity because we assume that the circumstances of our birth should not influence our chances of succeeding in life. The meritocracy we embrace implies that talent and effort alone should play a role in our social position. So why apply it at national level and not at global level? Of course the meritocratic system may be very imperfectly applied within Western countries, but as something we value, we should be consistent with it.

By restricting freedom of movement, Western states are acting in the same way as the nobility did in feudal times: they are limiting people's access to the social positions they desire and preventing them from leading the lives they aspire to. Based on this view, it seems that the burden of proof regarding the closure/opening of borders lies with the proponents of closed borders: they have to justify the non-coherence between principles of justice that we accept at local level but not at national level, and they have to justify that there are significant inequalities that are the consequences of this closure.

The third and final reason Carens puts forward, linked to equal opportunities, is that open borders are necessary in order to reduce economic, social and political inequalities. Again, a commitment to the moral equality of all human beings, Carens argues, implies a moral duty to

[10] I take for granted that equality of opportunity is something we value, at least in Western democracies. Of course, there is the question of moral relativism: is what we consider good in terms of morality and justice also considered good for other cultures or peoples? Without being able to explain it in detail here, I assume that this is the case and I therefore reject moral relativism.

reduce inequalities not only as an end in itself, but also as a means of achieving equal opportunities and freedom of movement. Consequently, the exclusion of the poorest would-be immigrants is, in his view, difficult to justify.

We can see that Carens bases his arguments on two essential foundations. In the first case, it is freedom, in the third case, it is a question of equality and in the second case it seems to be a combination of the two where freedom is used to promote equality. In my view, while his argument based on freedom is essential and implies, I would argue, a moral duty on the part of states to open their borders, arguments based on equality, while implying moral duties towards people living in poor countries, do not necessarily imply open borders. For the moment, I will leave aside the argument based on freedom and return to it in a later section. First, I will analyse the equality argument.

4.1 The global eglatiarian argument: three main critics

In essence, the argument based on equality is as follows: given that inequalities in the world are in part determined by birth in a certain country, and given that being born in a certain country is not morally relevant to moral responsibility for our situation, then the better-off countries have a duty to neutralize - or at least mitigate - inequalities of opportunities as well as economic inequalities. Wealthy states must therefore open up their borders in order to remedy these inequalities and open up the possibility of equal opportunities. Valentini (2012: 47) sums up the argument for global justice as follows:

1. « All human beings are owed equal respect *qua* moral persons.
2. There are goods that all human beings have reason to value: civil and political liberties, opportunities, income, and wealth.
3. Equal respect demands that human beings should not be worse off in the relevant respects (see 2 above) due to morally arbitrary (unchosen) factors.
4. A person's place of birth is a morally arbitrary factor.
5. Equal respect demands that rights, opportunities, income, and wealth should be equally – or roughly equally – distributed across the world's population. »

In the context of immigration in particular, proponents of this approach like Carens argue that we should opt for open borders since restrictions on movement prevent human beings from accessing new opportunities. It therefore implies that:

6. In order to guarantee a certain amount of equal opportunities and equal wealth, governments must allow much greater freedom of movement for people than is currently the case.

From this perspective, therefore, open borders are seen more as a remedy for inequality than as an ideal to be achieved as a right to international freedom of movement, an ideal see as inherently good. It is based on an argument that is well known in political philosophy: the luck egalitarianism argument. Luck egalitarianism stems from the idea that we cannot be morally judged or held responsible for our fate by something beyond our control. It is present in the argument in premise 3: human beings should not be worse off in the relevant respects due to morally arbitrary (unchosen) factors. The idea, then, is to extend the argument of the luck egalitarianism from national to global. To this end, the proponents of this argument insist that every human being deserves equal respect and consideration. This is what the first premise states.

Although the argument in general seems *prima facie* attractive, it actually presents many problems. Indeed, this argument has been attacked on several fronts. Here I will focus on three main criticisms.

Firstly, this argument is inherently cosmopolitan in the sense that it sees the first premise, equal respect for individuals, as implying a duty to extend the principles of justice to the global level. However, this assertion has been attacked by some authors. Indeed, some have argued that we have special duties towards our compatriots by virtue of the special relationship we have with them (Miller 1995, 2016b). For various reasons, they believe that even if we consider the equal respect of each human being, we still have weaker moral duties towards the inhabitants of other states (Blake 2001, Miller 1995, Rawls 1999). Nevertheless, I shall argue that this approach fails to be convincing.

Secondly, a criticism that also seems important to me is of the consequentialist type. It points out that opening up borders as a remedy for inequality and poverty is not necessarily a desirable solution. Indeed, the idea of opening up borders in order to resolve problems of inequality could prove ineffective, or worse, could worsen the situation.

The final criticism, which in my view is fatal, is a more general criticism of the theory of luck egalitarianism itself. Luck egalitarianism is one of the non-relational theories of justice. This theory is concerned with the distribution of goods *per se*, but not with social and institutional relations. As a result, luck egalitarianism has been criticised for failing to address the issue of oppression and domination. Wellman sums up the idea nicely: « if the real reason we worry about inequality is out of concern that those with less may be subject to exploitation and oppression, we should not lose sight of the fact that the capacity of the haves to oppress the have-nots will depend in part on the magnitude of the inequality but also on the *relationship* between the two parties » (2011: 61-62 - my emphasis). This criticism, I hope, will become clearer in the dedicated part.

In what follows, I first present moral cosmopolitanism and its critics, but argue that the latter are unfounded. Then I discuss the second criticism - the consequentialists challenge - which I think is fair but not necessarily definitive. I finish with the more general critique of non-relational theories of justice and luck egalitarianism which, I shall argue, may imply humanitarian duties but does not directly imply open borders and which, above all, fails to address the issue of justice and equality.

4.2 Cosmopolitanism

In the current state system, it will have escaped no-one that states treat their own citizens far better than outsiders. The conventional wisdom is that states have a moral duty to prioritise the well-being of their citizens over that of others. Foreigners are subject to border controls and, when they are able to enter the country, are denied access to a multitude of rights and opportunities. But two questions arise here. First, how justified is this preferential treatment? And if it is justified, how far can states put the welfare of their citizens before that of foreigners?

This question is crucial to the issue of immigration. As Miller notes « we need to ask this rather basic question because until we have an answer we have no way of assessing the claims that someone who wants to immigrate can make against the state she wishes to join » (Miller 2016: 21). There are many reasons why people might want to emigrate. For a better life, for access to new opportunities, for love of a particular person or country. It is clear that the decision as to whether or not a person will be able to live in the country to which she wants to emigrate will have a considerable impact on their life plans and, more consequently, on their well-being.

Now recall that the first premise asserts that every human being has equal moral value. Since this is a widely shared premise in liberal thought (in fact it even seems trivial in some

respects), it is unclear what it actually entails. Does this mean that every human being should be given equal treatement or, more modestly, equal respect? Or is this premise even false to the point where there is no doubt that the moral value of some people, our loved ones or our compatriots, is more important than that of other people?

Cosmopolitans have challenged actual states' practices and believe that the equal moral value of human beings should be taken more seriously. The first premise, according to them, is understood to entail a broader consideration of individuals. One of the consequences of this challenge for cosmopiltanists is that, understood in a stricter sense, the first premise implies a far better treatment of outisders' claims.

But what exactly is cosmopolitanism and what does it entail? One thing most philosophers agree on is that the term is ambiguous, to say the least (Miller 2016, Scheffler 2001). Its different meanings make it a concept worth clarifying.

Originally, to be cosmopolitan meant to be a « citizen of the world ». (*kosmopolitès*, « citizen of the cosmos »), a statement first made by Diogenes the Cynic and then popalurised by the Stoics (Sellars 2006: 129). According to Barry, the idea was for them « to indicate that they were, in the first instance, human beings living in a world of human beings and only incidentally members of polities » (Barry 1999: 35). This was consistent with their ethical doctrine - which advocated living in harmony with nature and rejecting conventions - since political communities can be seen as a form of human convention (Kleingeld and Brown 2019). Thus, for the Stoics, living in different political communities was just one step; the wise and virtuous Stoic « should live according to the natural law embodied in his or her virtue » (Sellars 2006, 131).

Today, Stoic utopia may seems a long way off. We live in a world made up of a multitude of political communities, and the idea of a world without borders and of living in harmony with nature - that is without conventions - will sound far too utopian to most people. But what exactly does it mean to be cosmopolitan today?

First of all, let us note that we can distinguish between three theses that can be likened to a so-called cosmopolitan position. The first is about *politics*, the second is about a *moral* point of view, and the third is about *identity*. (Miller 2016: 22). The *political* or *institutional* thesis refers to the idea of a global community under the aegis of a single banner, a single state. Proponents of this thesis believe that a central world power is needed to correct inequalities. In their view, without such an institution, we cannot fulfil our cosmopolitan duties (cf Miller 2016b; cf Blake 2013: 38) In a sense, this is the position of someone who would consider the state of international relations as a

state of nature of all against all, a Hobbesian vision, and who would advocate, as Hobbes did for the state as we know it, that the only solution to a more peaceful society would be to adopt a world state.

The *identity* thesis refers to a person who declares that he or she has no particular ties to a particular place and who claims to be a « citizen of the world ». They do not feel they belong to a special place, and their identity is as a human being among other human beings. As Barry notes, « being a cosmopolitan [in the sense of identity] indicates that one is a person who is marked or influenced by various cultures. » (Barry 2009: 8). In addition, those who consider themselves cosmopolitan do not pledge allegiance to a particular community. This seems to be the position of early Stoics such as Diogenes. The idea was to be loyal to the world's population as an inhabitant of the cosmos and, although this seemed to be considered a virtue, it did not appear to impose any positive duty such as establishing a world state (Kleingeld and Brown 2019).

The last thesis, the *moral* thesis, is the one that will interest us throughout this section. It corresponds to the first premise of the argument. This asserts, as a reminder, that every human being is morally equal and that it is therefore unacceptable to treat people differently for morally irrelevant reasons. Typically, it excludes discriminating against, treating or considering an individual by virtue of their skin colour, gender, sexual orientation or ethnicity. To be sure, this does not mean that everyone must be treated in the same way, since people's needs and interests may vary, but it does require that human beings be treated with equal respect and concern (Abizadeh 2016). In terms of justice, it calls for equal concern for all individuals and similar treatment for similar cases.

It is important to note that these three theses are not necessarily mutually inclusive, i.e. the defence of one of these theses does not necessarily imply the defence of all the theses. In fact, most philosophers interested in moral cosmopolitanism do not necessarily embrace the theses on identity and institutional politics. As a matter of fact, their cosmopolitanism is generally characterized as being compatible with preserving diverse cultural traditions (Tan 2004) and most of them argues that the cosmopolitanism they defend is indeed compatible with the existence of many political communities (Pogge 1989).

Nevertheless, the fact that the term « cosmopolitanism » is applied to these different definitions is obviously not without coincidence. The central idea of cosmopolitanism is that every citizen pledges allegiance « to the worldwide community of human beings » (Nussbaum 1996 - cited in Scheffler 2001: 113). Consequently, for a moral cosmopolitanist, the fact of being a citizen

of the world - that is a as a human being among human beings - is reason enough to justify the fact that the principles of justice must apply fundamentally to all human interactions and not only to those restricted to a particular community such as that of a nation-state (Scheffler 2001: 113).

More formally, Pogge defined moral cosmopolitanism position as involving four postulates

(i) « *Normative Individualism*: the ultimate units of concern are human beings, or persons - rather than, say, family lines, tribes, ethnic, cultural, or religious communities, nations, or states (which may be units be units of concern only indirectly, in virtue of their individual members or citizens). A cosmopolitan moral criterion thus bases its assessments and prescriptions solely on information about how individuals human beings fare or are treated.

(ii) *Universality or All-Inclusiveness*: Every human being - not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims - counts as an ultimate unit of moral concern and is therefore included in the information base on which a cosmopolitan moral criterion bases its assessments and prescriptions.

(iii) *Impartiality or Equality*: The survival and flourishing of all human beings matter equally, regardless of their native language, religion, skin color, gender, endowments, ethnicity, or lifestyle. A cosmpolitan moral criterion therefore takes information about each included human individual into account symmetrically […].

(iv) *Generality*: this special equal status of every human beings has global force. Persons are ultimate units of concern for everyone—not only for their compatriots, fellow religionists, or such like. The assessment and prescriptions that a cosmopolitan moral criterion delivers claim authority over all individual and collective human agents. » (Pogge: 2013: 294-295).

To endorse this position may seem ambiguous. In one sense, it seems *prima facie* too strong and against our intuitions. For example, the duty of *Impartiality and Equality* and *Generality* seems to go against our feeling of having specific duties towards certain people to whom we want to give more weight, as might typically be the case with our family. If that is what cosmopolitanism would refuse, then, according to this interpretation, we would all be anti-cosmopolitan. But we shall see shortly that this is not exactly what cosmopolitanism embraces.

If this is not what the comsopolitanist position entails, then, on the other hand, the position may seem mainstream or trivial. Blake and Miller, for example, have famously claimed that « we are all cosmoplitans now » (Blake 2013: 35, Miller 2007: 28). According to them, assuming that we have special responsibilities towards particular people - which the cosmopolitan position does not deny - we can still have impartial commitments. As a matter of fact, Blake argues that if we accept favouritism for those closest to us, as is typically the case in a mother-child relationship, then the cosmopolitan position is compatible with other forms of partiality such as compatriot partiality.

For Blake, therefore, cosmopolitan assumptions do not constrain our reasons for prioritising our nearest and dearest. In cases of competition - say for scare resources for example - they do not constraint justifications that are agent-relative such as a mother and child, or a politician advancing his country's interests.

At the same time, liberal philosophers are strongly committed to the equal morality of every human being and believe that no arbitrary distinction should be made between individuals when it comes to justice. At this point cosmopolitans (and liberal philosophers more generally) seem to face a dilemma. As Abizadeh and Gilabert points out:

> « On the one hand, [our commonsense] recognizes that all persons deserve equal treatment: that we cannot make arbitrary distinctions between them when we allocate our moral responsibilities. This commitment is cosmopolitan in nature, because it assumes that all persons *qua* persons have equal moral worth. On the other hand, commonsense morality seems to recognize that we may (and even must) prioritize, in the allocation of our scarce resources, those with whom we share certain special relationships (such as family, friendship, and, more controversially, nationality) over those with whom we do not share them. This commitment links to special responsibilities that are owed not to all persons *qua* persons, but to some persons whom the agent of the responsibilities has reason to declare near and dear. » (Abizadeh and Gilabert 2008: 350)

However, I shall argue that there is no dilemma. I agree with Blake that special relationships implies special duties but I shall argue that these special duties have limits and that they sometimes compete with general duties. In other words, I think there is no incompatibility between

cosmopolitanist commitments and special responsibilities. More specifically, I shall argue soon that special relationships, while valuable in themselves, are *not unconditionally* valuable.

In fact the idea behind cosmopolitanism is to embrace a form of moral universalism. What moral universalism claims is that « where we do make ethical distinctions between people there must be a good reason for doing so (*there must be a morally relevant difference*), and once we have made this distinction, members of these groups must still be treated similarly in similar situations » (Cole 2011: 174 my emphasis). Note that in Cole's short definition of moral universalism, it is not said that it is never possible to treat someone differently. The key point is that this difference in treatment must be based on a relevant moral criterion. Hence the question is the following: are the ties we have with certain people a relevant criterion for treating people differently?

Not all cosmopolitans agree on this question. Those who have been labelled « extreme cosmopolitans » answer no, while moderate cosmopolitans answer yes. Proponents of extreme cosmoplitanism champions that the fact that we prioritize our near and dear is merely a consequence of our duty to do good to humanity as a whole; a kind of division of labour (for example Nussbaum: 1996). In other words, according to this view, we as individuals cannot directly do good to all human beings. It is therefore preferable, in the name of humanity, to look after those closest to us before others. According to Scheffler's words, extreme cosmopolitans claim that

> « particular human relationships and group affiliations never provide *independent* reasons for action or suffice by themselves to generate special responsibilities to one's intimates and associates… That one's special relationships and affiliations need to be justified by reference to the ideal of world citizenship itself, or that any legitimate reasons we have for promoting the interests of people we care specially about must be derivative from the interests of humanity as a whole (2002: 115).

To be more precise, this position does not say that we can never show partiality towards our nearest and dearest, but it does assert that such partiality is justified only on condition that it does good for humanity as a whole. In other words, according to them, the fact that we have special relationships is not *in itself* a morally relevant criterion. If it is better for me to look after *my* children and for my neighbour to look after *his* children, it is because that is the best way of ensuring that as many people as possible are well looked after, not because we have a special duty

per se. Hence, extreme cosmopolitans acknowledges special responsibilities only to the extent that they can be derived from egalitarian duties (cf Abizadeh and Gilabert 2008: 350).

However, the extreme cosmopolitans view does not seem to reflect our intuitions about our commitments to family, friends and the loved ones. Indeed, this view regard social relations as purely instrumentally valuable, which seems frankly misleading. As Miller observed, « the loyalty we feel toward our families and our friends is unconditional » (2016b: 25), meaning here that loyalty to our family does not depend on other people having the same loyalty. Contrary to what extreme cosmopolitans think, the relationships we have with our friends and family are *intrinsically* valuable. The love we have for them comes from the gut, and it is hard to imagine that we love and care for our loved ones uniquely out of a concern for humanity.

On the contrary, some communitarians believe that we should always prioritise the well-being of those closest to us, those with whom we have a special relationship. On the one hand, this seems correct. Our commonsense seems to suggest that we have special responsibilities towards people close to us. The paradigmatic case of a relationship that grounds special obligations is between members of the same family (Abizadeh 2016: 107). For example, say that, by misfortune, my sister falls seriously ill and an unknown stranger (from my point of view) catches the same illness. By pure chance, the only medicine available to cure their illness happens to be in my possession. Unfortunately, I only have one pill of this miracle remedy. In that case, I take for granted that most people would accept the idea of me providing my sister with the pill. In this scenario, there seems to be nothing morally condamnable about me putting my sister's welfare before that of a stranger. The fact that we are members of the same family seems a good enough reason for me to prioritise my sister's well-being. The bonds we have created since our childhood are strong enough. This underlines the fact that my particular obligation to my sister stems from *the nature of our relationship* and the fact that, as human beings, we have reasons to value some relationships non-instrumentally (Abizadeh 2016: 107).

Once again, our intuitions seem to contradict each other. We recognise that we have special obligations to certain people, but we also recognise that every human being deserves equal consideration. So it seems that we either have to accept that relationships are not intrinsically valuable (i.e. only instrumentally valuable), or that some people do not carry the same moral weight as others. Yet, I do not believe we need to choose between these two irreconcilable positions. Let us find out why.

It seems safe to assert that special relationships, that is relationship that we value non-instrumentally, imply special duties. As Scheffler points out:

> « We human beings are social creatures, and creatures with values. Among the things that we value are our relationships with each other. But *to value (non-instrumentally) one's relationships with another person is to see it as a source of reasons for action of a distinctive kind*. It is, in effect, to see oneself as having special responsibilities to the person with whom one has the relationship. Thus, in so far as we have good reasons to value our interpersonal relationships, we have good reasons to see ourselves as having special responsibilities » (2002: 103-104 - my emphasis).

Thus, for Scheffler, since we have reasons to value certain relationships in non-instrumentally, we also have reasons to recognise a form of underived responsibility between people linked by a special relationship. Here, I agree with Scheffler. Again, however, there seems to be a tension with the cosmopolitan ideal. But, following Abizadeh and Gilabert (2008), I think this tension is in fact not a tension at all.

Before to see why let me here present *when* certain relationships lead to special responsibilities. Consider a case that is not subject to debate: personal relationships with close relations - say family or close friends. Miller points out that three conditions lead to what he calls « ground-level special duties » i.e « special duties that arise directly from membership of a group or a relationship of some other kind, as opposed to duties that arise from promises, contracts, cooperative practices, etc. » (Miller 2007: 35).

Firstly, they have intrinsic value. In other words, they are not relationships that are self-serving or used as a means to an end. These relationships provide us with well-being and we value them for that above all other considerations. In the case of family or friends, as we have seen, it seems clear that the value of the relationship is intrinsic.

Secondly, the feeling of having special responsibilities towards certain people is a feature of the relationship itself. As Miller puts it « if I don't believe that I owe more to my friend than I would owe to a passing acquaintance, then my relation to that person is not in fact one of friendship but something else » (2016: 26). In other words, the very fact of placing the well-being of our family and friends before that of others is an integral part of friendship and fraternity..

Thirdly, an interesting final condition is that for the existence of special duties to arise, the relationship itself must not involve injustice towards others. Miller gives the examples of a gang of boys whose only motivation is to bully their classmates or the Mafia. In these cases, there is no reason to have any particular duties towards the members of the group (there may of course be prudential reasons, as a member of the Mafia typically would). The reason for this is that « the pervasive injustice that they generate deprives them of such intrinsic value as they might otherwise have had, so they are not the kind of attachments that can legitimately support ground-level special duties. » (Miller 2007: 36).

This last condition is particularly interesting. Let us assume that certain relationships are intrinsically valuable and that these relationships can give rise to special responsibilities that are « underived ». Here, it is important to note that the meaning of « underived » means that « they are not conditional on their grounding relationships being efficient *means* to realizing the best state of affairs » (Abizadeh and Gilabert 2008: 355 - their emphasis). Yet there is a sense in which we can say, this time, that these relationships are conditional. As a matter of fact, drawing on Korsgaard (1996), Abizadeh and Gilabert notes that « the value of some final ends may be subject to conditions that are not causal means-ends conditions » (Ibid).

More precisely, they distinguish between four kinds of ultimate value: (i) unconditionnal value, (ii) constitutive value, (iii) state-conditional value and (iv) moral-conditional value. (i) Uncondtional value is an ultimate value whose value does not depend on anything else - a typical exemple could be well-being or happiness. (ii) A constitutive value is a value that is conditional in the sense that it is an important *part* of another ultimate value. For example, special relationships (friendship or fraternity for example) are valuable in themselves, but we could argue uncontroversially I think, that they are an integral part of another final value: happiness (or well-being). (iii) A state-conditional value is an ultimate value that is conditional on the presence of certain other states of affairs. The example given by Abizadeh and Gilabert would be someone whose life revolves around art. Art here becomes a value that is appreciated for its own sake, but it is conditional on the person liking it (hence conditional on his/her mental states) and seeing it as a condition of happiness. (iv) A moral-conditional value is a final value whose value depends on the fact that it does not violate certain moral constraints. Again, the value of a relationship seems to be moral-conditional, as we saw earlier with Miller and the example of the Mafia.

The important thing to bear in mind is that special relationships, even if good in themselves - i.e. non-instrumentally valuable - can nevertheless be conditionally valuable. They can be

conditional at least constitutively and morally. Put it differently, no relationship is *uncondionnally* valuable. The fact that special relationships are conditional means that our special obligations to them depend on their meeting those conditions.

Let me give an example here. Consider the case of the constitutive value of relationship. The value of a relationship is conditional on it being an important part of a human being's happiness as well as being valuable in its own right. This could give a reason *not* to value a relationship if it does not contribute to the individual's happiness. For example, this could be the case in a love relationship where one person abuses the other. In this case, the relationship does not contribute to the individual's happiness, even if he or she considers it a valuable relationship. Therefore, even though this type of relationship is non-instrumentally valuable, it does not give rise to any special responsibilities.

Now, given the cosmopolitan egalitarian premise that asserts the equal morality of all human beings, let us note that if the value of the relationship is constitutively and morally conditional on human well-being, then the value of a relationship must also be compatible with respect for the happiness/well-being of *every* human being and not just those involved in the relationship. As Abizadeh and Gilabert puts it (2008: 357) « the well-being of each individual figures into the justification of relationships in general and the special responsibilities to which they give rise, and this condition places constraints on whether any particular relationship does indeed give rise to special responsibilities ». Consequently, when we assess the status of a relationship, we must remember that the justifications that legitimate the value of the relationship (and that may putatively give rise to special duties) must concern everyone equally.

Thus special responsibilities can be recognised even in the context of moral cosmopolitanism. In fact, taking part in special relationships, i.e. relationships that are valuable non-instrumentally, is precisely a constituent part of the happiness of *every* human being. It is a good that *every* human being values as an element of well-being. Thus, the values of relationships *do not* conflict with considering every human being as having equal value, but they may conflict with other goods that are valuable. As a result, the conflict between special and general responsibilities arises when we recognise that, in the context of moral cosmopolitanism, there are several goods that may be in competition.

This seems to have alleviated the dilemma faced by the cosmopolitans: it is possible to have special responsibilities while recognising the moral equality of all. Let me summarise very briefly: special relationships can give rise to special responsibilities, but only under certain conditions (for

simplicity we can call this the *conditionality thesis* as Abizadeh and Gilabert have labelled it). Hence, we can recognise that we have certain duties towards our compatriots but that these duties are constrained by wider considerations. The logical consequence of what we have just seen is that a state, as an entity made up of a multitude of members who consider their relationship to be intrinsically valuable, cannot put the well-being of its citizens before that of other people at any price and in any situation.

Let us assume here that the first two conditions Miller set for a relationship to give rise to special responsibilities (the intrinsic value of the relationship and the fact that the feeling of having special responsibilities towards certain people is a feature of the relationship itself) are met. Consider also that, as we have seen, the relationship we have with our compatriots, *qua* non-instrumental relationship, can be conditional on two levels: constitutive and moral. If we transfer this idea to international relations, then it is clear that states cannot be partial in any situation. Special duties arising from the relationship can compete with general duties, for example the duty to prevent human beings from starving.

Let me try to summarise the idea here. Taking part in relationships that have intrinsic value is part of human well-being. These relationships give rise to special responsibilities provided that they do not violate moral constraints (they are morally conditional) or constitutive constraints (they are constitutively conditional). Thus, an individual has reason to value B's welfare over C's if (i) A and B share a non-instrumentally valuable relationship (ii) C does not and (iii) this relationship does not violate the conditions that give rise to special relationships.

However, now assume also that not being in a poor economic situation that endangers our well-being is also a good that is valuable in all human beings and consider the case where C is in vital danger because of a lack of resources and A and B have enough resources to prevent C from being in danger. Consider last, that as individuals, we have two types of duty. Firstly, the negative duty to avoid entering into activities which would directly or indirectly put an individual in danger and, secondly, the positive duty to help those in danger insofar as this does not require us to make too great a sacrifice. Consequently, if the ongoing relationship between A and B contributes to the endangerment of C either through direct involvement either through negligence, then A has *no* reason to prioritise B's welfare over that of C, particularly with regard to the alloaction of resources. In this case, A's responsibilities towards B conflict with his positive or negative duties. As a result, in this case, A's special responsibilities towards B must be weighed against its general duties (positive and negative) towards C.

One question that may arise is how to weigh up different claims. In practice, we often care more about those who are geographically close to us, but on reflection, location should not be a relevant factor in measuring the strength of claims. On the contrary, every human being should carry equal weight when we take seriously the moral equality of all. When it comes to « public » justice, i.e. the rules that concern the organisation of a cooperative society such as the world in general might be, everyone should have equal weight. This is in fact what is already happening at national level.

At a national level, the idea of equal consideration for all citizens is taken for granted, even though we also recognise special responsibilities towards those closest to us. However, the fact that I recognise these responsibilities towards my family does not mean that I will favour them no matter what. In certain situations, competing basic values demand a certain neutrality with regard to our loved ones.

For example, it is recognised as a value to allocate certain positions on the basis of merit. In other words, we have a general duty to be fair when it comes to distributing goods. A headteacher whose child attends the same school has a duty not to favour his or her child, for example by modifying his or her marks. Or in the event of an argument with another classmate, the headteacher's duty, even as a father, is to be impartial towards both protagonists. Or let me go back to the pill example. It seems that, as a brother, I might have a duty to promote my sister's well-being, but consider that I am the health minister of my country. In that case, it seems that my duty would be rather to assess the various claims and the weight I should put on each claim without favouring my sister's because of our special relationship.

Also, note that forms of nepotism at national level are considered immoral (even forbidden) and go against our duties not only as citizens but also as human beings. As Pogge pointed out, it is interesting to note the extent to which this duty of impartiality has been internalised and honored at national level (2013:297). Once again, at national level, when the stakes are high, we have taken care to create institutions precisely to avoid all forms of nepotism. So why should it be worth doing it at national level and not at international level? Let me give you another example. If I think that everyone should start out in life with roughly the same opportunities (which I think is the case for most people) then there is a duty to redistribute wealth and tax inheritance. Now let us imagine that I become extremely wealthy, it would still be consistent with my idea to be taxed and not to favour my child to the detriment of others, even if that might be difficult. It may not be what I would like because I would like the best for my child, but it is what justice requires and obviously it is the

principle of morality itself to sometimes have to sacrifice one's own happiness and privileges precisely in the name of justice.

To conclude this section, I suggest that we should retain two things. Firstly, there is not necessarily a dilemma between a cosmopolitan approach, i.e. the recognition of the equal morality of every human being, and the recognition of special responsibilities. Clearly, some relationships are valuable in themselves, but they are conditional. Secondly, special responsibilities are attenuated when competing basic goods are at stake. I have argued in this sense that the claims of would-be immigrants must be taken seriously given the stakes involved. Not that they have any greater weight in themselves, but we have to weigh up everyone's interests equally. Hence I conclude that the « special responsibilities » challenge fails to opt for closed borders.

4.4 Consequentialist challenges

Let us now turn to another difficulty with this approach. For the advocates of global egalitarianism, open borders are first and foremost a means « of achieving global distributive justice » (Carens 2013: 233). However, one of the problems with this argument lies in its consequentialist nature. Even if we accept the global cosmopolitanist argument, should this lead to a policy of free movement of people across the world?

As I noted earlier, this argument for open borders is more a remedy for inequality than an « ideal » theory of justice. Indeed, this theory applies to a non-ideal world insofar as being a citizen of a particular country arbitrarily determines opportunities: the fact that this is a legitimate claim in a world of inequality between countries also means that this argument would not necessarily apply in an ideal world where there were sufficient opportunities within borders (Bauböck 2009)

Defenders of this approach face three challenges: firstly, would open borders really be effective in reducing inequalities? Secondly, what impact would open borders have on inequalities within host countries? And thirdly, if global inequalities were resolved, what sense would there be in opening borders? (Ibid).

With regard to the first difficulty, this is obviously an empirical question, to which economists are the main people looking for an answer. It goes without saying that answering this question is a real challenge. To the question, « would open borders really be effective in reducing inequalities » I think that two points could suggest otherwise. The first is that we run the risk of facing the problem of brain drain. Indeed, it seems extremely likely that opening the borders of rich countries to people living in developing countries would run the risk of seeing only people who

already have a certain standard of living in their own country move. Typically, it would be likely that a doctor from, say, Rwanda or Bolivia would decide to move to a Western country if he or she could do so easily. As a result, by losing skilled workers, developing countries, and particularly the poorest people living in such countries, risk seeing their standard of living fall drastically. Losing health workers or engineers is unlikely to improve the situation in these countries.

However, on this issue, it is not yet clear what the economic impact of brain drain would be, and whether it would only be prejudicial. Indeed, we also have to take into account, for example, the remittances that immigrants send to home countries, which is an important factor. It is also entirely possible to imagine doctors (to take a classic example) leaving for a period of time but returning to their country of origin with more experience and the desire to pass on their knowledge to young compatriots. In fact, the brain drain issue is complicated because (i) it is difficult to predict who would leave and exactly what impact this would have on the country of origin and (ii) if we believe that people should be free to migrate where they want and that they have an *a priori* right to do so (as I argue later) it is difficult to prevent someone from doing so because it will have negative consequences on other people. In other words, it is difficult to weigh up the pros and cons. Does freedom outweigh the well-being of some people? However, it can be argued that this is not really the case as there are other ways of reducing inequalities. But then the question arises as to whether opening up borders is precisely a moral duty to reduce inequality since the very risk is that inequality will become even worse.

The second point is that, even if open borders were beneficial on the whole, i.e. if we imagined that there would be no brain drain issue and that it would improve the living conditions of the poorest, Seglow (2006) pointed out that opening borders for this purpose would still place a burden on the poorest. As he says « whilst from a rational-choice perspective a potential migrant must expect to enjoy a net benefit if she migrates, the question remains why we should burden poorer people with the extra costs that migration entails » (Seglow 2006: 236). In other words, why should *they* have to leave their homeland? Most people who migrate for economic reasons do not do so out of the goodness of their hearts. Given the risks that migrants take to cross the Mediterranean, for example, it seems clear that people in economic distress would surely prefer to stay at home. In this case, opening up the borders could also have a perverse effect and could be perceived as a form of imperialism. I tend to think that this argument has been underestimated in the literature. Again, it raises the question of whether open borders are a good solution to global justice. Nevertheless, we might think that Seglow's point is somewhat misleading. Opening borders in order to reduce

inequality is just one possibility among many, and to the extent that it is feasible, there would be no downside as long as individuals always have a choice. In fact, we may well consider that states have a duty to accept the most disadvantaged *if they want* to migrate, while bearing in mind that states must in any case act humanely by distributing their wealth to the least well-off. However, it is not clear that the least well-off have precisely that choice. If we take the inequality argument seriously, it might be preferable to provide direct financial assistance to developing countries. Obviously economic issues are not the only ones that drive people to migrate, and it makes no sense to prohibit migration completely for these reasons. As a result, I don't think these arguments are definitive, but at the very least they have to be part of the equation when you think about the consequences of opening up borders.

Furthermore we can ask ourselves what impact opening up borders to remedy inequalities would have on the host society. It is obviously difficult to predict the number of people who would choose the option of emigrating to a rich country if we decided to largely open the borders, but it seems clear to me that the economic impact for the host country, must be taken into account.

Some philosophers, including egalitarians, have argued that one of the reasons for controlling borders is the risk of immigration undermining the welfare state (for example Miller 2016b)[11]. For the host country, the risk of opening up borders is that welfare state systems will be undermined and the labour market saturated. According to this view, there would be no point in reducing inequalities between countries, only to increase them in one in particular. In particular, it has been shown that as societies become more multicultural and diverse, the level of trust between individuals tends to decline (Lenard 2012). One consequence of declining trust between individuals is their tendency to disengage from activities that promote wealth redistribution, such as honestly filling out their tax forms or voting for laws (or political parties) that promote such redistribution (Ibid.). Consequently, too much immigration risks undermining fairer redistribution at national level.

Again, I think this is an important point to consider. Nevertheless, this assumes (i) that many people would decide to migrate if borders were opened and (ii) that people are incapable of forming any sort of trust with strangers. On the first point, it is difficult to have a clear idea of the number of people who would migrate, given the relatively open borders. Accordingly, this may give a reason

11 As we have seen, we start from the principle that every human being has equal moral value; this means that the claims of individuals in the host country must also be taken into account in the same way as those in the sending country. Of course, some people have stronger claims. As noted above, the premise of moral equality implies equal consideration of claims, but it does not necessarily imply identical treatment. A person in a famine situation undoubtedly deserves more important and urgent treatment than a person in a « good » situation. Despite this, it is clear that the demands of individuals in the host country must be weighed in the balance.

for the restriction only if the number of individuals wishing to migrate is very large. Yet, on the second point, the assumption stems from an unconscious bias and therefore supports the argument only in a non-ideal way. That is, it gives « a moral reason for immigration restriction that we have in virtue of the fact that other agents are poorly motivated, and their unwillingness to comply with their moral duties threatens significantly harmful social consequences » (Stilz 2019: 196). Thus this is not an insurmountable reason to restrict immigration, and as a bias, we can do our utmost to mitigate it through education, for example.

Finally, let us note that the consequentialists considerations allows us to note that the open borders argument for global justice does not in fact seem to address the problem. Bauböck has pointed out that the argument for global justice is in fact an argument for special admission claims (2009: 4). The problem that Bauböck has highlighted is this: let us remember that the principles underpinning the arguments for open borders are of two kinds: equality and freedom. For the moment, we have concentrated on the egalitarian part. As we have seen throughout this section, the call for open borders to remedy inequalities appeals to a theory of the non-ideal type; it takes the world as it is and tries to find solutions to improve it. But in the event that open borders to remedy inequality do not work completely - for the reasons we have seen above - then, as Bauböck states, « the cosmopolitan egalitarian who defends a remedial view of free movement will in this case promote a migration policy that gives priority to the globally worst-off and therefore presupposes *a regime of state control and selection*. (2009: 5, my emphasis).

Thus, it seems to imply that the state would continue to have significant control over entry - which an open borders advocate like Carens does not seem to want - and would compete or contradict with the freedom of movement argument. The freedom-based argument asserts that freedom of movement is an essential human right regardless of the situation in the world and regardless of the person concerned. This makes it an « ideal » theory. So there seems to be an incompatibility between the two approaches. More to the point, assuming for the moment that the freedom-based argument works, then the equality-based argument does not seem to directly answer the question of open borders, but rather of a selection criterion. Thus, as Bauböck notes, « a coherent argument must build on reasons other than remedial ones to explain why immigration control in liberal states needs to be justified » (2009: 5). On this point, I have mixed feelings. On the one hand, I think that it is important to consider the real consequences of immigration policies, whether they impact a country's residents or would-be immigrants. On the other hand, I do not think it should override, or say underestimate, considerations regarding the rights of people to move

freely as we shall see shortly. In any case, the consequences of migration are only factors that allow us to evaluate the costs and benefits of migration and it is clear that they must be taken into account, but they are not arguments in themselves against the opening of borders and they must be weighed against the right of movement even if the right of movement involves costs.

4.5 Non-relational cosmopolitanism, duties and the approach to justice

As I noted earlier, the global egalitarian argument we saw at the beginning of this section refers to a non-relational type of theory of justice and a form of luck egalitarianism. It is of the non-relational type because proponents of this kind of theory consider justice to be transcendental - that is, they consider it to be insensitive to the human condition and transcending the circumstances of human existence - and does not take account of social relations between individuals (Valentini 2012: 28). In other words, the standard of justice is independent of the state of the world. For luck egalitarians, as Valentini puts it, « our obligations of justice do not rest on the existence of particular types of social relations or institutions, but are entirely grounded on a certain *conception of the person* » (2012: 45, her emphasis). Non-relational theories of justice are therefore not rooted in a social framework but merely reflect a state of affairs independent of human activity.

Luck egalitarians champion that inequalities are justified as long as they reflect the deliberate choices of agents. For them « justice is about the choice-sensitive equal distribution of life prospects across different agents, regardless of the specific natural and social circumstances in which they live » (Valentini 2012: 29). As a result, there is injustice when, by *accident*, we find ourselves in unfavourable situations. Richard Arneson, a prominent author of this approach, states that « the concern of distributive justice is to compensate individuals for misfortune. Some people are blessed with good luck, some are cursed with bad luck, and it is the responsibility of society—all of us regarded collectively—to alter the distribution of goods and evils that arises from the jumble of lotteries that constitutes human life as we know it… Distributive justice stipulates that the lucky should transfer some or all of their gains due to luck to the unlucky » (Arneson 2008: 80).

From a cosmopolitan point of view, it makes sense to apply this idea to the whole world: as it is unfair to find ourselves in a bad situation due to factors for which we are not responsible, and as being born in a certain country is beyond our control, then society has a duty to compensate for these injustices. Remember Carens' analogy between would-be immigrants and the poor of the feudal era. The argument is based on exactly the same ideas. However, I think the theory is problematic for two reasons: firstly, it seems to impose duties of *charity* on those who can help the most disadvantaged but not duties of *justice* as the defenders of open borders might claim.

Secondly, a wider criticism of luck egalitarianism is that it focuses on the distribution of goods, but underestimates the importance of social relations and therefore the power relations that can arise within them.

4.5.1 Non-relational cosmopolitanism and duties

To show that the non-relational theory is mistaken in asserting that our moral duties are not linked to relationships, let's consider a case where only two societies would exist[12]. On one side is Well-of-Land (W) which, as its name suggests, is a prosperous society. On the other is Badly-off-Land (B) which, by contrast, is a precarious society where living conditions are difficult. Since non-relational cosmopolitans believe that social relations have no impact on justice, and in order to test this hypothesis, we consider that the two societies are in fact separate islands whose individuals have never met. One day, a group of people from W decide to set off on a boat to explore the world. After a few days on the water, they eventually stumble upon the island where the people belonging to B live. Shocked by their standard of living and seeing that they need help, the explorers from W rush back home and recount what they have seen. Now the people of W decide to help them, which seems to go without saying. But what kind of moral duties do they have? Are they duties of charity or duties of justice based on equality? On the face of it, the answer seems obvious: humanitarian duty. If W decides to help B and can do so at a reasonable cost that does not endanger W's prosperity, then they have a duty to assist. But this duty to assist is not a moral duty linked to egalitarian justice. By helping them, W will be using their *own* resources to help B.

But here, the non-relational cosmopolitanist might respond that the diagnosis is made too quickly, because we assume in this scenario that W is entitled to the resources they possess. The non-relational cosmopolitanist would reply that whether the inhabitants of W are entitled to these resources depends on the cause of the poverty of B. In this case, two scenarios are possible.

In the first case, the inhabitants of B are themselves responsible for their poverty. Because of their irresponsible and wasteful behaviour, they have fallen into extreme poverty. In this case, the non-relational cosmopolitan would agree that the duty of the inhabitants of W is one of humanitarian assistance. They must help the people of B, but they must do so using their own

[12] I owe this example to L. Valentini (2011) Justice in a Globalized World: A Normative Framework. Oxford: Oxford University Press - Part 1.

resources, and they must do so as it is their duty to help their fellow man even if he is responsible for their misery.

In the second case, things are different. The disaster suffered by the inhabitants of B is not due to their behaviour but to bad brute luck. Although they are excellent workers and don't shy away from hard work, they have been hit by a drought that has prevented good harvests and are now on the verge of famine. In this scenario, the cosmopolitan luck egalitarian would say that we should transfer resources to B in the name of a duty based on justice. Indeed, if justice is a matter of compensating people hit by bad brute luck, why should the inhabitants of W have an advantage by being entitled to certain resources present on their territory? In this way, by retaining a « right of control » over their resources, W would be violating B's right. So, for the non-relational cosmopolitan, the nature of our duties towards an individual X depends on whether that individual is morally responsible for his state. But is this really the case? Is it true that we are bound by duties of egalitarian justice when another individual or nation finds itself poor because of misfortune? It seems to me that this is not necessarily the case.

Obviously, it seems that in the second scenario, the intuition about our duties towards B changes. Our duty seems *prima facie* stronger. But let us consider another case. Consider again a two-case scenario. In the first, Jules, who cannot swim, is walking on cliffs overlooking a lake. Liking to take risks, Jules decides to lean over dangerously to admire the view as close as possible to the edge of the cliff. Unfortunately, what had to happen happened and Jules fell into the lake. In the second case, Brian finds himself in the same situation as Jules and also doesn't know how to swim. However, unlike Jules, Brian doesn't lean close to the edge of the cliff but slips off unluckily.

Now consider that I'm there and that I'm in a position to save them. Does the nature of my duty to help one of them change depending on the scenario? For the non-relational cosmopolitan, once again, I have a humanitarian duty to save Jules, but a duty of justice to save Brian. Yet it doesn't seem clear why I would have a duty of justice to save Brian. There's nothing I myself have done to put him in this situation. In other words, my moral position towards both remains the same.

To see it even more clearly, suppose both fall at the same time and I can only save one. Would I have an even greater duty to Brian than I do to Jules, a sort of special responsibility to him? Obviously, intuitions about who to save can vary. I think most people will decide to save Brian because he has fallen through pure bad luck. But perhaps others will decide to save Jules for one reason or another; because they admire his penchant for risk or simply because they feel closer to him. Whether we save one or the other, there would be no moral fault. We can therefore draw the

conclusion that the fact that Jules took a risk while Brian did not does not provide a definitive answer as to who to save.

On the other hand, if I were responsible for one of them falling into the water, say because I pushed him, then I would obviously have a particularly strong duty towards him. My moral position towards him would obviously change at this point and, this being the case, the individual would have a *right* to be saved by myself. If Brian and Jules fall into the lake and Brian falls through bad luck while Jules falls through my fault, I have a stronger duty towards Jules than towards Brian. In the same sense, if the reason for B's poverty were due to the behaviour of the individuals in W, then the inhabitants of B would have a right to seek reparation from W. Consequently, duties of justice seem stronger than humanitarian duties, the content of the duty remaining otherwise equal.

Here the reader may ask what does this have to do with open borders? First of all, one important thing to note is that it is recognised in the literature of political philosophy that duties of justice are constraining whereas humanitarian duties are not (Valentini 2012: 54). More precisely, duties of justice are always constraining, i.e. it is a moral duty to act to remedy the injustice that has been committed - as long as this is done without causing further harm, whereas humanitarian duties can be constraining but only in extreme situations and at certain moral costs. (Ibid).

Now let's briefly recall that Carens' argument for open borders is that we have a duty to help the poorest if the reason they are in such a situation is due to circumstances they did not choose and that therefore it is our duty to open borders to achieve some equality. But as we have seen, it is not clear that such action would solve the problems of inequality. Above all, it seems that although it is necessary to help the poorest, this does not logically imply an absolute duty for rich countries to open their borders. Of course, this depends on the cause of poverty in developing countries, and it may be difficult to know the exact reasons, although there is certainly a large share of responsibility on the part of Western countries.

Having said that, as we saw above, the luck egalitarian argument would therefore impose humanitarian duties primarily and so the argument developed by Carens for equality seems in fact to be akin to an argument, once again, for special admissions or for a redistribution of wealth, but I fail to see how it would directly imply the opening of borders. The argument has the merit of putting pressure on Western countries to address the major inequalities. It can also be used to encourage countries to take in more of the poorest would-be immigrants. But does it really call into question the power of states to control their borders? I don't think so.

4.5.2 Luck egalitarianism and equality

Finally, there are two last flaws in this approach that I want to stress here. First, it should be noted that moral equality between human beings does not necessarily mean eliminating all material inequalities (Wellman 2011: 59). Harry Frankfurt, for example, has argued that « economic equality is not, as such, of particular moral importance. With respect to the distribution of economic assets, what *is* important from the point of view of morality is not that everyone should have *the same* but that each should have *enough*. If everyone had enough, it would be of no moral consequence whether some had more than others » (Frankfurt 1987: 21 - cited by Wellman 2011: 60 - his emphasis). Thus, according to this view, if the distribution of resources is fair and there are no people suffering from a lack of means, there would be no reason to worry about economic inequality.

However, a luck egalitarianist might reply that the injustice is not in economic inequality *per se*, but that those who have more have not deserved their lot: they were just lucky to be born in the right place. Once again, being born in the middle of the mountains of Afghanistan does not provide the same opportunities and the same comforts of life as being born in, say, Switzerland. So we should compensate for bad luck.

But here we can see another problem with luck egalitarians' conception of justice. In a seminal paper, Elizabeth Anderson (1999) has pointed out that luck egilatarianism misconctrues the point of justice, in particular with regard to equality. Proponents of luck egalitarianism regard equality as « an equal distribution of nonrelational goods among individuals » (Anderson 2014: 20). Their main concern, as we have seen, is that of inequalities due to factors beyond our control. The justification for this idea is that we owe equal respect to all human beings (Valentini 2012: 56). Thus, respecting individuals as rational and autonomous agents requires us, for luck egalitarians, to rectify material inequalities due to factors beyond our control (Ibid). But is this the relevant moral point? I will argue that it is not.

The problem with luck egalitarianism is that it focuses solely on material equality but seems to forget the most important thing: the danger of oppression and subordination. Equal respect does not *prima facie* require material equality, but demands that everyone should be treated in the same way. Thus it is not a question of material inequality but of inequality of *status*. The problem is when we treat others as morally inferior.

To see this, let us start by remembering that most egalitarian movements have been profoundly influenced by demands for justice based on oppression rather than economic inequality.

The civil rights movement in the United States, the women's movement and even the French Revolution were marked above all by a demand for an end to privilege *due to a certain status* rather than economic inequality. Of course, economic inequalities were also important and have certainly played a role in these different movements. But they are important above all insofar as material equality is a means of neutralising oppression. As Anderson has pointed out:

> « Inegalitarianism asserted the justice or necessity of basing social order on a hierarchy of human beings, ranked according to intrinsic worth. Inequality referred not so much to distributions of goods as to relations between superior and inferior persons. Those of superior rank were thought entitled to inflict violence on inferiors, to exclude or segregate them from social life, to treat them with contempt, to force them to obey, work without reciprocation, and abandon their own cultures. » (1999: 312)

This confirms the idea that justice is above all a relational concept. What matters essentially are social hierarchies and the relationships that individuals have with each other.

A striking example Valentini gives is that of racism and discrimination against minorities more generally (2012: 55-56). Reasonable people will all agree that they suffer injustice. Yet, the luck egalitarian will say that minorities suffer inequalities because of factors they did not choose; their « race », skin colour, gender, sexual orientation or disability. They are, in his view, simply unlucky. But this answer seems to completely miss the point. I agree with Valentini,

> « this response [is] not only unconvincing but possibly even offensive. Members of racial minorities in racist societies are not simply « unlucky ». What makes them underprivileged is not a natural or genetic fact, but *a social one*. They are placed in a position of inferiority by their fellow citizens; they are the victims of social stigma and domination. In short, they *are not respected as equals*. If their disadvantage did not stem from these asymmetric social relations, we would not regard it as morally outrageous » (2012: 56 - my emphasis).

This highlights two crucial points. Firstly, the relational aspect is essential. We saw this in the previous section in particular. As Valentini puts it « in the absence of a thick relational

background, the reasons that motivate our concern for distributive equality apparently cease to exist » (2012: 56). If beings, endowed by chance with supreme intelligence, lived on another planet and therefore had a substantially better standard of living than human beings, there would be no reason to think that their way of life was unfair compared to ours. Precisely because of our lack of relationship, these inhabitants of a distant planet could not oppress us (Wellman 2011: 62). It would only be if these aliens became aware of our existence, and therefore that we would enter into a relationship, that we could worry about being dominated.

A final example I would like to mention is perhaps more telling than abstract thought experiments. Wellman invites us to imagine a father who would buy first-class plane tickets for himself but demands that his wife and children travel by bus (2011: 62). What is shocking in this case is not that there are economic inequalities between the father and his children, for example. Nor is it that an individual can afford to travel by plane. What is shocking in this example is the kind of subordination the father is subjecting his family to, even though they have particularly strong family ties.

Secondly, it is the oppressive aspect that is important when it comes to equality. As I mentioned, material inequalities remain important because they are resources that can be used to oppress. But they are only instrumentally important, whereas social relations are inherently significant. This is where the point of moral equality comes into its own. In his famous *Spheres of Justice*, Michael Walzer sums up the idea precisely:

> « It's not the fact that there are rich and poor that generates egalitarian politics but the fact that the rich « grind the faces of the poor, » impose their policies upon them, command their deferential behavior. Similarly, it's not the existence of aristocrats and commoners or of officeholders and ordinary citizens that produces popular demand for the abolition of social and political difference; it's what the aristocrats do to commoners, what office holders do to ordinary citizens, what people with power do to those without it. The experience of subordination - of personal subordination, above all - lies behind the vision of equality » (1983: xiii)

Again, how does this relate to the question of borders? Again, the argument we looked at the beginning of this section uses the moral equality of people and the luck egalitarinism as its point of departure. Since everyone deserves equal moral consideration and since we need to neutralise the

effects of bad fortune, then we have a duty towards those who, through misfortune, are the most deprived.

But as we have seen, luck egalitarianism is not a theory of justice that points to the real issues at stake in a theory of justice. Luck egalitarianism fails when it comes to the question of what moral equality entails. Equality of opportunity is desirable because it treats every human being as morally equal, with no difference in hierarchy. Contrary to what the luck egalitarian defends, a theory of justice does not aspire to material equality because material equality is ultimately good, but because a theory of justice is desirable mainly because it claims social and political equality. To be sure, I reiterate, I do not mean that material (in)equality is unimportant, but the justification that considers that the Afghan has no chance of being born in his country and therefore *de facto* deserves to be at the same economic level as another person loses, according to the critics of the luck egalitarianism conception of equality, its moral force.

Therefore, if we think that luck egalitarianism fails to identify the issues at stake in a theory of justice, then it cannot be transferred to a question of global justice. Above all, as noted earlier, it does not seem to respond to the problem of open borders.

4.6 The global egalitarian argument: a brief conclusion

Let me briefly summarise what I have tried to demonstrate so far. The global equality argument asserts that rich countries have a duty to help the poorest when poverty is not the result of bad deliberate choices, an argument akin to the luck egalitarianism found in the political philosophy literature. Some authors have argued that this is a reason to open borders as a remedy to blatant inequalities. Although I think it is obviously right to help the most disadvantaged, I argued that this argument did not point directly to a moral duty for states to open their borders. More precisely, I have argued that

1) it is correct to consider every human being morally equal and therefore that the claims of would-be migrants should be taken more seriously especially when would-be immigrants are in a situation of deprivation.
2) consequentialist arguments are not sufficiently powerful to allow states an unconditional right to control their borders, but they can in some cases lead to a legitimate justification for restricting migrant numbers.
3) states have a duty of charity to help those most in need, but not a duty of justice (insofar as the state in question is not responsible for the distress of another state). And

4) the luck egalitarian argument fails to consider a theory of justice insofar as it fails to consider the social relations that are the very subject of justice.

Thus, I conclude here that the egalitarian argument fails to impose a moral obligation on states to open their borders, although it does impose a serious consideration of the growing inequalities of wealth between different countries and therefore between different individuals.

5. Autonomy, coercion and political liberalism: an open border case

As we have seen, then, a theory of justice must take two essential points into account: social and political relations as the very subject of justice, and oppression and subordination as the danger that threatens the moral equality of individuals. An important theory in political philosophy takes these two aspects seriously: political liberalism. This theory asserts that autonomy - and thus freedoms - is fundamental if man is to live a life in harmony with his aspirations.

In this section I argue that a presumption in favour of liberty implies an international freedom of movement. More specifically, I argue in favour of an international freedom of movement that can be constrained only under certain conditions that are reasonably justified.

5.1 Political liberalism

Let me begin by briefly explaining what political liberalism entails. Liberals start from two observations. First, the fact that we live in society with the aim of cooperating and benefiting from this cooperation. The second obeservation is that there is a great diversity of conceptions of the good life among individuals within the society. Some think that the good life is an austere life following the dogmas of the Church, others think that religion is an abomination and that it is necessary to free oneself from it. Some believe that the good life is instantiated in artistic fulfilment, while others in travel and leisure. Modern democratic societies are thus characterized by a plurality of religious, philosophical and moral doctrines often irreconcilable (Rawls 2005). In short, people disagree on certain ultimate values and the aim of the political philosopher is to find principles of justice that are acceptable to all - an « overlapping consensus » in Rawls's word - despite deep differences of views.

As a kind of neutral political philosophy, liberalism refrains from judging conceptions of the good life. Furthermore, a central feature of liberalism is its commitment to the moral equality of individuals as rational and autonomous persons. Liberalism thus accords equal respect to each individual. Consequently, claims the liberals, each person deserves equal consideration with regard to their claims. Hence it does consider that, ideally, the way in which society is organised should allow everyone to live their conception of the good life as long as these conceptions remain, as Rawls describes them, « reasonable » and that everybody should have « an equal right to the most extensive basic liberty compatible with a similar liberty for others » (Rawls 1971: 60). It is therefore clear that the essential characteristic of liberalism is *respect for the autonomy* of the

individual insofar as it enables people to live the life they wish to lead. Hence, autonomy can be considered as to be the core value of liberalism (I come back to the notion of autonomy shortly).

Another important characteristic of liberalism is its commitment to respect for individual freedom, defined in this context as the absence of external constraint. This characteristic in fact follows directly from respect for autonomy: freedom is the *sine qua non* condition of autonomy. In other words, it is valuable precisely because it serves autonomy (Abizadeh 2008). As a result, a common thread among liberal philosophers is their distrust of coercion as an impediment to autonomy. However, liberal philosophers have also, say since Hobbes, recognised that coercion is a necessary condition for freedom. Nozick has later elegantly shown that in the state of nature, a hypothetical anarchic situation, men would prefer to put themselves under the aegis of a state in order to guarantee access to freedom; a state system that has the power to coerce is needed to enforce the law (Nozick 2012 - part 1). As Valentini notes « coercion is thus Janus-faced: it is an obstacle to freedom and at the same time a means to it. » (2012: 124).

Now that we have these characteristics in mind, let us note three additional things. Firstly, given the importance of autonomy that liberalism embraces - and therefore the importance given to freedoms - and given that coercion is nevertheless necessary, liberals make a point of ensuring that any restriction of freedom is *justified* to those subject to or affected by the restriction. In other words, the principle of autonomy requires that the exercise of political power must always be justifiable to everyone[13] (Abizadeh 2008: 41). Secondly, since every citizen has this « right to a mutually justifiable degree of freedom » as Valentini has called it (2012: 124 - her emphasis) the duty of the state is to ensure that coercion is practised in such a way that every citizen has roughly equal freedom. Hence « only a society granting its members roughly equal opportunities to lead autonomous lives […] can be unanimously accepted by agents who wish to pursue their ends and goals. A social system falling short of this requirement could not be justified in the eyes of the people who are worse off, whose life prospects and opportunities would be significantly inferior to everyone else's » (Ibid). Thirdly, this view implies that the restriction of a freedom is legitimate only in the name of freedom itself. Thus, it may be possible to restrict a freedom, but it must be done under two conditions: the first, as we have just seen, is that it must be done only in the name of a freedom itself, and the second is that the restriction must be justified and justifiable. This last point is crucial because it implies that the burden of justifying the restriction of a freedom always falls on the person restricting the freedom and not on the person exercising it. As J.S. Mill wrote

[13] I shall call *autonomy principle*, following Abizadeh and Blake, the fact that coercion requires justification.

« the burden of proof is supposed to be with those who are against liberty, who contend for any restriction or prohibition […] the *a priori* assumption is in favor of liberty » (Mill 1963: 262).

In fact, as we saw in the previous section, moral equality, in the context of justice, is important in the sense of equality of status, i.e. of non-hierarchical consideration. Coercion in this sense is problematic in that it subordinates the coerced individual to the will of a third party. Huemer sums up the idea as follows « [if] coercion requires a justification, this may be because of the way in which coercion disrespects persons, seeking to bypass their reason and manipulate them through fear, or the way in which it seems to deny the autonomy of other persons. » (Huemer 2013: 10). Basically, therefore, that means that there is a presumption of the right to freedom in part because it considers everyone as equals.

5.2 Freedom and open borders

As we have seen, human beings care about freedom insofar as it is an essential feature of their autonomy. It enables them to carry out their life projects and thus lead a fulfilled life. Freedom of movement is part of what is regularly called basic liberty or fundamental liberty. It is desirable not only as an ultimate end but also in that it serves other freedoms and in a certain sense also guarantees equality. As noted above, it is desirable in its own right: the fact that legal punishment is the deprivation of this freedom is unmistakable proof of this. It is also desirable insofar as it allows access to other freedoms, such as the freedom to associate or freedom to be informed. As far as equality is concerned, freedom of movement also makes it possible to guarantee equality of opportunity, another important liberal commitment. Indeed, it is necessary to be able to move in order to access certain opportunities and take advantage of them.

I take it for granted that these statements are uncontroversial. At a national level, respect for this kind of freedom seems to be a given in democratic countries. Nevertheless, as we have seen, freedoms can be subject to restriction. Thus, at national level too, freedom of movement can be restricted. A recent example is the covid pandemic. During the pandemic, movement has been restricted by the states, but for a good and justified reason. The aim of this restriction was to guarantee a freedom that is surely even more important: the freedom to live and to live in good health and with dignity. The reason, to avoid a health catastrophe, therefore seemed legitimate. Of course, restrictions of this kind must always be weighed against the costs and benefits they will have on other freedoms. In winter, when diseases such as influenza are particularly virulent, it would make no sense to restrict people's freedom because the cost of this restriction on our freedom of movement, a freedom that is important for our well-being, would not outweigh the benefits of not

restricting it. Hence, if the authorities took such decisions, citizens would have the right to challenge them.

There is therefore a consensus that within liberal democracies, freedom of movement is considered a human right. But if this freedom is so important *within* nations, why shouldn't it be *between* nations? There are many reasons to migrate at a national scale. People move from one sub-state to another to take advantage of new opportunities, to join the love of their life or to join a cultural group that they consider closer because they share a religion or philosophy, for example. But all these reasons also apply at global level. So why should we accept freedom of movement as fundamental at state level but not at international level?

Since a commitment to liberalism implies a *prima facie* right of movement at national level there seems to be a similar case among countries. As we saw before, the restriction of a freedom must be justified. As is currently the case, those who choose to restrict movement must therefore give their reasons. The burden of proof lies with them. More specifically, they must show either that (1) freedom of movement must be restricted in the name of another freedom, or (2) that the principles of justice that apply at national level do not apply globally. Both kind of arguments have been put forward in the literature. However, I shall argue that both attempts fail to support the conventional view that states have an exlusive and unconditional right to exclude would-be immigrants.

5.3 Autonomy and coercion

5.3.1 Autonomy

What exacty are autonomy and coercion ? Let me here give an account of those two concepts.

An important contribution to explaining those two notions comes from a major work - *The morality of freedom* - by Joseph Raz (1986). Here, I draw on his work. Autonomous agents are, according to Raz,

> « those who can shape their life and determine its course. They are not merely rational agents who can choose between options after evaluating relevant information, but agents who can in addition adopt personal projects, develop relationships, and accept commitments to causes, through which their personal integrity and sense of dignity and

self−respect are made concrete. In a word, *signicantly autonomous agents are part creators of their own moral world*. (1986: 154 - my emphasis)

To live an autonomous life, Raz continues, requires three conditions. First, the individual must have adequate mental capacities to form and formulate judgements and life projects; second, he or she must have access to a variety of qualitative options, i.e. the choices available must not be dictated by urgent or personal needs; the final condition, which Abizadeh calls *independence*, is the fact of being free from subjection to the will of others (Abizadeh 2008: 40).

Accordingly, being subject to coercion can affect our autonomy in three ways, corresponding to the three conditions of autonomy (Abizadeh 2008: 39-40). The first is when coercion takes away our mental capacity to make judgements, as would be the case, for example, if we were drugged without our knowledge. In the second case, coercion affects our autonomy when it removes options that would otherwise be available to the individual. Abizadeh also observes that autonomy does not require a maximum number of available options, but only an « adequate range of valuable options » (Ibid). Thus, reducing options does not necessarily impact autonomy. It only reduces it when it leaves the individual with an unsatisfactory range of options. The last condition of autonomy, on the other hand, is always undermined by subjection to coercion, since coercion subjects an individual to the will of another (Ibid).

5.3.2 Coercion, the state and would-be immigrants

The question now is what exactly is coercion? In other words, when can we talk about coercion? Broadly speaking, coercion places significant constraints on agents' freedom. The agent's freedom is thus reduced compared to if he had not been forced. Raz (1986: 149) defines coercion as such:

P coerces Q into not doing act A only if

A.

(1) P communicates to Q that he intends to bring about or have brought about some consequence, C, if Q does A.

(2) P makes this communication intending Q to believe that he does so in order to get Q not to do A.

(3) That C will happen is, for Q, a reason of great weight for not doing A.

(4) Q believes that it is likely that P will bring about C if Q does A and that C would leave him worse off, having done A, than if he did not do A and P did not bring about C.

(5) Q does not do A

(6) Part of Q's reason for not doing A is to avoid (or to lessen) the likelihood of C by making it less likely that P will bring it about.

Moreover:

B. P's actions which conform to the conditions set out in *A* are *prima facie* wrong.

C. The fact that Q acted under those circumstances is a reason for not blaming him for not doing A.

Yet, we can ask whether individuals wishing to enter a territory are indeed subject to coercion. Following Abizadeh (2008), I argue that this is the case. To see why, let us first note an initial distinction between two forms of coercion (Abizadeh 2008: 57). The first is when an individual is *actually* and successfully coerced, the second is when an individual is *subject to coercion* (Ibid). The fact of being actually coerced corresponds to the fact that a person is prevented from doing something successfully. For example, an individual who would like to rob a bank but does not because of the fear of being locked up (but would have done so if there were no consequences) is actually and successfully coerced by the state. Now, note that while being actually successfully coerced always implies being subject to coercion, being subject to coercion does not necessarily imply being successfully coerced. Someone who never intended to rob a bank is *still subject to coercion* by the law and by the threat of sanctions. The important point is that when we say that an institution is coercive, as the state is for example, then this means at the very least that people are *subject to coercion*. And being subject to coercion is morally significant insofar « such subjection is sufficient to trigger a demand for justification » (Ibid.).

What is more, the state can coerce individuals in two different ways: through coercive *acts* and through coercive *threats* (Abizadeh 2008: 40). A coercitve *act* « directly and preemptively deprives a person of some options that she would otherwise have had. » (Ibid). This is typically the case when physical force is used to force someone to do something, that is, whent the individual's body and integrity are directly impacted by a coercive agent (generally, for the state, these are police officers or the military). A coercive *threat* simply communicates the intention to take action in the future if the person makes certain choices. In this sense, the aim is to prevent an individual

from doing something they would have done if the threat had not taken place. The descriptive criteria seen above correspond more specifically to the *threat* of coercion, as for Raz, « this is the form of coercion relevant to political theory » (1986: 149). Indeed, the important thing in political theory is obviously that we are threatened with doing something. A life in which we are constantly subjected to coercive *acts* would be beyond all imagination.

A coercive threat corresponds to conditions A.(1) to A.(4) of Raz. Conditions A.(5) and A.(6) imply that the subject is *actually* coerced. According to Raz, these descriptive conditions are necessary to talk about coercion, but not sufficient (1986: 149). Specifying the sufficient condition depends on the normative dimension of coercion. Coercion can have a normative dimension at least in two ways. The first corresponds to B. (it is *prima facie* wrong), the second corresponds to C (the fact that Q acted under those circumstances is a reason for not blaming him for not doing A.). More precisely Raz writes that:

> « conditions *B* and *C* are deliberately weak for there is no general agreement in the linguistic community on the precise evaluative signicance of coercion. By some, or sometimes, it is held to render the coerced not responsible in the sense that the action is only nominally theirs, whereas in fact the coerced are being controlled by another in a way akin to physical compulsion. By others, or at other times, coercion is held to be no more than a mitigating circumstance. Whichever view one takes, it is not to be justied on linguistic or conceptual grounds but *by the soundness of the moral theory of which it is a part*. » (Raz 1986: 149-150 - my emphasis)

Since what interests us here (i.e. the « soundness of the moral theory ») is mainly the fact that coercion hinders autonomy, we can suggest, in addition to the descriptive criteria, the following necessary evaluative criterion:

E: A coercive threat invades autonomy (in this case, P's threat hinders Q's autonomy)

Finally, Abizadeh (2008: 59) proposes to add the condition which, combined with A(1) to A(4) and E. becomes a sufficient condition to say that a threat coerces Q (and which, coupled with A(5) and A(6) becomes sufficient to say that a threat *actually* coerces Q):

S: C involves the use of physical force against Q

To briefly sum up: condition A(1) to A(4) combined with E and S are *sufficient* conditions for a threat to subject someone to coercion and hence invades the person's autonomy. The important point to emphasise is that, for a person to be subject to coercion, it is not necessary for them to be actually coerced. This means that a person is subject to coercion regardless of whether they intend to carry out action A. In addition, let us remember that among the three ways in which coercion can affect autonomy, there was also the fact that we are not left with any valuable options. In other words, we would not be subject to coercion if we were prevented from doing something while being left with a sufficient number of different options. However, in our case, note that since the threat directly coerces our independence (the fact of being subject to the will of another person or institution) then the above conditions are sufficient to invade our autonomy since autonomy, as we noted above, is always undermined by subjection to coercion. More precisely, as Abizadeh puts it, « it invades her independence because it threatens to interfere with the setting and pursuit of her own ends by using her body for purposes that are not her own » (2008: 59).

What can we learn from this definition? The main point is that, as far as border control is concerned, every human being is subject to coercion. Indeed, even someone who has no intention of migrating fulfils conditions A(1) to A(4) as well as E and S. This may seem too broad a definition. But in fact, even if we were to narrow the definition more precisely to those who *would like* to migrate, it is even clearer that they are subject to coercion. More concretely, remember that borders are often watched over by armed border guards, or protected by electric fences. It is clear to anyone wishing to enter that if they do so without authorisation, they risk their physical integrity. Consequently, the argument that must be defeated by the defenders of exclusive border control is the following:

(1) Autonomy is valuable (normative premise)

(2) Anyone whose autonomy is threatened by subjection to coercion can claim justification (the autonomy principle).

(3) Would-be migrants are subject to coercion by state borders (empirical premise)

(4) Would-be migrants may request justification for their refusal (according to (2) and (3)).

We can add that:

(5) if a state refuses a migrant without a good reason, it is morally wrong.

Of course, the justifications given to those who wish to enter and reside in a territory must be reasonable and based on solid and valid reasons that everyone could consider as such.

6. Challenges to the open borders

6.1 Do principles of justice apply globaly ? The coercion case

One of the arguments frequently found in the literature is that principles of justice that apply at national level are different from those who apply at global level. In fact, Rawls himself argued something similar in *The Law of Peoples* (1993 and 2001) and in *A Theory of Justice* (1971). For Rawls, the principles of political justice are chosen on the basis of a constructivist method. In his case, the constructivist method consists in choosing the principles of justice on the basis of a deliberative process subject to certain conditions (typically the veil of ignorance posing certain constraints). Thus, unlike philosophical theories with a universal vocation such as utilitarianism - where the standard of utility is used in any situation - Rawls' vision of justice as fairness does not necessarily apply to every social organisation (1993). He writes: « in justice as fairness the principles of justice for the *basic structure of society* are not suitables as fully general principles. They do not apply to all subjects: not to churches, and universities, or the basic structures of all societies, or to the *law of peoples* » (1993: 39 - my emphasis). The « law of peoples » is what is understood as regulating international relations between peoples. The consequence, according to Rawls, is that the principles chosen at international level would not be identical to those chosen at national level. He also believes that the principles chosen at international level would not be very far removed from those currently in force[14].

One of the implicit arguments for this difference is that Rawls believes that there is no such thing as a global basic structure[15]. The argument is based on two premises, one normative and one empirical. The first premise asserts that the principles of distributive justice operate only in the context of the basic structure of a society, i.e. where people share a common structure enabling

[14] The list of rules that would be chosen according to Rawls (2001: 37)

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.

   It should be noted that, in point 6, the list of human rights to be respected among peoples is minimal and does not take into account, for example, freedom of movement. (2001: 65).

[15] This argument is not explicitly used by Rawls but he seems to endorse it in *A Theory of Justice*. Indeed, Abizadeh (2007) has noted that Rawls asserts that even if we attenuate the closed society postulate, he does not conclude that international relations must be dictated by similar principles at the national level, but requires that principles for « adjucating conflicting claims among states » (1971: 377). However, this type of argument based on basic structure was later endorsed by authors claiming to be part of the Rawlsian heritage as we shall see shortly with Blake (2001).

individuals to claim justice through a shared responsibility for rights and duties. The empirical premise, on the other hand, is that while there is such a basic structure at the level of the state, there is no global basic structure similar to that which regulates internal affairs. Therefore, according to Rawlsian advocates of this view, the scope of distributive justice stops at the borders of the state.

Before going into the details of the argument, let us begin with a brief reminder of what Rawlsian theory consists of. Rawls takes as his starting point that we live in society in order to benefit from social cooperation. He sees society as a « cooperative venture for mutual advantage » (1971: 4). This social cooperation brings benefits, but also drawbacks. In other words, in Rawls's words « [this cooperation] is typically marked by a conflict as well as by an identity of interests » (Ibid). It brings benefits because it enables everyone to enjoy goods that would be inaccessible without cooperation. But it also brings conflict in that claims to the resources derived from cooperation can conflict. Consequently, rules are needed to regulate conflicts and to determine a fair distribution of the benefits and burdens of social cooperation. More specifically, the function of principles of justice is to define the rules of access by individuals to « social primary goods » (Ibid: 62). The main primary goods are, for example, rights and freedoms, power, opportunities, income and well-being (Ibid).

It is important to note for the remainder of this work that the regulatory principles chosen under the veil of ignorance - I will come back to this - are instantiated in institutions that Rawls calls « the basic structure of society » (1971: 7). A society's basic structure is « the network or system of institutions, taken as a whole and in dynamic relation to one another, that forms the institutional background within which individuals and associations interact with one another. » (Reidy 2015: 55). This « basic structure » for Rawls is the « primary subject of justice » because « the major institutions define men's rights and duties and influence their life prospects, what they can do except to be and how well they can hope to do » (Rawls 1971: 7). Rawls gives as examples of these institutions the political constitution, competitive markets, private property and the family. It is within this framework that the fundamental principles of justice apply.

But what principles of justice does Rawls propose? To find these principles of justice - and above all to justify them - Rawls invites us to imagine a hypothetical situation that he calls « the original position ». The idea behind the original position is to find principles of justice that are consensual, i.e. acceptable and justifiable in the eyes of all citizens. In this thought experiment, we have to imagine an assembly of individuals who know that they will form a society, but they do not know what place they will have in that society. The individuals will be placed under a 'veil of

ignorance'. The idea of the veil of ignorance is to ensure that we are not influenced by factors that might cause us to favour a particular principle arbitrarily. Typically, we ignore our conception of the good life, whether we are a man or a woman, or whether we are Christian, Muslim or atheist. Rawls also assumes that individuals are rational, mutually disinterested and have some sense of justice. From this original position, Rawls famously asserted that two essential principles of justice would be chosen:

> « First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
>
> Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. »[16] (Rawls 1971: 60)

The first principle refers to the idea we have seen so far, i.e. that autonomy demands that we have as much freedom as possible until coercion is justifiable. The second principle is what Rawls called the « difference principle ». The idea is that since we are not responsible for our talent, we must find a system that benefits from the skills of the most talented while sharing the wealth they produce.

Now the question is whether these principles of justice can also be applied internationally. Earlier in this work, I argued that every human person should be regarded as morally equal and that the challenge of special responsibilities failed to involve a theory of justice that was too focused on states. However, other Rawlsian arugments have also been defended. Several such arguments have been put forward, but here I focus on one particular type of argument that concerns coercion more specifically.

Blake (2001) has argued that certain principles of justice - in this case, principles of justice that he called « relative » as opposed to principles that he called « absolute » such as fundamental human rights - only apply between members of the same state. In his case, the argument stems from the fact that he conceives the state as a *coercive* political entity. The argument is relatively familiar from what we have seen so far. Blake starts from the liberal normative assumption that autonomy is valuable. He adds that, as we saw earlier, since autonomy is valuable, then the state, as a coercive apparatus, must justify any attempt to restrict the autonomy of those it coerces. Subsequently, he

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[16] To be sure, the fact that it is these principles that have been chosen has been criticised, but the literature on Rawls' political liberalism is so vast that I can only scratch the surface of its implications here In any case, this doesn't really change Blake's argument, which we shall see shortly.

argues that giving justifications to those subject to coercion implies a commitment to relative equality. He writes:

> « We have to give all individuals within the web of coercion, including those who do most poorly, reasons to consent to the principles grounding their situation by giving them reasons they could not reasonably reject - a process that will result in the material egalitarianism of the form expressed in the difference principle, since justifying our coercive scheme to those least favored by it will require that we demonstrate that no alternative principle could have made them any better off. » (Blake 2001: 283)

In other words, he argues that the justification of coercion necessarily implies a certain type of justice (a Rawlsian justice for example), since it is the only one that would be accepted and justified in the eyes of citizens, and particularly the least well-off. Consequently, the very reason for a principle of relative equality, according to Blake, is to obtain the consent of all, by demonstrating that the proposed principles would be the fairest form of justice. The important point here is that the purpose of the principle of difference, in Blake's view, is precisely to justify coercion. Thus, it asserts that states have a duty to adopt these principles of equality in their national policy. Put it differently, state coercion is a necessary condition for distributive justice (cf Caney 2008: 502).

The important point Blake is now making is that there is no coercion at the international level, or more precisely that the global order is not coercive. The logical consequence of his argument is as follows: since

(1) a commitment to autonomy requires the justification of coercion,

(2) the justification of principles of justice implies that states must adopt relative principles of justice (say, principles chosen under the veil of ignorance), and

(3) and since the global order is not coercive, it follows that

(4) relative principles of justice - roughly speaking the liberal principles - do not apply at the global level.

There is a first point to note here. Blake considers above all a form of material equality, but we should remember that the principles chosen by Rawls also concern freedoms. We also saw earlier that freedom of movement is also valuable in that it is a fundamental condition of equality of opportunity. A second point to stress is that Blake's thesis implies that states do not have a moral

obligation to accept migrants and help them in their relative deprivation (compared with their citizens, typically). He believes, as we have seen, that the scope of distributive justice « à la Rawls » is confined to the national level because there is no global coercion. But we might ask whether his argument that the global order is not coercive is correct. Rather, it seems to be the case that the current ability of states to restrict the movement of would-be migrants is a coercive act. In other words, the existence of borders and the guards assigned to them represent in themselves a coercive threat in that they undermine the autonomy of individuals through the act or threat of restricting freedom of movement.

Nevertheless, Blake anticipates these objections. First, he acknowledged that the international system could be coercive. But he replied that it was not the type of coercion that imposed liberal principles of justice as at the domestic level. He argues that: « [he] want[s] only to point out the difference between domestic and international legal institutions; only the former engage in *direct* coercion against individuals […] There is no ongoing coercion of the sort observed in the domestic arena in the international legal arena » (2001: 280 - my emphasis). The argument seems to be that the international coercive system is not directly coercive (and therefore implies that it is indirectly coercive) and « that each distinct form of coercion requires a distinct form of justification. » (Ibid - footnote 30).

However we can ask what is the relevant difference between direct and indirect coercion? Let us consider a country A in which some of its institutions exercise a form of coercion over a company B whose external actions lead to coercion of a population C. For example, this company could deforest a a wooded area whose existence is vital to a population, or the company could pollute a river that is also vital. In this case, A coerces C indirectly (A coerces B which in turn coerces C due to A’s coercion), but according to Blake's argument, this coercion would not require any particular justification because it is indirect. But it seems clear to me that Blake's conclusion is wrong and counterintuitive. Although indirectly, country A has clearly, through its own control over company B, undermined the autonomy of a population and therefore, according to the autonomy principle, requires a solid justification for its actions.

A second attempt to justify differences in coercion is that coercion within the state has a permanent and profound impact on people's life choices while this is, according to him, not the case at the international level. He writes:

> « only the state is both coercive of individuals and required for individuals to live autonomous lives. Without some sort of state coercion, the very ability to autonomously pursue our projects and plans seems impossible; settled rules of coercive adjudication seem necessary for the settled expectations without which autonomy is denied. International legal institutions, in contrast, do not engage in coercive practices against individual human agents » (2001: 280)

I agree with Blake that the state can be seen as necessary for an autonomous life. But I think Blake's argument is once again misleading. Firstly, let us remember that we saw earlier that would-be migrants are indeed subject to coercion by other states. It is not necessarily international legal institutions that we are concerned with, but all forms of international coercion that may be embodied by states other than the one of which we are citizens. Secondly, I think it is wrong to say that only state coercion has a permanent and profound impact on our life choices. Migrants who wish to leave often do so because they have no other choice. Those who leave for economic reasons, for example, migrate because they have no valuable options in their own country. Other reasons, such as going to live in a country where most people share a certain religion, or joining a loved one, are all reasons why the final choice made by a country does have a major impact on the lives of those who want to migrate. As a result, I think that Blake's argument fails to show that principles of justice are confined to the state.

6.2 Sovereignty and self-determination

A second criticism of open borders relates to the sovereignty argument. It can be argued that the fundamental principle of state sovereignty is incompatible with freedom of movement and that the sovereignty of each state implies the possibility for them to control their borders. However, I think this argument can be defeated in two ways. First, I argue that this does not prevent states from acting morally. In a second objection, I argue that it is not clear that states should unilaterally make decisions that affect a wider public than its residents and citizens.

Firstly, let us assume that states, and therefore citizens, enjoy sovereignty and can decide for themselves and for themselves the laws of the state in which they are located. This means that states largely have the power to choose their own destiny and the way in which society is organised, whether in terms of internal or external policy. But this does not prevent states from acting morally. As Carens rightly notes « we should not confuse the claim that states have a moral right to exercise

sovereign power with the claim that every exercise of sovereign power must be regarded as morally right (2013: 270).

Nevertheless, it has been argued by so-called realists in the literature on international relations that states are bound to act in their own self-interest and therefore have a duty not necessarily to act morally in relation to other states or peoples. Indeed, it has been argued that the international system is similar to the Hobbesian state of nature. The idea is that states, like men in Hobbes' story, are in a state of war in which no state has an interest in following moral rules that would limit the pursuit of their interests. In this sense, it would be necessary to set up a world government to arbitrate dissent and ensure that contracts are reciprocal.

Yet the analogy between the Hobbesian state of nature and international relations is fallacious[17]. In fact, there is nothing to prevent states from acting morally and there is no need to adopt a world government. The implication between sovereignty and not being able to act morally is therefore incorrect. In other words, it is not intrinsically the case that sovereignty in itself implies not allowing outsiders to enter and reside on the territory.

Secondly and more importantly, it can be argued that, as a sovereign political unit, states have the right to unilaterally control their geographical and civic borders. This is a type of argument that we find both in the literature and in non-specialist discussions. Let us recall the words of Marine Le Pen that I quoted in the introduction. She declared « It is the fundamental right of a nation and a people to decide who comes to their country, under what conditions, and who must leave and when ». In general, then, democratic commitments seem to run counter to liberal ones. A commitment to liberalism tends to imply freedom of movement across international borders - since preventing that hinders the autonomy of individuals - whereas a commitment to democracy tends to imply a right of peoples to decide who can enter and leave. But I suggest that it may not be so clear that democratic engagement implies a right to *unilaterally* control one's borders.

Notice a first point here. One thing that liberalism and democracy have in common is that they both aim to *justify* and *legitimise* coercion. However, they do so in different ways. Abizadeh has pointed out that liberalism regards the autonomy principle as imposing that the exercise of political power must be *justifiable* to everyone, whereas the democratic principle asserts that political power is legitimate insofar as it is *justified by* and *to* the people over whom the power is exercised (Abizadeh 2008: 41).

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[17] Unfortunately I don't have the space here to demonstrate how the analogy is fallacious. Nevertheless, for a convincing illustration see Beitz, C.R. (1979) *Political theory and international relations*. in particular Section 1

As a result, as Abizadeh puts it:

> « The key difference […] between liberalism and democratic theory is that while the former engages in a strategy of hypothetical justification to establish the *justness* of institutions and laws through which political power is exercised, the latter demands *actual participation* in institutionalized practices of discursive justification geared to establishing the *legitimacy* of political institutions and laws. » (Ibid - his emphasis).

Thus, we can remark that liberalism as such is not sufficient to ensure the legitimacy of the laws that would hypothetically be chosen. These laws also need to be democratically legitimised by the people they affect through some form of participation, whether direct or indirect. It would not be legitimate, for example, for laws, even liberal ones, to be imposed by a particularly benevolent autocrat concerned with justice. The point to emphasise is that the laws of a democratic state are only legitimate if those subject to them have the right to *participate*. (Abizadeh 2010: 121).

The conventional view of democracy states that only the people who are members of a state can decide to change, abolish or amend laws. The idea is that the people enjoy the right of self-determination and therefore have the right to decide the future of a nation. Consequently, this idea implies that the members of a state, the citizens, can control their geographical and civic boundaries. Recall here that Walzer believes that the right to control geographical boundaries is essential precisely because they enable civic boundaries to be controlled. For him, as soon as we allow an individual to enter our territory and give him the right to reside, we have a duty to grant him membership. The idea of controlling geographical borders is therefore intimately linked to controlling the *demos*, i.e. the participants in democratic processes.

But who is part of the *demos* is a matter of debate in the literature of political philosophy. Today, the answer seems self-evident to those unversed in political theory: history, by constituting nation-states and well-defined citizens, has legitimised the body politic. Through wars, alliances and what we have today - nation-states - the constitution of the *demos* has become territorialised, and its members are the *citizens* of different countries. However, on closer examination, the legitimacy of this way of constituting the demos does not seem fully satisfactory. For Leydet (2012: 406), this would mean that « the work of democratic legitimation would only begin with the

factuality of a history that has taken its course and must be justified retroactively »[18]. A history that is ultimately contingent and arbitrary (Ibid). Thus, the constitution of today's *demos* was largely constituted in an undemocratic manner.

The problem that arises here is one that is now commonplace in political philosophy. The problem of the consitution of the demos or the « boudary problem » consists in the fact that democratic theory itself is not capable of designating the legitimate civic boundaries of those who can take part in the decision-making process. Indeed, the consitution of the *demos* cannot be answered by participation, because that would once again mean asking who can take part in the process, and we would then find ourselves in an infinite process.

Hence the question of sovereignty is not all that obvious, and a second difficulty now arises. Recall that the problem with borders is that they coerce individuals, but this coercion, once again, is actually never subject to justification. Would-be immigrants are never taken into account in the democratic process, even though they are the first to be affected by decisions. As Abizadeh puts it:

> « *by its very nature*, the question of boundaries poses an *externality problem:* while democracy claims to legitimate the exercise of political power by reference to those over whom power is exercised, civic boundaries, which by definition distinguish between members and non-members, are always instances of power exercised over both members *and nonmembers*—and nonmembers are precisely those whose will, views, or interests the bounded democratic polity claims to be able legitimately to ignore. » (Abizadeh 2008: 47 - his emphasis)

To recapitulate, then, democracy requires that coercion be legitimised by participation in the decision-making process that leads to coercive rules, but in the case of migrants some of those coerced are not taken into account.

Different ways of legitimising participation in the democratic process have been proposed (the all-affected principle, all-subjected principle or the voluntary association principle…), but I propose here, according to what we have seen so far, that it would make sense to constitute the *demos* by taking precisely those *subject to coercion* into account in the decision-making process. In other

[18] « Le travail de légitimation démocratique ne commencerait qu'à partir de la factualité d'une histoire qui a suivi son cours et doit être justifiée de façon rétroactive »

words, it would make sense to constitute the *demos* through *a principle of coercion* rather than a demos constituted arbitrarily by the contingency of history and in an undemocratic manner.

However, it should be noted that this does not mean that civic borders or the division into several states makes no sense. The argument simply implies that if a state wants to keep its borders closed, it must legitimise this to those concerned. In other words, border control is possible but requires *justification*.

At this point, we can ask ourselves what kind of justification is possible. I think there are several legitimate justifications. A justification may be legitimate in the case of an individual who would threaten the security of a state, which would typically be the case of someone planning to carry out terrorist attacks. Another type of justification may lie in the consequentialist criticisms seen earlier in this work. Typically, this would be the case if too many people wanted to migrate to a country at the same time, which would risk undermining the welfare state, or if it would lead to saturation of the labour market and extreme unemployment. This type of justification is legitimate, but it should be noted that it is unlikely that such a large influx of would-be immigrants would arrive at the same time and in the same place.

6.3 Preserving culture

Last but not least, several authors have argued that it is necessary for the state to have control over immigration because the state has the right, if not the duty, to preserve culture (Walzer 1983, Miller 2016a, 2016b). They argue that immigration can be a danger to these rights. However, I shall argue that all of these arguments are powerful but they fail to support an exclusive right to states to control their borders.

Walzer is an author who has been classified as a communitarian. Historically, communitarians have opposed liberalism because they believe that the need to participate in community life goes beyond the need for individual freedom (cf Kymlicka 2001: section 6). They assert that human beings cannot live without a community that shares a common culture. In particular, communitarians such as Walzer have argued that a society is just only if it acts in accordance with its members' shared understanding of what the values embodied by the community are; that is, certain practices and institutions embraced by its members (Ibid).

They also believe that belonging to a community is fundamental if human beings are to live a fulfilled life. Communitarians have indeed criticised liberals for their emphasis on the individual and their neglect of the fact that individual freedom is only possible within a community. So unlike

liberals, they do not believe that the state should remain neutral with regard to life choices and projects, but that it should follow a policy of the common good understood as « a substantive conception of the good life which defines the community's « way of life » » (Kymlicka 2001: 220).

Although I do not subscribe to the political philosophy of communitarians in general, the idea here is not to formulate an extensive critique of communitarianism. The observation that life in community is necessary for human beings through shared practices seems correct to me. As Aristotle had already observed, human beings are social animals and have a vital need to form social ties with their fellow creatures.

On the basis of this observation, we quickly understand how immigration could, in their view, be a danger to a society's cohesion. An immigration whose individuals have a too different culture risks undermining this communitarian coherence and thus undermining the well-being of the members of the society. Walzer thus links the right to exclude and to control borders with the right to preserve culture. He writes: « the distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life » (1983: 7). Famously, he added that « admission and exclusion are the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life » (1983: 62).

One of Walzer's fears is that if the states were opened up, the result would be that we would end up with lots of little neighbourhoods completely closed in on themselves, like little states, or, in his words, like « a thousand of petty fortresses » (1983: 39). If we still insisted on opening up these neighbourhoods, Walzer continues, the result would be a « world of radically deracinated men and women ». (Ibid)

Once again I agree with Walzer that the community is important. However, his approach is problematic in a number of ways. First, while some people need to feel that they belong to a particular community with particular characteristics in order to lead a flourishing life, not everyone does. We have seen, for example, that some people see themselves as cosmopolitan in the sense of identity. This does not mean that these people are not attached to certain people, such as supporters of their football club or members of their religion, for example. It is only that they adhere to a mix

of cultures rather than a particular one, and it is hard to see why that would be wrong or morally condamnable[19].

Second, and related to the first point, it is clear that with new technologies (the plane, the internet and so on…) the world is increasingly connected and identities are increasingly heterogeneous. Hence, on the one hand, people of the same nationality can identify with extremely different cultures or values. On the other hand, a Swiss person may identify with a Nepalese person because of their love of the mountains, while the same Swiss person may not identify with a fellow countryman because of his religious or philosophical beliefs. It is by no means clear that culture within a single country is homogeneous. Does the fact that this Swiss citizen does not identify with his compatriots prevent him from leading a flourishing life? It seems obvious to me that the answer is no.

It could be objected at this point that it is not necessarily culture about something very specific like the love of mountains that matters, but rather a more abstract form of culture, like the idea of a public culture about mores and rules, or what is valued by a population. I'm thinking here, for example, of a certain democratic culture or democratic values such as equality, respect for human rights, a certain form of justice or more general values such as self-sacrifice or, say, courage. Nevertheless, I don't think this reasoning carries any more weight than before.

First, it would seem to endorse a form of moral relativism based on very general values, yet it is a safe bet that these values are not only endorsed by Westerners. Indeed, I share the idea known at least since the Scottish Enlightenment (Shafsebury, Hutcheson, Smith...) that human beings are endowed with an innate moral sense. Consequently, values such as equality and respect for human rights can be endorsed by any human being. To be sure, this moral sense is not honed in the same way in everyone; it depends on upbringing and other « senses » that we have, which could collide with other « senses » such as egoism (Baumard 2010). But it would be wrong to think that no-one can understand or endorse this type of value.

Second, we can consider two situations: a person can immigrate either because they do not find these values in their place of origin and therefore seek to access them and live them to the full, and in this case, there would be no problem of cultural difference, as Walzer thinks. Or a person may immigrate for other reasons and in that case, society can legitimately demand, I think, that the

[19] Moreover, this is where the limits of communitarianism become apparent. Liberalism proposes that everyone should be able to lead their own lives as they see fit. If that life is made up of social ties between people who share certain values, such as a religious person might be, then he or she is free to do so. But it seems to me that other people also have the right to live the life they would like to lead without a community dictating certain values to them.

person integrates and adopts the values of a population. On the other hand, I think once again that democratic values, to use this example, are not necessarily homogeneous across a population. We still find royalists in France, for example. Following Walzer's logic, these people would themselves have to leave their country to find a place that advocates hierarchical values of status between individuals. But despite this, most of these people prefer to stay at home, even though they have little hope of overthrowing a democratic government.

Finally, an objection raised by Carens (2013: 261-262) is the following: Walzer asserts that the « closure » of society is a necessary condition for the subsistence of a « community of character ». But it seems that this depends on the number of people entering the territory. It seems unlikely that the arrival of a small number of would-be immigrants would undermine the cultural coherence of a community. One might wonder whether opening borders would lead to massive immigration flows. But according to Walzer's own logic, this seems unlikely. Since, according to Walzer's vision, a community of character is necessary for human flourishing, why would individuals want to leave their community except out of urgent necessity ? Walzer needs to answer such a question if he wants to make his point soundable.

7. Conclusion

Let us summarise what has been argued in the course of this work. I have analysed two types of argument concerning the defence of a moral duty for states to open their borders. The first argument asserted that states have a duty to welcome immigrants, particularly the poorest ones, in order to remedy global inequalities. The second argument focused more specifically on freedom as the foundation of human flourishing.

Regarding the first argument, I argued that although the argument requires us to take inequalities seriously and try to remedy them, it does not impose a moral duty on states to welcome would-be immigrants. Indeed, although some attempts to challenge the argument by consequentialist and anti-cosmopolitan challenges have failed to refute it definitively, I have insisted that the problem with non-relational cosmopolitanism and luck egalitarianism is that they fail to recognise the importance of social relations and equality of status as the object of a theory of justice.

In the case of social relations, it is necessary to realise that the world is not made up of countries isolated from each other - in which case there would be no questions of justice - but that states are increasingly interconnected and interdependent. In the case of luck as a standard of justice

- embodied by luck egalitarianism - it is necessary to realise that justice is not just a question of luck or bad luck, but of how we are treated. The issue of migration is therefore not so much a question of economic inequality due to bad luck, but a question of respect for the treatment of would-be migrants *qua* human beings with a right to equal respect.

The second argument is based on a commitment to political liberalism. It supports the view that every restriction of liberty must be justified. I have argued that would-be immigrants, as individuals subject to coercion by foreign states, are entitled to justification when refused entry to a country. In fact, even more important than that, I have argued along the lines of Abizadeh that any form of coercion entails the right to participate in the decisions that lead to the subjection of individuals to laws. In fact, the argument is based not only on a commitment to political liberalism but also on democratic theory. As I argued in section 6.2, democracy and liberalism are two sides of the same coin. Whereas the former demands that principles of justice be *justifiable*, the latter demands that principles of justice be *justified* by a democratic process that includes all those subject to the coercion of law.

But we can ask ourselves how to set up such a system. First of all, it may seem far too utopian. The conventional view is that states are sovereign and few people would be inclined to question this current pillar of the state system. In this work I have taken the side of an ideal type of argument, i.e. without taking into account the complexity and difficulty of human interactions and the less reasonable sides of human beings. But ideal theories are supposed to be a guide to fairer institutions. Obviously, I do not expect things to change overnight. The fact that human beings are always biased towards the *status quo*, and misinformation about migrants, hinders the path towards a fairer world. However, I hope that this type of work will convince the most reluctant to at least question their certainties.

In fact, the argument suggests that it would be necessary to put in place a system of law and democratic process that protects people's *prima facie* right to freedom of movement. If you think about it, this type of system already exists, and the European Union is a striking example. But it seems to be a privilege of the wealthy. Far be it from me to assert that there are no poor people within the European Union, but it is clear that the European fortress, by restricting the movement of individuals without justification, is committing a moral fault.

We therefore need a system of international law that allows the claims of those who want to migrate to be taken into account. However, as I said in the introduction, the aim of this work was

first and foremost to convince citizens about the injustices of migration and I hope to have shown that this is the case.

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