

Master Thesis Applied Ethics

The moral tenability of open and closed borders to immigrants

A defence of porous borders



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Abstract

In this thesis I will analyse the moral tenability of open and closed borders to immigrants. I will present the strongest reasons for open borders: freedom, moral equality, no coercion without democratic justification and improvement of life conditions. And I will present the best arguments for closed borders: the self-determination argument and the functioning society argument. I will show that the culture and freedom of association versions of the self-determination argument and the indirect cosmopolitanism version of the functioning society argument do not hold, while the democracy version of the self-determination argument and the economy and security versions of the functioning society argument do hold. I will defend that porous borders – borders that are partially open and partially closed – are the best option. Furthermore, I will give an indication on some broad guidelines and criteria that may count as a minimum standard to which states need to adapt their immigration policy. I will illustrate to what extent states already incorporate this by comparing these guidelines and criteria with the Dutch immigration policy. I will conclude with the claim that states that have a porous borders policy need to fulfil some global moral duties toward, between others, third world countries, in order to make the porous borders option morally defensible.

1 Introduction

Immigration is a strongly debated issue nowadays. Newspapers write almost every week about new groups of African refugees crossing the Mediterranean Sea or about European political parties that want to limit immigration. This debate is often highly emotional; people are reacting to immigration out of fear or anger. Whether to open or

close borders to immigrants is also an issue that is of great importance to applied ethics and political philosophy. It raises questions on the moral acceptability of the way states treat would-be immigrants. What kind of admission policy should a state adopt?

1.1 Central question and objective

The central question of this thesis is: “What is the moral tenability of open and closed borders to immigrants?” It is my objective to show both that there are very strong reasons for a state to have open borders and that there are some good arguments for limiting the admittance of immigrants. I will defend that the porous borders option is in this case the best option, because it does justice to both the reasons for open borders and the arguments for closed borders. With porous borders I mean borders that are partially open and partially closed. I will argue that there are four strong reasons in favour of open borders: freedom, moral equality, no coercion without democratic legitimation and improvement of life conditions. I will argue also that the culture and freedom of association versions of the self-determination argument and the indirect cosmopolitanism version of the functioning society argument are not able to justify the closure of borders to immigrants. The only arguments that can be legitimately used in favour of some restrictions on an open borders policy are the democracy version of the self-determination argument and the economy and security versions of the functioning society argument. In order to give people that would like to immigrate equal chances in equal circumstances there have to be clear and fair criteria for the admittance of immigrants. I will give an indication for some guidelines and criteria that may count as a minimum standard for the immigration policies of states. Furthermore, I will argue that having porous borders obliges a state to fulfil their global moral duties towards, amongst others, the countries of which they refuse would-be immigrants insofar it is in their power to do so. The purpose is that the problems because of which people want to emigrate, e.g. hunger, poverty and violence, will be combatted. I am not offering a cut-and-dried solution for the problem of immigration, but the appropriate conditions for a solution.

1.2 Some remarks on borders

Before I continue with sketching the situation with regard to immigration of the case study of the Netherlands, I would like to make some remarks on the term ‘borders’. As we all know borders have often been drawn in an arbitrary way, without the wish of peoples to be separate or together being acknowledged. As a consequence peoples were split up between states and states including different peoples arose. Nonetheless I take the current borders as a given, because I want to use the world as it is now as a starting point, not a fictional reality.¹ So in this thesis I will be dealing with non-ideal theory. In ideal theory the question whether states should have open or closed borders would not even arise, because of the absence of the evils that cause many people to flee from their countries and to immigrate elsewhere. But in non-ideal theory this is a topic that needs to be discussed. What I try to do in this thesis is to point out how a borders policy in the current world can be morally defensible.

The control of borders can be managed in different ways. States can have open, closed or porous borders. With the term ‘open borders’ I refer to a situation in which a country admits all immigrants, while I use the term ‘closed borders’ for a situation in which a country refuses all immigrants. The term ‘porous borders’ refers to a situation in which a country admits some immigrants, while it refuses others. How porous a states’ borders should be I discuss in chapter 4. As we shall see the division between the defenders of open and closed borders is not as sharp as one may expect it to be. Some authors are in favour of an open borders position, but defend meanwhile some restrictions on open immigration. Other authors are in favour of a closed borders position, but allow also for some exceptions to this policy. Although authors may successively present arguments for both more open and more closed borders I will present the arguments separately.

¹ With taking the current borders as a given I do not mean to say that the current borders are the best possible or just option. Neither do I intend to neglect the historic context in which these borders have been created, nor do I mean to deny the moral responsibilities that may arise from the injustices that have occurred during the period in which borders were settled. I come back to this in paragraph 4.3. What I mean to say, however, is that I am talking about the current world as it is, without pleading for a stateless world, a global state or a revolution that will change the current borders.

1.3 Case study: the immigration policy of the Netherlands

As mentioned before, I have chosen the Netherlands as a case study. The purpose of this case study is to give a concrete illustration of how a borders policy may work out in practice. I will return to this case study in chapter 4 when I compare the guidelines and criteria that I have formulated with the Dutch immigration policy. I will now shortly describe the legal framework of the Netherlands with regard to immigration, placed in its international context within conventions and regulations of the United Nations (UN) and the European Union (EU). I will focus on the main points, so my treatment of this subject will not be exhaustive.

To begin with, the General Assembly of the UN established the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1950. This UN Refugee Agency has the protection of refugee rights as its task. The Convention relating to the Status of Refugees is the legal basis for the UNHCR's work. This convention is a crucial legal instrument for the protection of refugees which was adopted by the UN in 1951. It was ratified by the Netherlands in 1956. It defines who can be called a refugee and clarifies their rights as well as the obligations that the joining states have towards refugees. Article 1 of the convention describes a refugee as someone who "(...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."² Furthermore, the convention formulates the important principle of non-refoulement that forbids states to send back refugees to dangerous countries: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."³ The

² See: *Convention and protocol relating to the status of refugees* (Geneva, UNHCR, 2010 [1st edition: 1951]) p. 14.

³ See: *ibid*, p. 30.

protocol that was added in 1967 in order to remove the geographical and temporal restrictions of the convention was acceded by the Netherlands in 1968.⁴

Although the EU does not have a harmonised immigration and asylum system yet, it is currently working towards a Common European Asylum System (CEAS). One of the crucial regulations that aims at this is the Dublin II Regulation⁵ in which is specified which country is responsible for the asylum procedure of which immigrant. Usually this is the country in which the immigrant first applied for asylum, although there are some exceptions. Following the Dublin II Regulation only one EU Member State will consider the asylum application of an immigrant. Someone who is rejected in one Member State cannot apply for asylum in another Member State. The Netherlands also participates in Frontex, the EU Agency that takes care of the external border control.⁶

The immigration and asylum policy of the Netherlands has different criteria for different groups of people. The criteria for asylum seekers to be admitted are partly the same as in article 1 of the Convention relating to the Status of Refugees. Anyone who meets one of these criteria will be given a residence permit: “1. You have well-founded reasons to fear for persecution in your country of origin on grounds of race, religion, nationality, political conviction or because you belong to a certain social group. 2. You have well-founded reasons to be exposed to an inhuman treatment in your country of origin. 3. You had to leave your country because of severe traumatic experiences. The trauma is caused by the government or by groups that exercise the actual power in a country. The government cannot or does not want to offer protection. 4. You cannot return to your country because the Dutch government considers the situation there too unsafe to return. 5. You are a family member of someone who is in the meantime in possession of an asylum residence permit and you

⁴ See: <http://www.unhcr.org>.

⁵ The full name of this regulation is: Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT>.

⁶ See:

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133153_en.htm, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT>, http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm, http://www.europa-nu.nl/id/vh1aly4653wh/asiel_en_migratiebeleid, <http://www.frontex.europa.eu/>, http://www.europa-nu.nl/id/vh6telvdgppy/europees_agentschap_voor_het_beheer_van

have travelled simultaneously into the Netherlands or you have travelled into the Netherlands within three months after your family member has received the residence permit.”⁷ There are some restrictions however: “Your asylum application can be refused if: 1. You have been in another country where you could have applied for asylum before you came to the Netherlands or if you have applied for asylum in another country already. 2. You are a danger for the public order and national security. 3. You provide false data.”⁸ For immigrants other than asylum seekers different criteria apply. They need to have a sufficient income, a valid passport and they have to be willing to undergo a medical test on tuberculosis. Their employer needs to have a work permit for immigrants. Furthermore, they may not be a danger to the public order. In several cases there are some exceptions to these general criteria for employees. EU citizens need not have a job, but may also come to live in the Netherlands if they have sufficient financial resources and a health insurance. Victims or witnesses of human trafficking can be given a residence permit under specific conditions, just as persons who want to undergo a medical treatment in the Netherlands. On basis of article 8 of the European Convention on Human Rights⁹, that protects citizens against interference by the government into their family and private life, a residence permit can be given as well. Other possibilities of receiving a residence permit are the ‘not guilty’ clause for people who cannot return to their country without it being their fault and the ‘official grant’ clause for poignant situations.

⁷ My translation, see for the original Dutch text: <http://www.indklantdienstwijzer.nl/Default.aspx?jse=1>: “U hebt gegronde redenen om in uw land van herkomst te vrezzen voor vervolging op grond van ras, godsdienst, nationaliteit, politieke overtuiging of omdat u behoort tot een bepaalde sociale groep. U hebt gegronde redenen blootgesteld te worden aan een onmenselijke behandeling in uw land van herkomst. U hebt uw land om ernstige traumatische ervaringen moeten verlaten. Het trauma is veroorzaakt door de overheid of door groeperingen die de feitelijke macht uitoefenen in een land. De overheid kan of wil geen bescherming bieden. U kunt niet terugkeren naar uw land omdat de Nederlandse overheid de situatie daar te onveilig vindt om terug te keren. U bent een gezinslid van iemand die inmiddels in het bezit is van een verblijfsvergunning asiel en u bent gelijktijdig met hem of haar Nederland ingereisd of u bent binnen drie maanden nadat uw gezinslid de verblijfsvergunning heeft gekregen Nederland ingereisd.”

⁸ My translation, see for the original Dutch text: <http://www.indklantdienstwijzer.nl/Default.aspx?jse=1>: “Uw asielaanvraag kan worden afgewezen als u: In een ander land bent geweest waar u asiel had kunnen aanvragen, voordat u naar Nederland kwam of al in een ander land dan Nederland asiel heeft aangevraagd. Een gevaar voor de openbare orde en nationale veiligheid vormt. Onjuiste gegevens verstrekt.”

⁹ See: *The European Convention on Human Rights and its Five Protocols*, Council of Europe, 1950: “ARTICLE 8 Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

So the Netherlands cannot create criteria for immigrants as it likes to, but it needs to adapt these criteria to international law. This means that the Netherlands follows the UN Convention relating to the Status of Refugees when it comes to admitting refugees. Also the Netherlands needs to abide by EU regulations and conventions, such as the Dublin II Regulation and the European Convention on Human Rights. Referring to the unofficial distinction between ‘political refugees’ who seek protection against personal persecution and ‘economic refugees’ who seek a materially better life, the Dutch immigration policy tends to admit only the first group. For apart from exceptional cases only refugees and employees that satisfy the conditions mentioned above are being given a residence permit. Underprivileged immigrants that do not meet these criteria and would like to build up a new life in the Netherlands are being refused.

1.4 Overview chapters

In the upcoming chapters I will work out my central question “What is the moral tenability of open and closed borders to immigrants?” In chapter 2 I will give four reasons for a state to have open borders: freedom, moral equality, no coercion without democratic justification and improvement of life conditions. In chapter 3 I will examine two main arguments in favour of closed borders: the self-determination argument and the functioning society argument that has an economy, a security and an indirect cosmopolitanism version. In chapter 4 I will give a defence of porous borders. I will evaluate the arguments for closed borders that I have presented in chapter 3, concluding that the culture and freedom of association versions of the self-determination argument and the indirect cosmopolitanism version of the functioning society argument do not hold. On the other hand, the democracy version of the self-determination argument and the economy and security versions of the functioning society argument do hold. Also I will give some broad guidelines and criteria for the admittance of immigrants that may count as a minimum standard for the immigration policies of states. I will compare this with the immigration policy of the Netherlands. I will argue that to defend the porous borders option for wealthy states can only be justified when it is accompanied by the fulfilling of some global moral duties towards, amongst others, third world countries. In chapter 5 I will present my conclusion.

2 What are the reasons for open borders?

In this chapter I will discuss the question ‘What are the reasons for open borders?’ I will defend that the burden of proof lies with the defenders of closed border, because there are four strong reasons for open borders. These four reasons are subsequently: freedom, moral equality, no coercion without democratic justification and improvement of life conditions.

2.1 Freedom

One important reason why a state should have open borders is freedom. I consider freedom as a value of great importance. I agree with John Stuart Mill that “(...) 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 favour of freedom (...)”¹⁰ Obviously freedom is a concept that has many interpretations. Here I will use the interpretations of Joseph Carens and Chandran Kukathas. Freedom as reason for having open borders is mentioned by different theories, amongst which liberalism.¹¹ Liberalism holds that it is crucial to treat others as free and equal moral persons.¹² Joseph Carens uses the liberalism of John Rawls as one of three theories on which he bases his position that a state should have open borders.¹³ Although equality plays an important role in Rawls’ theory, it is also the significance of freedom in Rawls’ theory

¹⁰ See: Mill, John Stuart, J. M. Robson (ed.), *Collected Works of John Stuart Mill*, Volume 21 (Toronto: University of Toronto Press, 1963), p. 262; quoted in: Gaus, Gerald and Courtland, Shane D., "Liberalism", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2011/entries/liberalism/>> 1.1.

¹¹ See: Wellman, Christopher Heath, "Immigration", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>>, 2.2 and Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 215-222.

¹² See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 216.

¹³ See: *ibid*, p. 212. Note that this article was first published in 1987 and its account of Rawls’ theory is based on Rawls, John, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) and not on Rawls, John, *The Law of Peoples* (Cambridge, Massachusetts: Harvard university press, 2002). In *The Law of Peoples* Rawls refers only briefly to the problem of immigration (p. 8-9, 38-39). Though he pleads for restrictions on the autonomy of states (p. 25-27) and argues in favour of the right of emigration (p. 74), he nowhere defends that states should have open borders. For another account of Rawls’ liberalism and its tendency to open borders, see: Whelan, Frederick G., "Citizenship and Freedom of Movement: An Open Admission Policy?" in: Gibney, Mark (ed.), *Open Borders? Closed Societies? The Ethical and Political Issues* (New York: Greenwood Press, 1988), pp 7-10.

that Carens uses in his argument for open borders. Rawls conception of liberty contains a set of basic liberties, such as political liberty, freedom of speech and freedom of thought, that form together a total system of liberty.¹⁴ Carens recalls that in Rawls' original position the participants choose two principles. First, the principle that everyone has equal liberty: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."¹⁵ Second, the difference principle, which contains that social and economic inequalities may exist, as long as they benefit the people who are least well off. Besides, this inequality has to be "attached to positions open to all under fair conditions of equal opportunity."¹⁶ While Rawls in *A Theory of Justice* intended to develop the original position for a national situation, Carens argues that the original position can be used as well for an international situation. He claims that the use of force against people – both citizens and non-citizens – needs to be justified. And thinking about international issues as migration and trade needs to be done without biases. The original position provides a good strategy to address this, because it aims to give a justification for the principles of justice that govern society and because it creates a way to minimise biases. The veil of ignorance in the original position serves as a way to neutralise the effects of natural and social contingencies, such as the fact whether one is born in a poor or in a rich country.¹⁷ According to Carens the principles of justice that are chosen behind the veil of ignorance will lead to a moral restriction of the sovereignty of a state. Within the original position people will end up with considering the justness of a principle while having the perspective of the most disadvantaged people. In the case of the principle of freedom of migration this would mean the perspective of vulnerable people who would like to migrate to another country. Carens claims that in this situation one would decide to include the freedom of migration into the system of basic liberties, because "It might prove essential to one's plan of life."¹⁸ He states that the reasons why freedom of movement within a country should be allowed, count for international freedom of migration as well. These reasons vary from the search for better economic or cultural opportunities to

¹⁴ See: Rawls, John, *A Theory of Justice* (Cambridge, Massachusetts: Harvard university press, 1999 [revised edition, 1st published: 1971]), pp 52-56 and 176-180.

¹⁵ See: *ibid.*, p. 266.

¹⁶ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 215.

¹⁷ See: *ibid.*, p. 216.

¹⁸ See: *ibid.*, p. 218.

having a relationship with a person from another country or joining a religious community. So the basic agreement is that there will not be any restrictions on migration, because of the importance of the freedom to make one's own decisions on how to live one's life. Carens stresses that we have an obligation to aim for a system of open borders and concludes: "Free migration may not be immediately achievable, but it is a goal toward which we should strive."¹⁹

Someone else who defends a system of open borders on the basis of a principle of freedom is Chandran Kukathas. He does not choose one moral theory as his starting point, but he claims that if freedom is an important value, there must be severe arguments for restricting it. Other reasons that make that these arguments must be of great weight are, first, the impact that closing borders has on the life of refugees who fled away of their country because of the terror of dictatorial regimes. This would mean denying people the freedom of a safe place to live. Second, the effect of closing borders on people who would like to sell their labour, which amounts to denying people the freedom to work where they want to and the freedom of others to buy this labour. Third, the consequences of closing borders to people who would like to be reunited with their family or friends. This restricts their freedom of association.²⁰ Kukathas argues that all arguments that are brought in against open borders "(...) are not weighty enough to justify restricting freedom even to a limited degree."²¹ Although Kukathas is convinced of the weight of freedom of migration he remains realistic: "(...) it should be admitted that the prospect of states opening their borders completely is a remote one."²²

As I observed before, freedom is a concept with many interpretations. One clear distinction within this concept is made by Isaiah Berlin. He discerns between negative freedom and positive freedom.²³ Negative freedom is the absence of constraints. The

¹⁹ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 229.

²⁰ See: Kukathas, Chandran, "The Case for Open Immigration" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), p. 210.

²¹ See: *ibid.*, p. 211.

²² See: *ibid.*, p. 210.

²³ See: Berlin, Isaiah, "Two Concepts of Liberty" in: Berlin, Isaiah, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp 118-172 and: Gaus, Gerald and Courtland, Shane D., "Liberalism", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2011/entries/liberalism/>> and: Carter, Ian, "Positive and Negative Liberty", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL =

freedom of people gets limited when others prevent them from doing something. Negative freedom focuses on opportunities; it is important that many options are available, even if people do not use these options.²⁴ On the other hand, positive freedom is the presence of autonomy and self-determination. It focuses on people shaping their own lives; not making uncritical decisions, but reflecting on their ideals and long-term interests.²⁵ Negative and positive freedom can be exercised both individually and collectively.

Carens does not define the concept of freedom he uses. He leans on Rawls who, as I have mentioned before, describes freedom as a set of basic liberties that have to be in balance. Rawls does not pay attention to the distinction between negative and positive freedom.²⁶ However, having a closer look on Carens' argument, he seems to use conceptually both negative and positive freedom. The availability of a set of basic liberties amounts to negative freedom, because it accentuates the importance of opportunities. Carens also points out that the use of force against people, i.e. putting constraints that lead to the limitation of people's freedom, needs to be justified. There he uses the concept of negative freedom as well. Furthermore, Carens uses the concept of positive freedom by making clear that freedom of migration may be essential for the way people shape their lives. By referring to people's choices in life Carens seems to use positive freedom only for its exercise by individuals, not by the collectivity. Kukathas just uses the concept of negative freedom. He stresses that closed borders restrict people's freedom of movement. Freedom should be seen as a universal freedom for everyone, not as a particular freedom for a group of citizens. I will come back to this distinction in chapter 3, when I discuss the self-determination argument that favours the latter interpretation of freedom.

<<http://plato.stanford.edu/archives/fall2008/entries/liberty-positive-negative/>> 1. Berlin uses the terms 'negative liberty' and 'positive liberty'. I consider freedom and liberty as equivalents.

²⁴ See: Gaus, Gerald and Courtland, Shane D., "Liberalism", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL =

<<http://plato.stanford.edu/archives/spr2011/entries/liberalism/>> 1.2 and: Carter, Ian, "Positive and Negative Liberty", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N.

Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2008/entries/liberty-positive-negative/>> 1.

²⁵ See: Gaus, Gerald and Courtland, Shane D., "Liberalism", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL =

<<http://plato.stanford.edu/archives/spr2011/entries/liberalism/>> 1.3 and: Carter, Ian, "Positive and Negative Liberty", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N.

Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2008/entries/liberty-positive-negative/>> 1.

²⁶ See: Rawls, John, *A Theory of Justice* (Cambridge, Massachusetts: Harvard university press, 1999 [revised edition, 1st published: 1971]) pp 176-177.

Both Carens and Kukathas do not offer a complete theory about freedom as central argument for open borders. For example, they do not pay attention to the possible negative effects of the freedom of some on the freedom of others. Also the question how realisable open borders are is pretty much left aside. Still they do make it very plausible that freedom is a good reason for opening borders to immigrants. Although I do not think that all sorts of freedom should always be maximised – the prohibition of killing other human beings, for example, is a constraint on a certain kind of freedom, but not one that should be maximised – I do agree with Carens and Kukathas that freedom is a crucial value and that restrictions of the freedom of migration need to have very strong arguments in favour of them.

2.2 Moral equality

A second strong reason why states should open their borders to immigrants is moral equality. Defenders of different egalitarian moral theories give equality as a reason for open borders. Moral equality of all human beings does not mean that all human beings are equal in the sense that they are identical. It refers conversely to the universal conception that human beings deserve equal dignity and respect.²⁷ First, utilitarianism takes the moral equality of persons as basic assumption. It follows that citizens and foreigners do have an equal weight within the utilitarian calculus. Maximizing utility is the fundamental principle of utilitarianism. Carens, who uses utilitarianism as one of three theories in his argumentation, argues that whether it is an utilitarian approach that focuses on happiness, welfare, preferences or interests and whatever method of calculation will be used, the outcome of the calculus will always take the concerns of foreigners as much into account as the concerns of citizens. For in utilitarian theory citizens do not have a privileged position as compared to foreigners; their gains and losses count as equal in the utilitarian calculus. Even though different forms of utilitarianism may allow for different degrees of open borders “(...) the final outcome is still likely to favor much more open immigration than is common today.”²⁸ And when one takes the economic welfare of people as criterion this will lead to an open

²⁷ See: Gosepath, Stefan, "Equality", *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2011/entries/equality/>> 2.3.

²⁸ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 224.

borders policy, according to Carens. He clarifies that the free mobility of capital and labour is crucial for the maximisation of economic development. And this would require open borders.²⁹ Also Wellman stresses the fact that utilitarianism makes the case for open borders, because closed border will lead to economic inefficiencies that are non-beneficial for people. As Wellman argues: “Indeed, restricting Mexicans from fully developing and capitalizing upon their talents in the United States economy, for instance, makes no more sense than relegating men and women into separate spheres. Just as a system in which only men may be doctors and only women may work as nurses unjustifiably deprives the world of countless excellent female doctors and male nurses, a geo-political system in which countries are entitled to exclude outsiders regrettably fails to capitalize upon the talents and work ethic of foreigners who are denied access to the world's most robust labor markets. Given this, it seems reasonable to believe that people would on average be much better off if there were no restrictions on immigration.”³⁰

Second, also liberalism values the moral equality of persons highly.³¹ There are of course different versions of liberalism; here I will treat this theory as used by Phillip Cole and Joseph Carens. The former argues that liberalism cannot embrace both the moral equality of persons and immigration controls and still be a coherent theory: “With its universalist commitment to the moral equality of humanity, liberal theory cannot coherently justify these practices of exclusion, which constitute ‘outsiders’ on grounds any recognisable liberal theory would condemn as arbitrary.”³² But, as Cole shows, this is what most liberal theories do: “And yet at the same time the liberal project depends upon those practices: the existence of a liberal polity made up of free and equal citizens rests upon the existence of outsiders who are refused a share of the goods of the liberal community.”³³ He claims that most liberal theories do not address the question of who belongs to the liberal community. The liberal idea of moral

²⁹ See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 222-224.

³⁰ See: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 2.4.

For a general discussion on equality and the distinction between insiders and outsiders in utilitarianism, see: Singer, Peter, *Practical Ethics* (Cambridge: Cambridge University Press, 1993 [2nd edition]), pp 247-263.

³¹ See for a short overview of the opinions of Amy Gutmann, Will Kymlicka and Michael Walzer on this topic: Cole, Phillip, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), pp 3-4.

³² See: Cole, Phillip, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), p. 2.

³³ See: *ibid.*, p. 2.

equality of persons is expressed in the ideal of democratic citizenship. Liberalism holds that all people are equally subject to the law, while the law is the result of the sovereign will of these people. The existence of outsiders, who are only subject to the law, but no sovereign over it, makes this equality impossible. For Cole the question how to shape the political participation of citizens so that they contribute in an active and meaningful way to the community and the question who is admitted as a member of this community, are inseparable. The last question has to be answered in a way that is coherent with the liberal commitment to the moral equality of persons.³⁴ Cole identifies three possible answers for liberal theory to this question. First, the membership question ought to be answered by sovereign decision of the state itself. Second, there ought to be no immigration controls; international migration should be totally free. Third, all immigration controls ought to be administrated by an international framework, so that these controls will remain within a liberal political morality. Cole rejects the first and the third option, because they are incompatible with the moral equality of persons: “(...) there is no strategy of membership control that can be consistent with central liberal principles; any such strategy involves an incoherence between internal and external principles, and the result is that in both theory and practice liberal theorists and states apply non-liberal if not illiberal principles to outsiders.”³⁵ So the only option that does not render the internal principles for citizens and the external principles for non-citizens incoherent, is option two, the option of open borders and free international migration.³⁶ Cole’s argumentation is conditional: he contends that if one endorses the moral equality of all persons, then an open borders policy is the only solution. Other options for border control are not compatible with the liberal principle of moral equality.

Furthermore, Carens gives the moral equality of persons as a reason for open borders also on the basis of liberalism. Following Rawls he points out the importance of minimising natural and social contingencies. Carens claims that the benefit of citizenship should not be linked only to where one is born. To compensate for this arbitrary natural contingency freedom of migration is needed. Then people can choose

³⁴ See: Cole, Phillip, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), pp 2-9.

³⁵ See: *ibid*, p. 193.

³⁶ See: *ibid*, pp 192-203.

of which country they would like to be a citizen.³⁷ Carens sees restrictions on immigration as a way of sustaining inequality: “(...) we have an obligation to open our borders much more fully than we do now. The current restrictions on immigration in Western democracies – even in the most open ones like Canada and the United States – are not justifiable. Like feudal barriers to mobility, they protect unjust privilege.”³⁸

To resume: egalitarian theories like utilitarianism and liberalism both assume the moral equality of persons.³⁹ On this ground they argue in favour of open borders. As Carens puts it: “What is *not* readily compatible with the idea of equal moral worth is the exclusion of those who want to join.”⁴⁰ Not only citizens, but also foreigners should be treated as moral equal persons. Concluding can be said that moral equality is a strong reason for the opening of borders to immigrants.

2.3 No coercion without democratic justification

Another reason against closed borders – and, as I will argue, for some form of open borders – holds that on democratic grounds the closure of borders to refugees cannot be defended, unless they have been given a vote in the decision making process concerning the opening or closure of these borders.⁴¹ No coercion can be legitimately exercised without the people concerned being democratically consulted. The defender of this theory is Arash Abizadeh.⁴² His argument is internal to democratic theory. It does not give a defence of democratic theory, but takes it as a starting point. Abizadeh begins his argumentation with defining to whom the justification of a regime of

³⁷ See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 221.

³⁸ See: *ibid.*, p. 229.

³⁹ See also: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 2.1.

⁴⁰ See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 230.

⁴¹ See: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 2.3.

⁴² See: Abizadeh, Arash, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders” in: *Political Theory*, Volume 36, Number 1 (February 2008), pp 37-65. For a reply on this article, see: Miller, David, “Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh” in: *Political Theory*, Volume 38, Number 1 (2010), pp 111-120. For Abizadeh’s reply on Miller, see: Abizadeh, Arash, “Democratic Legitimacy and State Coercion: A Reply to David Miller” in: *Political Theory*, Volume 38, Number 1 (2010), pp 121-130.

border control is owed. According to the popular state sovereignty view – of which Abizadeh is not an adherent – this would be owed solely to the states’ members. His thesis is conversely that democratic theory rejects the view that a state has the right to unilaterally close its borders or that democratic theory admits for the closure of borders by a state if and only if this has been democratically justified to both citizens and foreigners.⁴³ Abizadeh defines his coercion claim as follows: “The state’s laws subject persons to coercion by virtue of credibly authorizing the deployment of physical force and threatening punitive harms against them (backed up by force).”⁴⁴ Furthermore, he explains that a state can subject individuals to coercion by two means: first, by coercive acts that limit a person’s options and second, by coercive threats that will prevent a person from choosing certain options in the future.⁴⁵

Abizadeh assumes that the core value of liberalism and democratic theory is personal autonomy. Following Joseph Raz he discerns three conditions for personal autonomy: “(...) the person (1) has the appropriate mental capacities to formulate personal projects and pursue them, (2) enjoys an adequate range of valuable options, and (3) is independent, that is, free from subjection to the will of another through coercion or manipulation.”⁴⁶ Being subject to coercion harms personal autonomy subsequently in three ways: first, it destroys the requisite mental capacities of a person or makes its development more difficult. Second, it eliminates the range of options available to a person to some degree, though it may not eliminate all, but only a few options. Third, it subjects a person to the will of someone else and thus harms his independence. So coercion always invades autonomy. Therefore, according to both liberalism and democratic theory coercive actions of the state should be either eliminated or “(...) receive a justification consistent with the ideal of autonomy.”⁴⁷ Following Michael Blake, Abizadeh calls this the autonomy principle. Blake asserts furthermore that it is possible that coercion by a state on the one hand invades personal autonomy, but on the other hand makes a global contribution to autonomy.⁴⁸ The interpretation of the

⁴³ See: Abizadeh, Arash, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders” in: *Political Theory*, Volume 36, Number 1 (February 2008), p. 38.

⁴⁴ See: Abizadeh, Arash, “Democratic Legitimacy and State Coercion: A Reply to David Miller” in: *Political Theory*, Volume 38, Number 1 (2010), p. 121.

⁴⁵ See: Abizadeh, Arash, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders” in: *Political Theory*, Volume 36, Number 1 (February 2008), p. 40.

⁴⁶ See: *ibid.*, pp 39-40.

⁴⁷ See: *ibid.*, p. 40.

⁴⁸ See: *ibid.*, p. 40.

autonomy principle by liberalism and democratic theory is different, but both agree that this needs to be done in a way that is consistent with viewing each person as free and equal. According to liberalism it requires that the exercise of political power has to be justified in principle to everyone. The justness of institutions and laws is being hypothetically justified. What is important in the liberal strategy is the content of the justification. On the contrary, for democratic theory the autonomy principle requires that the exercise of political power has to be justified by and to the people over whom this power is exercised. While liberalism concentrates on justifying the justness of political institutions, democratic theory concentrates on the legitimacy of these political institutions that requires the actual participation of the people in political decision making, whether this be done through representation or not. In democratic theory the process of justification matters. So democratic theory has two conditions for satisfying the autonomy principle: participation on the one hand and freedom and equality on the other hand. What discerns liberalism and democratic theory in this respect is the latter's demand for self-determination.⁴⁹

While many authors believe that democratic theory implies a state's right to close borders, Abizadeh argues that this is not true. He asserts that the need for the existence of boundaries and the control over it are two different issues.⁵⁰ Whelan, Walzer and others argue that the principle of self-determination requires the right of a state to control its borders unilaterally. Abizadeh does not agree. He holds that "the democratic justification for a regime of border control is ultimately owed to both members and nonmembers". His argument for this thesis has two premises.⁵¹ The first premise holds that the coercive exercise of political power has to be democratically justified to all people over whom this power is exercised. The second premise is an empirical fact: the regime of border control subjects both members and nonmembers to the coercive exercise of political power. Therefore, Abizadeh concludes, a regime of border control has to be justified to both members and nonmembers. This does not imply that a state has to justify its power to everyone who is affected by it, but solely to the persons that are being subjected to coercion. Abizadeh argues that the demos to whom a state owes justification is in principle unbounded. He defends this unbounded

⁴⁹ See: Abizadeh, Arash, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders" in: *Political Theory*, Volume 36, Number 1 (February 2008), pp 41-43.

⁵⁰ See: *ibid*, pp 42-43.

⁵¹ See: *ibid*, p. 44.

demos thesis, as he calls it, by proving that the other option, namely that the demos is bounded, is incoherent. Abizadeh identifies two problems that show this incoherence. First, there is what Whelan calls the boundary problem. The fact who are members and who are not cannot be decided democratically, as in order to decide this by political participation it has to be clear who are the members that are participating.⁵² As Abizadeh puts it: “Democratic theory is incapable of legitimating the particular boundaries that, once we assume the demos is inherently bounded, it presupposes.”⁵³ The incoherence thus exists in the insolvable tension between these two assertions: that the exercise of political power is only legitimate if this is justified to all people and that the determination of the boundaries of a state is legitimate even if these boundaries are not justified to all people. Second, there is the externality problem. The fact that boundaries exist, entails that there are members and nonmembers over whom political power is being exercised. But within a theory of a bounded demos the interests of nonmembers can be legitimately ignored, while democratic theory requires that borders are democratically legitimated, because they are a means through which political power is exercised.⁵⁴ So, this is incoherent because first, the democratic theory of political legitimacy requires the justification of power to all people over whom this power is exercised. While, second, the theory of a bounded demos makes this conceptually impossible: the determination of borders is an exercise of political power over nonmembers to whom no justification is owed. According to Abizadeh this is not an incoherence of democratic theory, but an incoherence of the theory of a bounded demos. The latter is in his opinion a mistaken reading of democratic theory. His alternative is the unbounded demos theory: the exercise of political power is only legitimate if it is mutually justified to all people who are subject to it in a way that is consistent with their freedom and equality.⁵⁵ This entails that the demos is in principle unbounded. The result of it is that a closed border policy can be justified in two ways: first, it is justified to both member and nonmembers. Or, second, it is justified to members only, but their unilaterally control of the borders is justified to all. In both cases the regime of border control is justified to both members and nonmembers. Abizadeh observes that this way of legitimacy is currently not

⁵² See: Abizadeh, Arash, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders” in: *Political Theory*, Volume 36, Number 1 (February 2008), pp 45-46.

⁵³ See: *ibid.*, p. 47

⁵⁴ See: *ibid.*, p. 46.

⁵⁵ See: *ibid.*, p. 47.

practiced by states. Therefore, the current unilateral border control of states has according to democratic theory a legitimacy gap. He pleads instead for the development of cosmopolitan democratic institutions that can decide on entry policies.⁵⁶

To the objection that this argument ignores the fact that a regime of border control has much more impact on the interests of members than on the interests of nonmembers and that the former should therefore have a greater say in the political decision concerning the regime of border control, Abizadeh replies that this assumption is false. His argument is that also for refugees who risk their lives while going for example to a Western European country the stakes are high. So it is not proven that the impact of border control is greater for a member than for a nonmember. But Abizadeh admits that there is a partial truth in this argument, namely that a regime of border control invades the autonomy of some more than the autonomy of others. He suggests a division of groups that participate in the cosmopolitan democratic institutions that he wants to be created. The people who would have little benefit of living in the concerned state would have the weakest participation rights, while the people who would have a great advantage when they would be able to live in the concerned state would have stronger participation rights. Abizadeh imagines also a level in between those two groups and he admits that maybe the strongest participation rights would be for the members of the concerned state.⁵⁷

It is obvious that many foreigners – coming mainly, but not only, from third world countries – will benefit from living in a Western country like the Netherlands and will be coerced upon if they will be refused to settle there. Following Abizadeh's argument that people over whom political power is exercised should have a say in the political process, this would mean that many foreigners will take part in the decision making process concerning the border control of a wealthy Western state. It is plausible that the majority of these foreigners will vote for an open border system, as this will benefit them. Depending on how the distribution of weaker and stronger participation rights will work out, this will result in a regime of border control that is

⁵⁶ See: Abizadeh, Arash, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders" in: *Political Theory*, Volume 36, Number 1 (February 2008), p. 48.

⁵⁷ See: *ibid.*, pp 54-55.

either entirely open or partly open and partly closed, that is: porous. The possibility of the outcome of a closed border system is highly unlikely, if not impossible. Therefore, I take Abizadeh's argument that no coercion may be exercised without democratic justification as a good reason to have some form of open borders.

2.4 Improvement of life conditions

Another strong reason in favour of open borders to immigrants is the improvement of life conditions of people who live in severe circumstances. Kukathas calls this the 'principle of humanity'. He explains that: "The great majority of the people of the world live in poverty, and for a significant number of them the most promising way of improving their condition is to move. (...) To say to such people that they are forbidden to cross a border in order to improve their condition is to say to them that it is justified that they be denied the opportunity to get out of poverty, or even destitution. And clearly there are many people who share this plight, for numerous illegal immigrants take substantial risks to move from one country to another – courting not only discomfort and even death by traveling under cover in dangerous conditions, but also punishment at the hands of authorities if caught."⁵⁸ Also Carens says that people's search for opportunities to have a decent life is a good, even the strongest, reason for open borders: "The argument is strongest, I believe, when applied to the migration of people from Third World countries to those of the First World. Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one's life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely."⁵⁹ Even though Thomas Christiano concludes with an argument in favour of restrictions on immigration, he admits that "(...) open borders would go some distance towards improving the opportunities of many of the world's poorest. This

⁵⁸ See: Kukathas, Chandran, "The Case for Open Immigration" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), p. 211.

⁵⁹ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 212. Furthermore, the historic context to which Carens refers, can be seen as a separate argument in favour of open borders. Because of the many injustices that occurred in relations between countries, including the colonial past, wealthy states should open their borders to inhabitants of poorer states that want to immigrate. I will not describe this argument separately, but I will return to the subject of (post)colonialism and the historic context in paragraph 4.3.

seems to be the strongest argument for the position of open borders.”⁶⁰ When people are suffering from terrible life conditions like hunger, poverty or violence in their own country, it seems not more than reasonable to enable them to have a decent life by admitting them as immigrants. At least the improvement of life conditions of people coming from severe circumstances provides a good reason for the opening of borders to immigrants.

2.5 Conclusion

In this chapter I have discussed four strong reasons in favour of the open borders position. First, freedom is an important reason for the opening of borders to immigrants. Carens and Kukathas show, while using concepts of both negative and positive freedom, that freedom greatly matters to the way people are able to live their lives. They should have the freedom to choose between different options, amongst which immigration. Therefore, freedom of migration should not be restricted lightly. Second, moral equality is a reason for open borders. As all persons are moral equals they should be treated as such. Carens and Wellman argue that utilitarianism, which has the moral equality of persons as a central assumption, points into the direction of open borders. Carens stresses that in the utilitarian calculus both citizens and foreigners count as equal, which will lead to more open migration. Wellman emphasises that according to utilitarians closed borders lead to economic inefficiencies that have a negative effect on people’s interests. Cole argues that liberalism, that also has moral equality as assumption, cannot be coherently compatible with closed borders. Only open borders are coherent with liberalism. Carens uses the moral equality idea of liberalism to say that in order to compensate for the inequalities that arise from the arbitrary factor where one is born, there should be freedom of migration. Third, another reason for open borders is that there should be no coercion without democratic justification. Abizadeh argues that coercion cannot be legitimately exercised without it being democratically justified by both citizens and foreigners. In order to enable foreigners to democratically justify a state’s immigration policy Abizadeh pleads for the development of cosmopolitan democratic

⁶⁰ See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), pp 954-955; see also: p. 961.

institutions that make decisions on states' immigration policies. As I have shown this will lead to either open or porous borders. Fourth, the improvement of life conditions of people who are living in severe circumstances like hunger, poverty or violence is another reason in favour of open borders. Kukathas, Carens and Christiano show that enabling people to improve their life conditions by migration is a good reason why states should have open borders. While all four reasons are in favour of open borders, they leave also room for a porous borders option. Because although they provide for strong reasons for open borders, they do not show that these reasons are absolute. In this chapter I have shown, however, that the reasons for a state to have open borders are so strong that the burden of proof lies with the defenders of closed borders to show which arguments are so weighty as to outweigh these four reasons. Their arguments I will discuss in the next chapter.

3 What are the arguments for closed borders?

In this chapter I will discuss the question ‘What are the arguments for closed borders?’ I will present the two most important arguments in favour of closed borders. First, the self-determination argument. Second, the functioning society argument with the economy, security and indirect cosmopolitanism versions. In chapter 4 I will evaluate both arguments.

3.1 The self-determination argument

The self-determination argument holds that states are sovereign and have the right to self-determination. Because of this right they are allowed to formulate their immigration policies as they want to, including a closed borders policy. This argument is being used in different variants. In what follows I will show in what way several authors use the self-determination argument in order to claim that states are allowed to close their borders to immigrants.

Michael Walzer defends a liberal communitarianist view on immigration and claims that the membership of a community is a primary good that people distribute to one another.⁶¹ Walzer argues that determining its own political and cultural values is of such great importance to a community that sovereign states should have the authority to decide on its own immigration policy: “The distinctiveness of cultures and groups depends upon closure and cannot be conceived as a stable feature of human life without it. If this distinctiveness is a value, as most people (though some of them are global purists and others only local loyalists) seem to believe – more strongly, if individuals have a right to form distinct and stable communities – then closure must be permitted somewhere.”⁶² So it is up to the present citizens to decide whether the

⁶¹ See: Walzer, Michael, “The Distribution of Membership” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p.146. This article Walzer included later in his book: Walzer, Michael, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford: Martin Robertson, 1983) pp 31-63. In what follows I will refer only to the article.

⁶² See: Walzer, Michael, “The Distribution of Membership” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 153.

borders of their state should be open or closed and what criteria for applicants there should be.⁶³ Walzer stresses that the control of immigration serves to defend the common life of the members of the community and their liberty, welfare, politics and culture.⁶⁴ The policies of admission to states are motivated by different arguments: first, arguments concerning the economic and political conditions of a state, second, arguments concerning the character and future of a state and third, arguments concerning the character of states as political communities in general. Walzer considers these last arguments the most important. He compares the membership of states to the membership of other kinds of communities, namely neighbourhoods, clubs and families.⁶⁵ States are unlike neighbourhoods, because in the latter: “Strangers can be welcomed or not welcomed; they cannot be admitted or excluded.”⁶⁶ States are, however, like clubs: “Here the appropriate analogy is with the club, for it is a feature of clubs in domestic society, as I have just suggested it is of states in international society, that they can regulate admissions but cannot bar withdrawals.”⁶⁷ States are sovereign in deciding upon who will be admitted as immigrants, because of their freedom of association. Sometimes states are also like families that open up their household to people whom they have not chosen, but to whom they are morally connected. In the case of states this means opening borders to “a particular group of outsiders, recognized as national or ethnic “relatives.””⁶⁸ Although Walzer argues in favour of the position that there are moral reasons for putting restrictions on the distribution of membership, he allows for some criteria for admitting refugees:⁶⁹ “(...) actually to take in large numbers of refugees is often morally necessary; but the right to restrain the flow remains a feature of communal self-determination.”⁷⁰ This communal self-determination prevails on the moral duty to take in refugees. Because there are so many refugees Walzer allows states to choose between them: “(...) when the number increases, and we are forced to choose among the victims, we shall look, rightfully, for some more direct connection with our own

⁶³ See: Walzer, Michael, “The Distribution of Membership” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 153.

⁶⁴ See: *ibid.*, p. 154.

⁶⁵ See: *ibid.*, pp 149-150.

⁶⁶ See: *ibid.*, p. 150.

⁶⁷ See: *ibid.*, p. 154.

⁶⁸ See: *ibid.*, p. 155.

⁶⁹ See: *ibid.*, pp 148 and 163-165. Walzer allows for the admittance of refugees: “There is, however, one group of needy outsiders whose claims cannot be met by yielding territory or exporting wealth, but only by taking people in. This is the group of refugees whose need is for membership itself, a nonexportable good.” (p. 163). But also here Walzer requires an affinity with the culture of the country the would-be immigrants would like to live in (p. 164).

⁷⁰ See: *ibid.*, p. 165.

way of life. If, on the other hand, there is no connection at all, antipathy rather than affinity, there can't be a requirement of any sort to take people in."⁷¹ So even refugees can be refused because they do not share a society's culture. Although Walzer admits that the right of a community to determine who will be admitted as a member is not absolute, he claims that: "What is at stake here is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are at 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."⁷²

Another account of the self-determination argument that is based on a common culture is given by David Miller. He specifically focuses on public culture. His assumption is that states need this in order to constitute the political identity of their citizens and to support democracy. Miller supposes furthermore that immigrants bring particular cultural and political values with them. Their values will be changed by the public culture of the society they will start living in and the public culture of this society will be changed by these immigrants.⁷³ Miller argues that people have an interest in determining the public culture of their country, like their language or the physical shape of their country, i.e. buildings and landscape. He emphasises that the cultural continuity he finds important is not the same as cultural rigidity; he allows for the development and renewal of public culture. But because of the significance for people to control the process of cultural change, Miller pleads for restrictions on immigration. How far these restrictions will go, depends on the cultural values of the would-be immigrants and on how easy it will be to integrate them in the public culture of the existing society.⁷⁴

⁷¹ See: Walzer, Michael, "The Distribution of Membership" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 164.

⁷² See: *ibid.*, p. 174.

⁷³ See: Miller, David, "Immigration: The Case for Limits" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 199-200.

⁷⁴ See: *ibid.*, pp 200-201. See also: Wellman, Christopher Heath, "Immigration", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.1. For a more elaborate account of Miller's view on national self-determination, see: Miller, David, *On Nationality* (Oxford: Oxford University Press, 2002), pp 81-118.

Although Michael Dummett is in favour of the open borders position, he also allows for the restriction of immigration because of the importance for people to determine the culture of their country. Like Walzer and Miller he claims that the preservation of a community's culture is a good reason for closing borders to immigrants. He limits this argument however to vulnerable cultures that may be easily destroyed by the entrance of great groups of immigrants who have different cultural values:⁷⁵ “Those whose culture is fragile and not shared with other peoples of power and influence therefore have a right that their culture should be protected from being submerged under the influx of foreigners who have no particular respect for it. This right gives a state under whose authority they live the right and duty to exercise such control over immigration into its territory as to prevent this from happening.”⁷⁶

Christopher Heath Wellman is also using the self-determination argument for closed borders. His version of this argument is based on the right to freedom of association that states have. Wellman assumes that legitimate states have a right to political self-determination. He considers freedom of association as a crucial element of self-determination. Furthermore he claims that freedom of association entails that people can deny others to join their association. He concludes that in order to be fully self-determining a state must have the right to decide which immigrants will be admitted and which will be refused: “According to this line of argument, then, there is nothing mysterious or complicated about a country's right to screen applicants for admission: it is merely a standard component of a state's more general right to self-determination.”⁷⁷ There is a difference, however, between Wellman's argumentation and the argumentations of Walzer, Miller and Dummett. While these three authors all emphasise the importance of the distinctiveness of a community or particular political or cultural values, Wellman stresses that he pleads for a right to freedom of association for everyone. In his opinion this should not be dependent on something like a shared culture: “(...) my defense of freedom of association makes no mention of a political community's distinctive character or culture. I emphasize this to distinguish myself from those who argue that ethnic, cultural, or national groups have

⁷⁵ See: Dummett, Michael, “Immigration” in: *Res publica*, Volume 10, Issue 2 (2004), pp 119-120.

⁷⁶ See: *ibid.*, p. 120.

⁷⁷ See: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.6.

a right to limit immigration in order to preserve their distinctive characters.”⁷⁸ To show that a state has the right to self-determination because of its freedom of association Wellman compares the state to a marriage: “No one says that I am denied my right to marriage merely because I cannot unilaterally choose to marry you against your will. So, just as my freedom of association in the marital realm remains intact despite your right to not associate with me, there seems no reason why my right to freedom of movement does not similarly remain intact despite foreign states’ retaining the right to exclude me.”⁷⁹ So Wellman claims that like people can refuse to marry someone, states can refuse to admit someone as an immigrant, because both have a right to freedom of association.

Frederick Whelan comments upon an argumentation for closed borders on basis of the self-determination argument as well. He takes democracy as a starting point. According to Whelan democracy “(...) refers to active citizenship and participation in public affairs, to majority rule, and in general to collective “self-determination” by a people with respect to what they take to be their common affairs.”⁸⁰ In a democracy people should have control over matters that concern their common interests. The way to realise this is through democratic procedures such as elections. Whelan considers the admission of new members to the society as a matter that should be decided upon in this way. Therefore people should be able to determine who is allowed to immigrate in their country:⁸¹ “Democracy as a set of procedures of self-determination, then, appears to imply a power in the present citizen body to control immigration.”⁸² A democracy may also be understood as a democratic community with an identity of its own. This results in the community’s entitlement to restricting the entry of immigrants that do not share their common identity.⁸³

Jürgen Habermas pleads for a liberal immigration policy and has a positive view on the possible contributions of immigrants to the community. He uses the self-

⁷⁸ See: Wellman, Christopher Heath, “Immigration and Freedom of Association” in: *Ethics*, Vol. 119, No. 1, (2008), p. 117.

⁷⁹ See: *ibid*, p. 135.

⁸⁰ See: Whelan, Frederick G., “Citizenship and Freedom of Movement: An Open Admission Policy?” in: Gibney, Mark (ed.), *Open Borders? Closed Societies? The Ethical and Political Issues* (New York: Greenwood Press, 1988), p. 27.

⁸¹ See: *ibid*, pp 28-29.

⁸² See: *ibid*, p. 29.

⁸³ See: *ibid*, p. 29.

determination argument however to allow for some restrictions on immigration. His focus is on the political culture of a society. Habermas expects immigrants to take fully part in this political culture, but he does not want to force them to give up their own culture and to completely assimilate:⁸⁴ “Certainly the democratic right to self-determination includes the right to preserve one’s own *political* culture, which forms a concrete context for rights of citizenship, but it does not include the right to self-assertion of a privileged *cultural* form of life. Within the constitutional framework of the democratic rule of law, diverse forms of life can coexist equally. These must, however, overlap in a common political culture that in turn is open to impulses from new forms of life.”⁸⁵

As I have shown above there are different versions of the self-determination argument, each of them focusing on a different feature. Walzer emphasises the protection of the common life of the community, while Miller, similarly, emphasises public culture. Dummett also uses the self-determination argument in order to preserve a society’s culture, but he restricts his argument to vulnerable cultures that may be easily swept away by a huge amount of immigrants. Wellman uses the self-determination argument in a more general way, namely not just to protect a specific culture, but to consolidate the universal right to freedom of association. Whelan stresses the importance of democracy in the self-determination argument. And Habermas argues that a state’s self-determination entails deciding upon its own democratic political culture. In contrast to the universal freedom that forms a reason for open borders, the self-determination argument defends the particular freedom of a group of people by allowing them to have the right to freely choose which people to exclude as immigrants. While all authors claim that the right to self-determination is of great importance to states, none but Wellman claims that this right is absolute, thus leaving room for other values than self-determination. And even though the defenders of the self-determination argument claim that a state’s right to self-determination allows it to close borders to immigrants, all of them leave room for a porous borders position. Because states may use their right to self-determination not only to exclude foreigners, but also to include them.

⁸⁴ See: Habermas, Jürgen, “Citizenship and National Identity: Some Reflections on the Future of Europe” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 306-307.

⁸⁵ See: *ibid.*, p. 307.

3.2 The functioning society argument

The functioning society argument holds that immigration will disturb the functioning of a society in such a way that the effects will be disastrous for the whole society. The proper functioning of the society will thus be made impossible. This amounts to the claim that it is therefore justified to close borders to immigrants. The functioning society argument has different versions, depending on which part of society gets disturbed: the economy or the security. I conclude with the functioning society argument of indirect cosmopolitanism.⁸⁶

3.2.1 Economy

A part of society that may be threatened by the arrival of immigrants is the economy. Though Kukathas does not defend the functioning society argument himself, he gives an account of this argument focused on the economy, which he afterwards refutes. The first aspect of the economy that may suffer when many immigrants enter a state is the local market economy. The balance of the economy can be changed this way, which may entail the lowering of wages and the heightening of prices. This can be negative for the people who were already living in this state. They may lose their jobs because foreigners will have jobs previously held by citizens or they may have to accept lower wages because of the competition with foreigners.⁸⁷ Wellman adds that also the arrival of immigrants with a different work ethic may be negative for a state's economic growth.⁸⁸ The second aspect of the economy that is likely to be severely influenced by the arrival of many immigrants is the distribution of goods and services by the government, such as healthcare, education, state allowances and the

⁸⁶ Another version of the function society argument holds that overpopulation caused by immigrants is a threat to society. I do not discuss it here, because I think it is not one of the most important versions of the functioning society argument. See for a discussion of it: Dummert, Michael, "Immigration" in: *Res publica*, Volume 10, Issue 2 (2004), p. 119 and: Miller, David, "Immigration: The Case for Limits" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 201-202.

⁸⁷ See: Kukathas, Chandran, "The Case for Open Immigration" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 211-212. See also: Wellman, Christopher Heath, "Immigration", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.2.

⁸⁸ See: Wellman, Christopher Heath, "Immigration", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.2.

maintenance of public space.⁸⁹ In order to manage the social system well, either the provision of state benefits or the entrance of immigrants has to be limited. Kukathas describes: “People on low incomes and with children or elderly or infirm dependents would find it advantageous to move to countries with generous public education and healthcare. This could impose a significant additional burden on taxpaying individuals and firms, or pressure a state with fiscal problems to reduce the quality of its services. Immigration is a problem of welfare states – understanding welfare in its broadest sense to include health and education services as well as unemployment relief and disability benefits.”⁹⁰ Also Wellman gives this argument, saying that: “Indeed, presumably so many would immigrate that there would be no way for this state to continue distributing these benefits at anything like their current rate.”⁹¹ In short, the claim is that open immigration would hurt the economy to such an extent that the functioning of society is threatened. Therefore, it is justified to close borders to immigrants.

3.2.2 Security

The functioning society argument is being used by authors who underline the importance of a state’s security and the protection of its citizens. Although Joseph Carens argues in favour of open borders, following Rawls he argues for restriction on immigration because of security threats as well. Rawls admits that there may be put a restriction on liberty for the sake of liberty. All liberties depend on the security and public order in a state.⁹² Carens allows therefore for a public order restriction on the principle of freedom of migration. This restriction cannot always be applied. There should be a reasonable expectation that immigrants either have intentions to overthrow the just institutions of a society or come from a society with little liberal democratic values and thus threaten national security and public order. Another reason could be the expected arrival of such a huge amount of immigrants that it

⁸⁹See: Kukathas, Chandran, “The Case for Open Immigration” in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 211-212.

⁹⁰See: *ibid*, p. 213.

⁹¹See: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.3.

⁹² See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 218.

would be so overwhelming for the hosting country that its liberal democratic values or its national security will be threatened. Carens emphasises that the restriction on the freedom of migration may be enforced only insofar this is essential to the maintenance of public order.⁹³ As Carens, Dummett's position is the one of open borders. But like Carens he allows too for a restriction on immigration when it is clear that this will threaten a state's security: "Admittedly, to protect its own citizens, a state always has the right to exclude individuals when there is genuine ground to suspect them of intending to commit crimes or to inflame hostility towards racial or religious groups against which strong prejudice already exists."⁹⁴ Wellman also sees immigration as a possible threat to a state's security: "After all, given the presence of international terrorists, one can hardly question the threat posed by at least some foreigners."⁹⁵ Obviously, also other people than would-be immigrants, like citizens, tourists or temporary workers, can be a threat to the security of a country. But this does not take away the right of a state to undertake action to persons who are a threat to society, whether they are would-be immigrants or not. And in the case of would-be immigrants this may mean the refusal of admittance to a state.⁹⁶ That is: for adherents of the security version of the functioning society argument being a threat to a society's security is sufficient reason to exclude immigrants – provided that there is considerable proof that there is really a threat caused by these persons.

3.2.3 Indirect cosmopolitanism

Another form of the functioning society argument is inspired by cosmopolitanism. Thomas Christiano defends a cosmopolitan view that aims at creating a global political community.⁹⁷ Cosmopolitanism is usually in favour of a free immigration policy, because of the value it attaches to principles of equality of opportunity and

⁹³ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 219-220.

⁹⁴ See: Dummett, Michael, "Immigration" in: *Res publica*, Volume 10, Issue 2 (2004), p. 121.

⁹⁵ See: Wellman, Christopher Heath, "Immigration", *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.5.

⁹⁶ See: *ibid.*, 1.5.

⁹⁷ Of course there can be said much more on this topic, for example on the unequal treatment of citizens and would-be immigrants who are a threat to society. While the former may end up in prison, they will not be expelled from the country, while this is the case with would-be immigrants. However, this is a too complicated issue to address here in detail. For a discussion of this topic, see: Kukathas, Chandran, "The Case for Open Immigration" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 217-219.

freedom of movement.⁹⁸ Also Christiano allows for the merits of an open borders policy.⁹⁹ However, he pleads for the restriction of immigration under certain conditions.

Christiano argues in favour of a just cosmopolitan order: “Political communities, in my conception, attempt to bring about a just order among a group of persons. The standards of justice are independent of political community, and the job of the political community is to realize those standards to the extent possible within a community of persons. They attempt to do this by accommodating the many disagreements people have over justice in a way that itself is reasonably just – that is, democratically. For these reasons, in my view, the ultimate political aim for humanity as a whole must be a global political community. Only a global political community can realize justice as much as possible among all the persons in the world.”¹⁰⁰ Furthermore, Christiano assumes that democratic states are of great importance to the development of a just cosmopolitan order.¹⁰¹ Therefore, he argues that it is acceptable to put restrictions on immigration, if these restrictions are of significance to the proper functioning of a democratic state, i.e. if without these restrictions there would exist a great threat to democracy. Christiano discerns two possibilities of which this threat may consist. First, as a threat to the constitutional structure of a democratic state, and, second, as a threat to a democratic state’s ability to fulfil its main functions. Christiano defines these functions as “The most stable activities of democracy (...) that have withstood the test of time and thus are ones that seem to have the strongest support from democratic societies.”¹⁰² Christiano gives three reasons why these restrictions should be respected. First, because it is the intrinsic value of democracy that it ensures the equal concern for the interests of all citizens. Second, because democracy is an adequate means to promote the welfare of human beings and to protect their human rights. Third, because democracy supports the advancement of the

⁹⁸ See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), p. 933.

⁹⁹ See: *ibid*, pp 954-955.

¹⁰⁰ See: *ibid*, pp 950-951.

¹⁰¹ See: *ibid*, pp 935, 952-954 and 956. See also: Wellman, Christopher Heath, “Immigration”, *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/sum2010/entries/immigration/>> 1.9.

¹⁰² See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), p. 956.

material well-being of citizens.¹⁰³ Christiano distinguishes three mechanisms by which immigration may function as a threat to democracy. First, immigration may be a threat to trust in democratic societies. This is based on the assumption that mutual trust between citizens is needed in order to make a democratic society function properly. If there is distrust in a society, this would make citizens less willing to respect the outcomes of the democratic decision making process. Furthermore, distrust may influence the distribution of goods and services by the government in a negative way, so that the welfare state will be undermined. The worst case scenario Christiano foresees, is “(...) the collapse of the democratic order itself.”¹⁰⁴ He explains that immigration may lead to this situation: “This is the result, not necessarily of xenophobia, but of misunderstanding and uncertainty as to whether the new group is really willing to participate in the society. A great deal of diversity, brought about by a rapid influx of persons from another society, could therefore conceivably lead to distrust.”¹⁰⁵ Second, immigration may lead to distrust in a society, because there is a lack of identification. Citizens may fall short of identifying with others who have a different culture. Therefore, they may be unwilling to make great sacrifices to immigrants. Third, also the mere lack of understanding may lead to distrust. Differences in conceptions of society and justice or in linguistic capacity have the undermining of democratic activities as a consequence. Christiano does not consider xenophobia as basis for these three mechanisms, but identifies uncertainty and misunderstanding as crucial factors. He does not claim that immigration will automatically lead to the existence of these mechanisms, but he claims that *if* immigration leads to this, it *would be* good to restrict immigration.¹⁰⁶

Christiano admits that it is difficult to deal with the trade-offs between current and future injustices. While open borders may have an immediate positive effect on international justice, because it contributes to providing a better life to people in severe circumstances, it may have a negative long-term effect in that it may harm democracies that host immigrants. And this harm may have the consequence that international institutions that are able to influence the level of wealth and good

¹⁰³ See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), p. 956.

¹⁰⁴ See: *ibid*, p. 957.

¹⁰⁵ See: *ibid*, p. 957.

¹⁰⁶ See: *ibid*, p. 958.

governance in development countries will cease to function well or to exist at all. Christiano asks himself: “To what extent is injustice in the present justified by the desire to avert much greater injustice in the future?”¹⁰⁷ He does not give a direct answer to this question, but he argues that if his hypotheses are true, in the end no one would gain from open borders for immigrants. Christiano claims that open borders will probably not help the worst off, but only the people that already have enough resources to migrate. He contends as well that injustices to the first are greater than injustices to the latter. Therefore, he suggests that it is the better option to have injustice now towards people that are able to migrate, by closing borders, instead of injustice later towards the worst off, by opening borders. Christiano concludes: “If the route to cosmopolitan political community is through the successful operation of democracies, then the immigration policies of democratic states must not undermine the proper functioning of those states. If open immigration were to undermine the proper functioning of democratic states – and that remains a big *if* – then that would undermine the main route to the cosmopolitan political community which alone can fully implement distributive justice on a global scale.”¹⁰⁸

So the validity of Christiano’s theory depends on several assumptions. First, the importance of creating a cosmopolitan political community. Second, the necessary role of democratic states in bringing about this cosmopolitan order. Third, immigration may be a threat to the functioning of democracies. Whether immigration is really a threat to the functioning of a society remains depending on hypotheses that are impossible to verify.

3.2.4 Conclusion

I have shown that the functioning society argument allows for the closing of borders to immigrants if they are a threat to the functioning of a state. First, Kukuthas shows – although he does not defend it – that immigration may be a threat to a state’s economy. Both the local market economy and the provision of goods and services by

¹⁰⁷ See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), p. 960.

¹⁰⁸ See: *ibid*, p. 961.

the government may be negatively affected by the arrival of many immigrants. Also Wellman gives this argument. Second, Carens, Dummett and Wellman show that immigration may be restricted if would-be immigrants are a threat to the security of a state. Third, Christiano claims that immigration may be limited because it may be a threat to the functioning of democratic states, which alone are able to create the cosmopolitan political community that will improve the life conditions of the worst off. These three versions of the functioning society argument show that borders may be closed to immigrants under certain conditions, i.e. if immigrants are a threat to the functioning of a state. So they leave room for a porous borders option in which not all immigrants are excluded.

3.3 Conclusion

In this chapter I have elaborated on the two main arguments for closed borders: the self-determination argument and the functioning society argument, with the economy, security and indirect cosmopolitanism versions. As I mentioned in my introduction to this chapter, I will not evaluate these arguments now, but I will do this in the next chapter. Still there is one point that I would like to stress here: both arguments leave room for the porous borders option. The self-determination argument does this in leaving it to the current citizens to decide upon their immigration policy. This means that citizens may also choose to have a porous borders policy. The functioning society argument leaves room for the porous borders option, because it indicates requirements because of which states are allowed to exclude immigrants. So this does not mean that the exclusion of all immigrants is justified under all circumstances.

4 Should borders be open or closed?

In this chapter I will discuss the question: “Should borders be open or closed?” As I explained in the introduction to this thesis: in an ideal world there would be open borders. But in the actual world porous borders is the only defensible option. In this chapter I will defend the moral tenability of porous borders. In chapter 2 I have shown four reasons in favour of open borders: freedom, moral equality, no coercion without democratic justification and improvement of life conditions. Also I have made clear that the burden of proof lies with the defenders of closed borders. Their arguments I have presented in the preceding chapter. Now I will first evaluate these arguments in order to determine to what extent they hold. I will argue that some versions of these arguments hold, while other versions do not hold. Below I will discuss this into more details. Second, I will indicate some guidelines and criteria for the admittance of immigrants. This will not be an inexhaustible list, but I will give an impulse to a minimum standard for the immigration policies of Western states. To illustrate this I will compare these guidelines and criteria to the Dutch immigration policy as I have sketched it in the case study of the Netherlands in chapter 1. Third, I will argue that a porous borders policy for Western states is only morally acceptable if it will be accompanied by the fulfilling of global moral duties. I will explain why states have these global moral duties and give an indication on how to fulfil these duties. I do not pretend to solve the question whether borders should be open or closed definitely or into great details. But I hope to make clear why wealthy states in the current situation should have porous borders and that states have global moral duties in order to make their having porous borders morally acceptable.

4.1 Porous borders

In this paragraph I will examine the two main arguments for closed borders, the self-determination argument and the functioning society argument, in order to determine whether these arguments hold. As said, I will refute some versions of these arguments, while accepting other versions.

4.1.1 The self-determination argument

The self-determination argument holds that states are allowed to refuse immigrants because of their right to self-determination. This argument can be used for arguing in favour of the protection of roughly three things: communities and their culture, freedom of association and political culture including democracy. In this paragraph I will discuss these three lines of argument. I will refute the self-determination argument as used to argue for the protection of culture and freedom of association, while I will accept this argument as used for the protection of democracy.

First, Walzer, Miller and Dummet, who are adherents of the self-determination argument, have the assumption that citizens share a common culture that is worth preserving. This assumption is partly correct in the sense that, yes, there exist cultures that are worth preserving. Still it is not clear what it really means to share a culture. In the case of the Netherlands for example, should all citizens like the paintings of Rembrandt? Should they all be direct and down-to-earth? Or should they all eat croquettes and kale every week? It is a bit empty to refer to a shared cultural identity, when it is not even clear what this contains. Even more, what if someone from Tunisia would really appreciate Rembrandt, be direct and down-to-earth and eat croquettes and kale every week, would this make the Tunisian share the Dutch culture? Or is something more needed? Should all people that meet these cultural criteria then be admitted as immigrants? And what about people who are living in the Netherlands and do not meet these criteria; should they not be part of the Dutch society? Another – related – objection to this assumption is this: although the self-determination argument seems to imply it, it is not evident that people who live in the same country have more in common than people who live in different countries. For example, a farmer from Groningen may have much more in common with a farmer from Canada, than with a human rights activist from The Hague. The latter may have much more in common with a human rights activist from Syria. While, similarly, a catholic from Limburg may have more in common with a catholic from Argentina, than with an atheist from Noord-Holland. My point is this: what connects people is far more extensive than just a national culture. People who share a religion, profession or interest while living in different countries may in fact share more than people who just live in the same country but otherwise have nothing in common. It is therefore unclear

why immigrants who share many things with part of the present citizens or who share even cultural taste, attitudes or behaviour that can be marked as part of the national culture should be refused admittance. As I have shown it is difficult to define a culture exactly and even more difficult and arbitrary to make cultural identification a criterion for the admittance of immigrants. The second assumption is that in order to be in control of the preservation of their culture citizens have a right to self-determination. And the last assumption is that immigrants are a threat to the culture of the existing community of a country. As I have shown above, immigrants may have more or less in common with the culture of the society they would like to settle in. But suppose immigrants with a very different cultural background would be admitted in a country. Would they really be a threat to the existing culture? Take the example of the Netherlands. In the past decennia many immigrants from totally different cultures came to live there, like Indonesians, Turks and Moroccans. Did they really change Dutch culture profoundly? Do Dutch people now speak Indonesian, Turkish and Arab? Did they take over values of Indonesian, Turkish or Moroccan culture? Did they stop liking Rembrandt? Not as far as I know. Now and then Dutch people do go to an Indonesian restaurant, buy a Turkish pizza or make couscous at home.¹⁰⁹ But is this a threat to Dutch culture? I do not think so. Of course immigrants bring something of their own culture with them to their new country, but this seems to me rather a supplement than a threat to the existing culture. Another reason why the assumption that immigrants are a threat to the culture of the existing community of a country will not do is the comparison with internal migration in a country.¹¹⁰ Because differences between people who are moving within a country can change the local culture as well. Imagine loads of people from Amsterdam moving into a tiny village in Friesland. The culture of this village will obviously be influenced. If cultural change caused by migration should be absolutely prohibited, then – in order to be coherent – adherents of the self-determination argument should also ban internal migration in a country. But they do not do this; they only focus on immigrants from other countries. I would like to assert the contrary: if internal migration is not a threat

¹⁰⁹ Maybe some may think these examples commonplace and not representative for culture. In that case they should come up with counterexamples that show that mine do not suffice. Still, I believe that also defenders of the self-determination argument have such examples in mind. For examples of culture as language and physical shape (buildings and landscape) see: Miller, David, "Immigration: The Case for Limits" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 200-201

¹¹⁰ See: Carens, Joseph H., "Aliens and Citizens: The Case for Open Borders" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 226-227.

to culture, immigration is not a threat to culture either. Still another reason why the preservation of culture is not sufficient to exclude immigrants is the relativity of culture. For even in a situation in which a country's culture would be deeply changed by immigrants this does not have to be a problem. Cultures change anyway – there is no immigration needed for that – and it cannot be objectively determined whether one culture is better than another.¹¹¹ Carens says on this matter: “Open immigration would change the character of the community but it would not leave the community without any character. It might destroy old ways of life, highly valued by some, but it would make possible new ways of life, highly valued by others.”¹¹² A last reason why the culture version of the self-determination argument does not suffice is that other factors, such as the hosting of political refugees, may outweigh the importance of the preservation of citizens' national culture. Although citizens should have a say in how the culture of their country is developing, namely by active participation in public debate and democratic elections, this should not amount to an absolute right to self-determination. The conclusion of the self-determination argument is that countries are allowed to use their right to self-determination to exclude immigrants from their country, so that the existing culture will be preserved. As I have shown above I do not consider the possible preservation of a country's culture sufficient reason to exclude immigrants.

Second, defenders of the self-determination argument use the right to freedom of association in their argumentation. While Walzer makes some room for exceptions, Wellman simply argues that states have the right to exclude all immigrants if they like to, because of their right to freedom of association: “(...) legitimate states are entitled to reject all potential immigrants, even those desperately seeking asylum from corrupt governments.”¹¹³ Both Walzer and Wellman use analogies to make their case. Walzer compares the state to a club: “Hence, we might imagine states as perfect clubs, with sovereign power over their own selection processes.”¹¹⁴ This analogy is wrong for at least two reasons. First, a state and a club differ on the influence they have on the way

¹¹¹ With ‘culture’ I do not refer to criminal actions such as domestic violence, that others might consider as part of a culture.

¹¹² See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 230.

¹¹³ See: Wellman, Christopher Heath, “Immigration and Freedom of Association” in: *Ethics*, Vol. 119, No. 1, (2008), p. 141.

¹¹⁴ See: Walzer, Michael, “The Distribution of Membership” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 155.

people are able to live their lives. While exclusion from a club may be disappointing or discriminating, exclusion from a state has a deep impact on people's lives. Not being able to play tennis in your preferred club is from a totally different order than not being able to live in the country of your choice. Second, states and clubs differ on how people become members of them. Member of a club you become by registering yourself or by following an application procedure. Member of a state you become either by immigration or by birth. While a club is a private organisation that may choose to select their members according to a set of criteria, a state is public institution that for a great part cannot choose its members, but is bound to treat its new born members as equal citizens. However, no one is born into a tennis club or any other club. So members of a club may always choose who become new members, if they like to. But members of a state cannot choose who is born in their country. Therefore, comparing clubs and states seems to be comparing apples and oranges. Wellman compares the state to a marriage: "(...) just as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. And just as an individual's freedom of association entitles one to remain single, a state's freedom of association entitles it to exclude all foreigners from its political community."¹¹⁵ This is another analogy that is incorrect. First, here also counts that the freedom to associate in a state or in a marriage has an entirely different impact on people's lives. Being forced to accept someone against your will as a compatriot or as a partner in life is something very different. Wellman acknowledges this difference, but he does not consider it as a barrier for his comparison, because his argumentation does not rely upon the two things being of equal importance. He compares freedom of association in a marriage to the religious freedom of association and claims that these two things also differ in the impact it has on people's lives, but that no one would conclude here that religious freedom of association need not be respected. According to Wellman, what counts here for religious freedom of association, also counts for the freedom of association in a state.¹¹⁶ But Wellman is mistaken here. Accepting someone as a compatriot or as husband or wife is something so completely different that it cannot be concluded that if you may refuse to marry

¹¹⁵ See: Wellman, Christopher Heath, "Immigration and Freedom of Association" in: *Ethics*, Vol. 119, No. 1, (2008), pp 110-111.

¹¹⁶ See: *ibid*, pp 111-113.

someone, you may similarly refuse to accept immigrants. Second, the same point that I made clear for the analogy between states and clubs counts for the analogy between states and marriages as well. People are not born in their own marriage, but they are born in their states. This makes the relation between current and new members in states and marriages incomparable.

Third, the self-determination is being used with reference to democracy. Whelan seems to assert that acceptance of democratic theory leads automatically to the situation that only present citizens decide upon a state's immigration policy. Abizadeh shows, however, that in order to prevent the existence of coercion without democratic justification the interests of potential immigrants should also be taken into account during the democratic decision making process. If this is done, the outcome of democratic decision making will never be the complete exclusion of immigrants. Habermas does not share Whelan's opinion. He pleads in favour of a state's democratic right to self-determination, but he specifies this to political self-determination. For Habermas cultural self-determination is not a necessary part of democratic self-determination. Following his line of thought, the exclusion of immigrants because of their different cultural background is not allowed. As I made clear in chapter 2, freedom and moral equality are of great importance. And these values are best protected in a democratic society. Therefore, I agree with Habermas that citizens should be able to protect their democratic political culture through political self-determination. So in order to prevent a democratic society to become an aristocracy or dictatorship, states are allowed to exclude immigrants of whom there is considerable proof that their admittance will severely affect the existing democratic political culture.

4.1.2 The functioning society argument

In what follows I will discuss three versions of the functioning society argument. I will show why the economy and security versions hold and why the indirect cosmopolitan version is not justified.

The economy version of the functioning society argument holds that immigrants may be excluded if they are a threat to the economy of a state. Both the local market economy and the distribution of services by the government may be negatively influenced by immigrants. But a sufficient economic level is needed in order to make it possible for the government to continue providing goods and services to their citizens equally. If a welfare state with a good social security would have an open immigration policy, probably many people would immigrate to benefit from this system, instead of contributing to it. When too many of these immigrants enter such a society, probably the government will at some point not be able anymore to provide their goods and services equally to all its citizens. As both equality and the welfare state with its social security are of high importance – assuming that the latter also contributes greatly to the former – it is acceptable to refuse immigrants in order to avoid that a state’s economy will be harmed so severely that the state will not be able anymore to provide its goods and services equally to all.¹¹⁷ Obviously there should be done profound research on this topic, before limiting immigration.¹¹⁸

The security version of the functioning society argument holds that immigrants of whom there is a reasonable expectation that they are a threat to a society’s security may be refused admittance. I agree with Carens, Dummett and Wellman that immigrants who are a threat to national security and public order should not be admitted, because when security is threatened the freedom of people is threatened and in a worst case scenario even democracy will be threatened. Therefore, this version of the functioning society argument is a good reason for excluding immigrants. Still, it remains in practice difficult to determine if would-be immigrants are really a threat to security. So even though this is a valid argument, it needs to be applied carefully and after extensive investigation into the persons concerned.

¹¹⁷ Kukathas also argues that open immigration and the welfare state cannot exist both. He suggests, however, the contrary of what I say: open immigration instead of the welfare state. See: Kukathas, Chandran, “The Case for Open Immigration” in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), p. 214.

¹¹⁸ Research on this topic, i.e. the costs and benefits of immigration, is a debated issue. Researchers disagree on definitions and calculations. Most sociologists do however identify generally positive effects of immigration on the economy. See: Simon, Julian L., *The Economic Consequences of Immigration* (Oxford: Basil Blackwell, 1989), p. 347. For a recent Dutch study, commissioned by the right wing party PVV, that concludes that immigrants have had a negative effect on the Dutch economy, see: Geest, L. van der and A.J.F. Dietvorst, *Budgettaire effecten van immigratie van niet-westerse allochtonen* (Utrecht, NYFER, 2010).

The indirect cosmopolitanism version of the functioning society argument holds that if open immigration harms the functioning of democratic states, then this would be a barrier to the development of a cosmopolitan political community that will be responsible for global distributive justice. Because of this harm immigration may be restricted. If creating a cosmopolitan political community would really lead to a better situation for the worst off, it should be created. But as similar institutions exist already, like the United Nations, without having stopped extreme poverty until now, it is doubtful whether Christiano's assumption is true. Still, without such a global order the situation of the worst off would probably be even worse, so that is why I grant Christiano the benefit of the doubt on this assumption. I agree with his next assumption that democratic states are necessary in bringing about this cosmopolitan order, because it seems obvious that democratic states are better equipped to do this than aristocracies or dictatorships. As for his last assumption that immigration may be a threat to the functioning of democracies: when many immigrants that prefer an aristocracy or dictatorship as form of government enter a society, this may be the case. I agree that democracy is worth protecting.¹¹⁹ Therefore, it is acceptable to restrict immigration in order to protect the democratic functioning of a state. Still it has to be kept in mind that it is difficult to prove that immigrants will overthrow a state's democratic order and that immigrants may only be refused if there is considerable reason to think that they will in fact do this. As I noted before, it is impossible to verify all these assumptions; it remains a speculative argument. While all three versions of the functioning society argument have a speculative element, the economy and security versions have a higher degree of plausibility than the indirect cosmopolitan version. Christiano thinks it acceptable to have injustice now because of restrictions on immigration in order to avoid greater injustice on a later moment because of an open borders policy now that causes the lack of a cosmopolitan political community in the future that will be able to reduce the poverty of the worst off. Because Christiano's assumptions cannot be verified and his ultimate goal is so far away, it is in my opinion not acceptable to close borders to immigrants because of this argument. Although Christiano's purposes, i.e. the creation of a cosmopolitan political community, the functioning of democratic states and the improvement of the circumstances of the worst off, are worth pursuing, it cannot be simply assumed that

¹¹⁹ See also paragraph 4.1.1.

these purposes will be better reached when immigration is limited. Therefore, I reject the indirect cosmopolitan version of the functioning society argument.

4.1.3 Conclusion

As I mentioned in the introduction of this chapter in the debate on the opening or closure of borders the burden of proof lies with the defenders of closed borders. In the previous paragraphs I have discussed the two main arguments of defenders of closed borders, namely the self-determination argument and the functioning society argument, in order to determine whether these arguments hold. Although there are strong reasons for having open borders, like freedom, moral equality and the improvement of life conditions, this discussion shows that there are also some good arguments for closing borders. First, I have shown that the culture and freedom of association versions of the self-determination argument do not hold, but that the democracy version does hold. Second, I have shown that the economy and security versions of the functioning society argument hold, while the indirect cosmopolitanism version does not hold. So some but not all arguments against open borders can be refuted. However, this does not mean that closed borders are justified. The democracy version of the self-determination argument and the economy and security versions of the functioning society argument give good reasons for closing borders in some circumstances, but not for having completely closed borders all the time. As neither completely open, nor completely closed borders can be defended, this entails that borders should be porous. In the next paragraph I will discuss how porous borders should be and which guidelines for criteria for the admittance of immigrants should be used.

4.2 Guidelines and criteria for the admittance of immigrants

How porous should a state's borders be? In this paragraph I will give an indication on how to answer this question. I will not go into details, but only give broad guidelines and criteria for the admittance of immigrants that form the minimum standard that states should have.

Considering the weighty reasons in favour of open borders, freedom, moral equality and the improvement of life conditions, borders should be as open as possible. Still, as I have shown in the preceding paragraphs, there are some arguments that show in which circumstances immigration may be restricted. First, when a state's democratic political culture is threatened; the democracy version of the self-determination argument. Second, when a state's economy is threatened; the economy version of the functioning society argument. Third, when a state's security is threatened; the security version of the functioning society argument. For all three arguments counts that they should not be used lightly. There should be considerable proof that these threats are highly plausible. At first sight these arguments may seem to offer some criteria for the limitation of immigration. However, on closer examination these arguments do not all provide for clear criteria for the admittance or refusal of immigrants, although they give some directions towards which the criteria should amount. The first argument entails that immigrants that are a threat to democracy have to be refused. This is a criterion that, when used in practice, will not exclude many immigrants. For it is hard to prove that an immigrant is a threat to democracy. The second argument has as a consequence that the coming of an extremely high number of immigrants has to be prevented in order to protect the economy. But this does not formulate a specific criterion for the admittance or refusal of individual immigrants. It simply means that there should not be too many immigrants. The third argument leads to the exclusion of immigrants that are a threat to a state's security. This is a concrete criterion that can be investigated by the intelligence service. So the good arguments against open borders provide for two negative criteria: immigrants must not be a threat to either democracy or security. Furthermore, it gives the guideline that the arrival of too many immigrants should be prevented. These three arguments give some clarity on the criteria for the admittance of immigrants, but this does not suffice for a state that wants to formulate its immigration policy.

Also positive criteria are needed in order to determine who will be admitted as immigrants, that is: it is not only necessary to formulate which immigrants to exclude, but also which to include. Because if the two negative criteria mentioned above were the only criteria, the guideline on the number of immigrants would not be met, because there will be too many immigrants that meet these criteria. In order to formulate positive criteria for the admittance of immigrants I will use some of the

reasons for open borders mentioned in chapter 2. The importance of freedom gives rise to the formulating of the following criteria. First, the freedom of persons to be free from persecution has to be respected. So states have to offer protection to persons who flee from persecution and accept them as immigrants. Second, the freedom to have a family life has to be respected. Therefore, states have to accept family members of persons that immigrated already.¹²⁰ Of course there are many other liberties that are worth protecting, so choosing between them entails always some arbitrariness.¹²¹ These two forms of freedom are not the only ones that should be protected, but they are so important that they form the minimum that states should offer immigrants to be guaranteed. The importance of moral equality leads to the guideline that immigrants always have to be treated equal in equal circumstances. The importance of the improvement of life conditions gives the criterion that people fleeing from bad circumstances like hunger, poverty or violence have to be able to improve their lives by being admitted as immigrants. Although this is of great importance, it leads to difficulties in its realisation. A first dilemma rises between enabling people to safeguard their lives from severe circumstances on the one hand and preventing the arrival of too many immigrants on the other hand. As there are so many people suffering from terrible circumstances, it is likely that too many people will apply for immigration. A second dilemma rises between the acceptance of immigrants who would like to improve their life conditions on the one hand and the equal treatment of immigrants in equal circumstances on the other hand. It is unacceptable to refuse some people fleeing from famine, while accepting other people fleeing from famine. I will not try to solve these dilemmas here. But I have stipulated these dilemmas in order to point out which difficulties may arise when formulating an immigration policy for a state with porous borders.

To illustrate to what extent a Western state could incorporate these criteria and guidelines I will return to the case study of the Netherlands that I elaborated in chapter 1. The two negative criteria that immigrants must not be a threat to democracy or

¹²⁰ Walzer mentions family migration shortly, see: Walzer, Michael, "The Distribution of Membership" in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 155-156.

¹²¹ Obviously, many other things can be said about the arbitrariness and the further details of these two criteria. For example, which family member to admit: all or some? And why admit family members, but not close friends? And what persecution is meant exactly? As I mentioned in the beginning of this paragraph: I will not discuss the criteria into detail, but just give some broad directions towards which an immigration policy should go.

security can be compared to this Dutch criterion for refusal: “You are a danger for the public order and national security.”¹²² Although democracy is not explicitly mentioned, it can be seen as one of the elements that constitute public order. The criterion that immigrants must not be a threat to democracy is not identical to this Dutch criterion, but is comparable. Obviously, security is explicitly mentioned, so this criterion is completely incorporated in Dutch policy. The positive criterion that persons fleeing from persecution have to be admitted is in the Dutch immigration policy formulated as follows: “You have well-founded reasons to fear for persecution in your country of origin on grounds of race, religion, nationality, political conviction or because you belong to a certain social group.”¹²³ So this criterion is also included in Dutch policy, but it is made more specific. The next positive criterion that family members of already accepted immigrants have to be accepted as well, is mentioned in this Dutch criterion: “You are a family member of someone who is in the meantime in possession of an asylum residence permit and you have travelled simultaneously into the Netherlands or you have travelled into the Netherlands within three months after your family member has received the residence permit.”¹²⁴ Clearly, this criterion is incorporated in Dutch policy as well, but in a restricted version. However, this restriction is too arbitrary. For many reasons people may not be able to travel simultaneously or within three months after their family member has received the residence permit to the Netherlands. Therefore, this restriction should be skipped. The last positive criterion that people who are fleeing from severe circumstances as hunger, poverty or violence have to be admitted as immigrants, is partly mentioned in Dutch policy: “You have well-founded reasons to be exposed to an inhuman treatment in your country of origin. You had to leave your country because of severe traumatic experiences. The trauma is caused by the government or by groups that exercise the actual power in a country. The government cannot or does not want to offer protection. You cannot return to your country because the Dutch government considers the situation there too unsafe to return.”¹²⁵ So some, but not all severe circumstances are mentioned in Dutch policy.¹²⁶ But because of the importance of enabling people in severe circumstances to improve their life conditions, other

¹²² My translation, see for the original Dutch text: <http://www.indklantdienstwijzer.nl/Default.aspx?jse=1>.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ For some exceptions, that are not part of the regular criteria for the admittance of immigrants, see paragraph 1.4.

circumstances like hunger, poverty and violence should be added, as long as this can be compatible with the two guidelines I described above: the arrival of too many immigrants should be prevented and immigrants should always be treated equal in equal circumstances. In the next paragraph I will discuss what moral duties a porous borders policy as sketched above entails.

4.3 Global moral duties because of porous borders

A state that has porous borders has to refuse at least some immigrants. This may entail causing injustice to people, even though, as explained above, there are good reasons for refusing these immigrants. In order to morally justify the practice of porous borders a state has to take up some moral duties on a global level, especially – but not only – towards the people it has refused as immigrants.¹²⁷ In this paragraph I will indicate some moral duties that follow from having porous borders. Again, I will not specify these duties into detail, but rather give some conditions for having a porous borders policy that can be morally justified.

At first it may not seem obvious why states would have moral duties on a global level because of their porous borders policy. But these moral duties are in fact necessary in order to make a porous borders policy morally acceptable. A first reason for this is that the refused immigrants usually did not leave their country because of unimportant reasons; they flee from severe hunger, poverty or violence. This evokes the general moral duty to relieve people's suffering when it is in your power to do so. And wealthy Western states do have the power to help people in third world countries who are living in severe circumstances. As Miller puts it: "Persisting global injustice does impose on rich states the obligation to make a serious contribution to the relief of global poverty (...)"¹²⁸ Also Christiano stresses that the world's poorest need to be helped: "First, we must find a way to accommodate the needs for immigration of those of the world's poorest who are trying to emigrate. (...) Of course, this does not

¹²⁷ Obviously, a state does not only have moral duties on a global level, but also on a national level. The latter category I will however not discuss in this paragraph, nor in another part of my thesis, because it would stretch too far to discuss moral duties that are of less crucial importance to my main subject.

¹²⁸ See: Miller, David, "Immigration: The Case for Limits" in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), pp 198-199.

require that every state need open its borders to everyone. It requires a kind of sensible coordination among relatively wealthy states on immigration policies that will alleviate some of the world's most serious poverty. And for this we will need international institutions.”¹²⁹ A second reason is the role Western states have had in the past that amongst others has led to the current inequalities between states. Cole says that: “(...) relationships between states and peoples must be understood against what is now a postcolonial world: a world that has been radically shaped by European colonialism and which is still living through its consequences.”¹³⁰ The colonial period lasted from the sixteenth century until the second half of the twentieth century; a period in which many injustices and exploitation were caused by Western states. That is why Cole pleads for a postcolonial perspective: “A political theory that can be applied to the world shaped by the European tradition therefore needs to take a postcolonial perspective, and take into account the way relations between peoples have been shaped by the history of colonialism, especially relations of power.”¹³¹ He rejects political philosophy that “(...) is written against the background of a fictional history in which colonial exploitation never occurred.”¹³² Cole is right in pointing out the necessity of taking the colonial history into account. Many third world countries in which people are living in severe circumstances are former colonies of Western countries. This creates a moral responsibility for Western states towards former colonies. However, when people living in these third world countries try to immigrate into a Western country they are likely to be refused. So another way to fulfil the global moral duties of states needs to be found. I will come back to this after the discussion of another reason why states have global moral duties because of their porous borders policy. This, third, reason is that Western states are no self-sufficient societies that have nothing to do with the rest of the world. On the contrary, all countries are interconnected in a globalised world.¹³³ If a country would be completely isolated it might be defended that it has no moral duties that cross borders. But as I just pointed out, this is not the case now. Globalisation in politics and trade has made global moral duties more evident. It is not morally acceptable to profit from

¹²⁹ See: Christiano, T., “Immigration, Political Community and Cosmopolitanism” in: *San Diego Law Review*, Vol. 45 (Fall 2008), p. 955.

¹³⁰ See: Cole, Phillip, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), p. 2.

¹³¹ See: *ibid*, p. 199.

¹³² See: *ibid*, p. 14.

¹³³ See: *ibid*, p. 1.

international trade in for example oil, coffee or rice, while neglecting moral responsibilities towards the people who live in the countries of origin of these products and produce them, often under bad working and living conditions. So I have shown that there are three reasons why a state with a porous borders policy has global moral duties: first, because of their ability to help people living in severe circumstances, second, because of the role Western states have had in oppressing current third world countries during the colonial period and third, because of the globalisation that makes all countries interdependent.

As I pointed out in the previous paragraph not all would-be immigrants can be accepted by a state, even though they may be fleeing from severe living conditions. Also, states have global moral duties to third world countries – from which the refused immigrants are mainly coming. The question is: what kind of global moral duties? As said, I will not go into details, but point into the direction that should be followed. The main point is that states have a moral duty to reduce the problems because of which people are fleeing their countries and are trying to immigrate, such as famines, war, dictatorships, poverty and so on, insofar this is in their power to do so. Carens suggests helping the worst off by “transferring resources and reforming international economic institutions”.¹³⁴ Miller does not choose one way to help the worst off, but he shares the opinion that states have a moral duty towards them: “Meanwhile, the lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live – by aid, by intervention, or by some other means – or they must help them to move to other communities where their lives will be better. Simply shutting one’s borders and doing nothing else is not a morally defensible option here. People everywhere have a right to a decent life.”¹³⁵ So even though there are many ways to fulfil their moral duty towards third world countries and their inhabitants, whether by global distributive justice or by interventions, what matters is that Western states acknowledge this global moral duty and act accordingly.

¹³⁴ See: Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), p. 221. Walzer also allows for some kind of distributive justice, see: Walzer, Michael, “The Distribution of Membership” in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008), pp 159-162.

¹³⁵ See: Miller, David, “Immigration: The Case for Limits” in: Cohen, Andrew I. and Christopher Heath Wellman (ed.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell Publishing, 2005), p. 198.

4.4 Conclusion

In this chapter I have defended that states should have porous borders. First, I have shown that the culture and freedom of association versions of the self-determination argument do not hold, while the democracy version does hold. I have shown also that the economy and security versions of the functioning society argument hold and that the indirect cosmopolitanism version does not hold. Furthermore, I have made clear that the arguments in favour of closed borders that hold do not justify a system of entirely closed borders. Because there are strong reasons for open borders and some good arguments for closed borders, this means that only the porous borders option is compatible with both of them. Second, I have given some guidelines and criteria for the admittance of immigrants that follow from the arguments for closed borders that hold and from some of the reasons for open borders. These are not meant to be definite, but just to give an example of a minimum standard that states should use when formulating their immigration policy. I have compared these guidelines and criteria to the Dutch immigration policy and concluded that some of them are incorporated in some way in this policy, while others are not. Third, I have argued that in order to make the porous borders option morally acceptable wealthy states should fulfil some global moral duties.

5 Conclusion

In this thesis I have answered the central question: “What is the moral tenability of open and closed borders to immigrants?” My answer is that in the current situation neither open, nor closed borders are morally tenable. Instead I have given a defence of porous borders; the only morally tenable option.¹³⁶ I have started my defence with pointing out four strong reasons in favour of open borders, claiming that these reasons are so strong that the burden of proof lies with the defenders of closed borders. Carens and Kukathas show that freedom is of such great importance to people’s lives that this is a strong reason for open borders. Carens, Wellman and Cole show that moral equality is another strong reason for open borders. If citizens and foreigners are moral equals, the latter should not be refused to immigrate. Abizadeh shows that no coercion may be exercised without democratic justification. Both citizens and foreigners should be able to democratically justify a state’s immigration policy, which makes the closed borders option impossible. Kukathas, Carens and Christiano show that the improvement of life conditions is a good reason for open borders. Although these are four strong reasons in favour of open borders, they are not absolute. So other considerations in the formulating of a borders policy are not excluded. This allows for the possibility of a porous borders policy.

I have proceeded with my defence of porous borders by presenting the two main arguments for closed borders. Walzer, Miller, Dummett, Wellman, Whelan and Habermas all defend some form of the self-determination argument. This contains that states have a right to self-determination because of which they are entitled to close their borders to immigrants. The self-determination argument is being used in defence of the protection of communities and their culture, freedom of association and political culture including democracy. I have shown that the defence of a community’s culture does not hold because of several arguments. First, it is not clear what a culture exactly contains. Second, it is not proven that citizens share more with their compatriots than with people who live in another country and have a different

¹³⁶ Of course I keep the option open that in the future another option may be morally defensible, but in the current situation I think this the only morally tenable option.

culture. Third, it is not apparent that immigrants with a different cultural background change a society's culture profoundly. Fourth, internal immigration within a country is not limited, even though there are differences in culture between the different areas. Fifth, cultures always change over time; it cannot objectively be determined whether one culture is better than another. Sixth, even if immigrants would change a society's culture, there are other factors that can outweigh the importance of preserving a culture, like taking care of the safety of political refugees. Therefore, the self-determination argument as used in favour of the protection of culture does not hold. I have shown also that the defence of freedom of association in the immigration debate does not hold, because states cannot be compared with other private associations as clubs or marriages. Therefore, statements about the refusal of club members or partners for life cannot be used to draw conclusions on the refusal of immigrants; the self-determination argument that defends the freedom of association of citizens does not hold. However, the self-determination argument used for the protection of democratic political culture does hold. Because the freedom and equality of citizens are best protected in a democratic society it is permissible to refuse immigrants of whom there is considerable proof that they would be a threat to democracy. None of the defenders of the self-determination argument, but Wellman, claim that the right to self-determination is absolute. Furthermore, states may use their right to self-determination as well to accept immigrants instead of to refuse them. Therefore, this argument allows for the importance of other values than self-determination and thus for a porous borders option.

The other argument for closed borders is the functioning society argument, with the economy, security and indirect cosmopolitanism versions. Kukathas and Wellman show that immigrants may be refused if they are a threat to the economy. I have shown that this version of the functioning society argument holds, because in order to enable a state to provide goods and services equally to its citizens there should be a sufficient economic level. When too many immigrants arrive in a state the economy will probably be negatively influenced in such a way the government will not be able anymore to provide their goods and services equally to all. Therefore, restrictions on immigration are justified if there is considerable proof that they will negatively influence the economy to this extent. Because of this the arrival of too many immigrants should be prevented. As this restriction has far reaching consequences, it

has to be recommended that there should be done more research on the effects of immigration on the economy. Carens, Dummett and Wellman show that immigrants may be refused if they are a threat to a state's security. When a state's security is threatened also citizen's freedom and democracy are threatened. States are therefore allowed to exclude immigrants if they really are a threat to security. Christiano shows that if immigration threatens the functioning of democratic states, immigrants may be refused. Because he considers democratic states necessary for the development of a cosmopolitan political community that will alleviate the suffering of the worst off. This last version of the functioning society argument does not hold, because its assumptions can never be verified. Christiano's argument stretches too far; immigration may not be limited because of hypothetical speculations. All three versions of the functioning society argument show that borders may be closed to immigrants in the circumstances I just pointed out: when immigrants are a threat to the functioning of states. As immigrants may be refused in some, but not in all circumstances this allows for a porous borders option.

So it can be concluded that the democracy version of the self-determination argument and the economy and security versions of the functioning society argument give good reasons for closing borders in some circumstances, but not for always having completely closed borders. As neither completely open, nor completely closed borders can be defended in today world, this means that borders should be porous.

I have continued my defence of porous borders by giving some guidelines and criteria for the admittance of immigrants, that should be seen as an impulse to the formulating of a minimum standard for immigration policy that states ought to have. I have formulated two negative criteria: immigrants should not be a threat to either the democracy or the security of a state. Because of these criteria immigrants may be refused. I have also formulated three positive criteria: the freedom of people not to be persecuted and the freedom of people to live with their family should always be respected. Furthermore, people fleeing from severe circumstances, such as hunger, poverty or war should be able to improve their life conditions. Because of these criteria immigrants should be accepted. I have also pointed out that especially the last of the three positive criteria conflicts with the two guidelines I have formulated: the negative guideline that there should not be admitted too many immigrants and the

positive guideline that immigrants should be always treated equal in equal circumstances. It has not been my purpose to solve this dilemma, but only to point out that these dilemmas exist. I have compared these guidelines and criteria with the Dutch immigration policy to illustrate to what extent a Western state already incorporates them. It turns out that some though not all of the criteria are already incorporated in Dutch immigration policy.

I have concluded my defence of porous borders, and I will conclude with it now, that wealthy states need to fulfil their global moral duties towards poorer countries. This is necessary in order to make the porous borders option morally defensible. States have these duties because of several reasons. First, because people who are trying to immigrate in general do not do this because of unimportant reasons; they flee from bad life conditions as hunger, poverty or violence. Refusing them as immigrants may be permissible, because of one of the reasons mentioned above, but this does not mean that states do not have moral duties towards them or to people in equal circumstances. States that have the power to reduce the suffering of these people should do this. Second, because of the historic context, including a colonial past, in which wealthy countries have exploited current third world countries. Third, because of the globalisation in which all countries are interdependent and in which wealthy countries often profit from trade with poorer countries. I have shown that wealthy states have global moral duties towards, between others, third world countries. I have not specified the way in which these moral duties should be fulfilled, but I have suggested that it may be done by global distributive justice or other interventions.

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