

State Membership: A Question of Individual Choice

Melina Duarte

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Supervisors: Prof. PhD Kjersti Fjørtoft and Prof. PhD Erik Christensen



«Borders? I have never seen one.
But I have heard they exist in the minds of some people.»

Thor Heyerdahl
Norwegian Explorer
(1914-2002)

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Melina Duarte
Ersfjordbotn, September, 2015.

Preface

I am an immigrant or, better still, a cosmopolitan citizen. In the last decade, which represents most of my adult life, I have lived in eight different countries: Brazil, Switzerland, France, Belgium, Germany, Sweden, England, and Norway. Through this journey, I have learned different languages and cultures, and worked in different philosophical traditions. When I first left home, being abroad put me in constant contact with the new, the different, and the other. With that, I dealt with the great enthusiasm of a curious and young explorer. At first, everything I learned, I learned by comparing home and abroad. In order to be familiarised with new ways of living and of organising societies, I used to relate the novelty to the previous knowledge of the world that I had from my hometown. For some time in the learning process, there was always a reference, a theoretical act of going back home, that kept me connected while living abroad.

At some point, however, these references got lost. My sense of belonging became diffuse, and so did my conception of otherness. I understood that many differences might lie in the eyes of the observer, not necessarily in the things, states, facts or actions themselves. When the observer chooses to stress and value homogeneity in narrow terms, at the limit, one will most likely not find it outside the mirror. Everything other than the self can appear

alien and be portrayed as a threat. On the contrary, when the observer focuses on a broader conception of homogeneity, she might become able to disclose and connect similar patterns in different cultures, languages, ethnic groups or classes, the whole world becomes one.

The trustees of the Pitt Rivers Museum of Anthropology of Oxford, England, have challenged the view of the narrow-minded observers. They did that with great success when organising artefacts and tools not by country or continent, but by functionality. There we see that by adapting to the availability of resources, many tools and techniques were similar across the globe, long before contemporary globalisation. While the “slynge”, a type of weapon made of weights covered in leather tied together by chords, was used in the North Pole, the “boleadeira” was used in the South Pole. What changes is mainly the name of the tool, not its characteristics or function. Capturing these nuances in the places I have been since I left home has considerably changed my view of the world. I found new homes abroad and understood that national borders may be much more meaningless and unnecessarily controlled than I once thought them to be. And it was in the context of extensive mobility that, from an immigrant, I started to define myself, but also others, as cosmopolitan citizens by default.

In my extended sojourns and trips, however, I have encountered many people who did not enjoy of the same mobility as

I did and continue to do. This was simply because they did not have sufficient means for traveling and/or did not meet the requirements for the visa applications vastly colouring the front and back cover of this thesis. These visas are expensive commodities. It is not only the administrative fees that go well above the minimal monthly wage in some countries, but the money one has to have saved in a bank account to prove that one can support oneself during the whole stay in a foreign country, sometimes for a year. Much of the prejudice, distrust, and fear reflecting on immigration policies prevented these people from exercising their freedom of choice and having equal opportunities in life just because they are disadvantaged from the start. Those who can exercise these rights usually do so because they can pay for it. The others are taking chances, gambling with their own lives. At international airports, I saw anxious people standing in long checkpoint queues, afraid of being deported after desperately having spent their life savings in the hope of a new life. Some of them were close family members of those immigrants who, with a great deal of luck, had previously managed to cross the borders. Most of them wanted just to be a family again, entering as tourists with the intention to stay.

Through local immigrant networks, I was also made familiar with those who were not even able to access the international airports. This is not only because the related costs were unaffordable, but also because the “tourism excuse” simply does not

work for everybody. Unemployed individuals who lack insurance or general social assistance cannot use the “tourism excuse” in order to migrate, as they rarely have the privilege of taking holidays, much less going for holidays abroad. They remain smuggled in the back of trucks or forced to take the risk in precarious boats and rafts across the ocean. The numbers of casualties related to border crossing have skyrocketed since I first started work on this thesis. According to the Missing Migrants Project sponsored by the International Organisation for Migration (IOM), the casualties have almost doubled in the last few years. January to late September, 2015, recorded almost 4,000 deaths, at an average of 14 persons a day. The size of the problem is excruciating and the fatalities related to immigration are not restricted to the border areas of, for example, the Mediterranean, South Pacific, U.S/Mexico border, Caribbean, North Africa, Middle East, or Calais. They have spread to the streets. Buildings, buses, tube trains and airplanes have been bombed in attacks against diversity in Amsterdam, London, Madrid, Oslo and Paris, to name a few; and persons and children of immigrant background have been shot in selected neighbourhoods by people targeting the vulnerable.

With time, I began to feel guilty instead of privileged for never being stopped at the border, never having a visa denied and never having suffered any violence towards my otherness. My studies of the classic texts in philosophy became, from a personal dimension,

insignificant to me. I then found myself highly provoked by this contemporary problem of immigration and borders that unevenly affects so many lives. Thus, instead of pursuing a historical or purely theoretical thesis, I was driven to pursue a political philosophical committed not only to the ideal of global justice, but to the reality of all these immigrants who, in one way or another, have crossed my path.

My motivation was to investigate the pillars behind the restrictive understanding of citizenship that led to the current practices of border control and exclusion. Citizenship is a complex concept. It means equal status of rights, political and social participation, but it also means belonging to a community and national membership, which is historically tied to nationhood and national identity (Kymlicka and Norman 1994: 353). In “The Future Governance of Citizenship”, Dora Kostakoupoulou (2008) proposes to disentangle these always changing and conflicting dimensions of citizenship throughout history in order to grasp its contemporary function. Citizenship is according to her a dynamic and necessarily polysemantic concept and our task is to constantly unveil its transformations in order to adapt to the needs of our times. Although I agree with her that we need a concept that responds to our current challenges and acknowledge the merits of her work, I do not think that, when referring to practices, the loaded concept of citizenship can ever be totally free from the parochialisms that our

times require. To me, it seems that no matter how much we want to suppress or smother the parochial element of citizenship when theorising, citizenship linked to nationality is still often implicitly behind our current practices of border control and exclusion. To preserve conflicting meanings in a concept, in my view, is a form of intellectual capitulation that does not help to enlighten contradictory practices, but rather the opposite; it might even help to reinforce them. Even if, for example, supranational forms of citizenship such as the EU Citizenship have emerged, they are still parasitic on national citizenship to one of the state members. Even if the *ius soli* is celebrated as an advancement of a denationalised form of citizenship, very few states, none in the EU currently, adopt unconditional *ius soli* policies to the detriment of *ius sanguinis* (Honohan 2010). To grant citizenship to foreigners in terms of *ius domicilii*, these same states do require sufficient assimilation to community values (e.g. French community values, British values, Dutch values); values that do not necessarily reflect only political allegiance. Therefore, in order to highlight the contradictions of these practices obscured by the ambiguous concept of citizenship, I decided not to use it and replace it with more specific terms, as follows:

When I want to refer to the parochial element of citizenship tied to nationhood and national identity, I use the term *national citizenship*. When I want to oppose national citizenship in the

abstract level, I use the term *cosmopolitan citizenship* referring to all individuals belonging to the globe. When I want to refer to citizenship meaning purely formal equality of rights or political participation, I use the term *state membership*. By distinguishing *state members* and *national citizens* instead of blurring them both into a confusing concept of citizenship, I want to show the important differences between political and national members that might not and perhaps should not need to be overcome in order to guarantee the access of basic rights in our pluralistic societies. In terms of rights and political participation, it is of course important from a liberal democratic perspective that state members and national citizens are considered equal, but this does not mean that we should necessarily require immigrants to become national citizens in order to grant them access to these basic rights. Considering this, the overarching aim of this thesis is to develop the idea and significance of state membership becoming a question of individual choice. Without proposing the dissolution of the states or the abolition of national citizenship as an ordinary form of identity for those who see value in it, this thesis is a defence of freedom of human mobility and state membership across borders.

In this sense, my thesis is for me a quest for justice, which I have embraced with great passion. It is the result of the recognition of injustices emerging from comparisons of different experiences of mobility across borders. Much of this passion I have saved for

articles of opinion and dissemination that are not included here, except one that is in the appendix. I chose to include this article here because it is my first publication in Norwegian and I wanted to express my deep cordiality to this country that has now become my home. I do hope that the readers can still feel the vibration motivated by my passion for the topic throughout the thesis even when I am analytically discussing concepts, definitions and policies at the normative and circumstantial levels. My goal is to propose a reconciliatory approach to the contradictions generated by border control and exclusion in times of increasing human mobility across borders. I hope this proposal will be sound enough to instigate new discussions in this ongoing and pressing debate on cosmopolitanism, immigration and borders. Thank you for your time.

Introduction

1. The Puzzle: International Human Mobility versus State Border Control

Many factors nowadays are contributing to increasing the pressure for international human mobility. Among them are war and conflicts, globalisation, economic and career development, personal aspirations, family reunion, and climate change. The worldwide expansion of interconnectedness promoted by the spread of capital, technology, services and also values and culture has led to a considerable increase in the flow of persons across borders (Li 2008:1). As communication and transport become more accessible, people aspire to build a new future for themselves and their families abroad.

These increasing pressures for international human mobility, however, clash with the territorial rights of contemporary states that attempt to regulate the movement of persons across borders as an essential element of their sovereignty. Tensions emerge when states are no longer able to manage the effects of such factors and determine emigration and migration policies solely according to their national agendas. The limitations of the states' action are multiple and they can refer to (i) the inability of states to deal alone with the magnitude of the factors that drive migration and (ii) the ongoing political shift from unilateral policy-making and internal

sovereignty towards the consolidation of international law and external sovereignty.¹ While the first limitation can be said to be global (i.e., shared by every state independent of regime), the second presents a more significant challenge for liberal democracies. The first limitation is global because the driving forces of international mobility are becoming politically unmanageable at the state level. Experience has shown that no matter how much unilateral authority is imposed, or how much resource is allocated to border control, so-called 'illegal migration' cannot be stopped completely (Papademetriou 2005). Thus, states that exert close control on immigrants and forbid their citizens to leave the country or require them to apply for an 'exit visa', such as North Korea and China, risk losing their sovereignty when confronted by uncontrollable mass immigration and emigration. The second limitation is more specific to liberal democracies because, in seeking economic development and social progress, liberal states agree to bind themselves together guided by the conjoint effort of promoting and protecting peace and human rights.

From a Western perspective, the controls exercised by North Korea and China constitute a serious violation of basic human rights. Although international human rights law permits the

¹ Internal sovereignty concerns the relationship between a sovereign state and its subjects. External sovereignty concerns the relationship between sovereign states and other states.

signatory states to regulate the entry, residency and citizenship of foreigners in their territories, articles 13, 14 and 15 of the 1948 Universal Declaration of Human Rights amends the right to emigrate, the right to return to one's country of origin, the right to migrate within the state borders, the right to seek asylum abroad, and the right to a nationality or to change nationality. Thus, little seems to be left for states to determine regarding human mobility, and any attempt for a state to exert control on human mobility can, from a certain perspective, be considered a last resort to assert state sovereignty; but much of the struggle affecting many people's lives arises from this.

Up until now, states have been operating with different immigration policies. The visa requirements, application fees and the time for eligibility to permanent residency, for example, vary considerably from country to country. This gives the impression that this last resort of sovereignty over border control is, somehow, still preserved. However, more and more border control is escaping the scope of the states and being delegated to supranational structures not only with a common economic, but also a common political project, such as the European Union, Mercosur, Nordic Passport Union and several other multilateral agreements among states, allowing internal regional mobility. These agreements gradually lead to the standardisation of the immigration policies and challenge the conception of national sovereignty based on states'

autonomy to determine their own policies and protect themselves from foreign domination.

At the level of the European Union, these agreements already have a binding force and violations are brought to the European Court of Human Rights. But the question of how fragile these agreements are still remains. The UK, for example, was brought to court for violating refugee rights. Now, they recently decided in a referendum (23.06.2016) to quit the European Court in order to reclaim their autonomy over migration control. That being said, we can see that although international law is advancing towards deeper cooperation and coordination among states, and with that comes more freedom of mobility, these advancements are not without strong backlashes from states that want to preserve their internal sovereignty. The strength of these backlashes endangers even the already settled freedom of mobility enjoyed within certain unions and bilateral agreements. This shows that the conflicts between international and state sovereignty concerning border control are very much alive and must be discussed further. The pressing question that arises from this, then, is whether it is possible and, if it is, how to reconcile freedom of international human mobility with territorial states.

2.Relevance: Why is it important to reconcile the increasing international human mobility with territorial states?

The tensions between the increasing international human mobility and state border control have acquired rising political salience in the last years. The Paris attacks (13.11.2015), the Cologne assaults (01.01.2016) concomitantly with the refugee crisis have contributed considerably to the increase of hatred and hostility towards immigrants. Immigrants are often accused of being a threat to national security, stealing jobs, distorting national identity, burdening welfare states and also increasing domestic criminality and spreading infectious diseases. In politics, this mind-set is causing the rise of the influence of far-right organisations and parties with racist ideologies. The Swiss People's Party, the Progress Party in Norway, the Finns Party, The New Flemish Alliance and the Sweden Democrats are examples of parties basing their claims substantially on anti-immigration rhetoric. The opportunistic ways in which the fundamental principle of human equality has been undertaken in the public debate brings the discussion on immigration and borders back to the core of moral and political philosophy as an urgent and actual matter. Considering this, it is of great importance to explore the relationship between international human mobility and territorial states in order to clarify the points of conflict and disclose ways of overcoming them in times of instability.

In a relevant sense, these points of conflict emerge from tensions between aspirations and attitudes favouring either universalism or particularisms. This can take the form of conflicts between international law and state sovereignty; state membership (liberal and inclusive citizenship linked to domicile) and national citizenship (communitarian and exclusive citizenship linked to nationality); individual autonomy and group self-determination; human rights and domestic law; i.e., these are the conflicts generated by the challenges of our contemporary globalized societies not fitting to the models of the closed communities of the past.

Universalism and particularisms are constantly pushing and polling each other causing enormous friction. This friction is responsible for hindering the development of more pluralistic modes of political inclusion based on equal participation and equal recognition of nationals and foreigners. The emergence of such globalized and pluralistic societies is not here simply taken for granted as something desirable from an argumentative point of view. It is rather considered as a fact, i.e. a product of our time, and the desirability of which is very difficult to contest in the liberal democratic terms. Human mobility across borders increasing at unprecedented rates, is also a fact that follows from our time. This means that we currently have to deal with this issue no matter our opinions about immigration and borders. It presents the challenges

of a changing world of shorter distances and greater interconnectedness that, although not without backlashes, seems to be here to stay. On the other hand, we have a rigid structure of nation-states (nationalism) and states (patriotism) holding on, in different degrees, to the remnants of a system still based on national citizenship (national identity).

Certainly, instead of a reconciliatory approach, we could theoretically think that one could rather bend for one or the other side, but this would, most probably, reveal problematic alternatives in political terms: either to embrace the future with no institutional backup ready for it or to revert to the twentieth- and nineteenth-century practices of suppressing the development of pluralistic societies. While the former alternative ignores that the promotion and protection of pluralism depends on an institutional structure appropriately scaled to the problems it faces (today exercised by the states), the latter ignores that maybe suppressing the development of pluralistic societies is no longer feasible because, as we have seen, those who want to or have to migrate will do so no matter how dangerous the route or how inhospitable the host is. Based on that, a reconciliatory approach using existing institutions for the development of pluralistic and inclusive societies presents itself as a promising alternative; and it is that balance that I will be searching for from this point of my thesis onwards. Despite the fact that I will present one proposal towards this direction, I truly believe there is

not only one approach able to fulfil this reconciliatory role. Before I introduce my proposal, I will explore some mainstream approaches addressing the tensions between freedom of international human mobility and territorial states in order to investigate which elements of these positions are, from my point of view, important to be kept in a reconciliatory thesis. The investigation will be more occupied with “learning” from these arguments than “teaching” or trying to impose my view on them.

3. Some Previous Responses: From Parochial to Cosmopolitan Approaches

The question of whether it is possible to conciliate freedom of international human mobility with territorial states has been undertaken by many migration scholars from several disciplines. Many of the approaches from the social sciences have been occupied with the understanding the causes of migration aiming to describe and analyse its process. In political and moral philosophy, the debate has been framed as ranging from nationalistic to cosmopolitan approaches. These debates can be said to deal more with the ideal and real consequences of migration than with its causes and the goal is to extract from them a normative value that can guide us towards the development of our societies. While nationalistic arguments tend to emphasise one or more of the following elements: value of homogeneity (e.g. ethnic, racial,

religious, ideological, linguistic), cultural identity, state self-determination and sovereignty, and domestic economic stability over freedom of mobility; cosmopolitan arguments, on the other hand, challenge the arbitrariness of such constructions determined by one's place of birth and tend to stress that a greater equality among all human beings could be achieved through open borders. Of course, not all nationalists endorse strict restrictions on human mobility, nor do all cosmopolitans defend open borders. These simplified definitions of nationalistic and cosmopolitan theories are useful for establishing a common ground to begin the debate, but the benefits are limited. They serve to make known the edges of the scale. However, to statically polarise the extremes in the name of analytical clarity does not help to disclose the most sophisticated arguments that usually attempt to balance nationalistic and cosmopolitan elements. In this section, I will briefly move towards these more sophisticated arguments by highlighting what lies between these extremes. This is because the research question proposed in this thesis on the reconciliation of the two apparently opposing forces requires an arbitrated answer. Thus, I will label the arguments individually and try to place them into a continuum rather than integrate them in one of these poles. It is important to notice that the spectrum is not organised as ranging from less to more "mobility". If this was the case, indeed not only would conservative forms of statism perhaps have to be placed before

liberal forms of nationalism, altering the order in which I placed the purer forms of nationalism and statism, but an even more obvious problem would emerge in that this would imply that the economic reasons for restricting mobility “allows” more mobility than, for example, cultural reasons, which is not the case in this context. Instead, the spectrum was meant to be organised according to the degree of parochiality, i.e., the degree of provinciality or insularity involved in the arguments listed. The higher is the degree of parochiality, the more limited or narrow is the outlook or scope of the arguments. It is like starting from the smallest concentric circles and expanding them to aggregate more integrative forms. This follows a similar logic of categorisation as the one used in taxonomy to classify species. For example, it starts from an animal such as a snow leopard; from there it moves to the category of leopards in general that also includes clouded leopards; it then moves to the subfamily *pantherinae* that includes tigers, lions and jaguars; and finally ends with the big family *felidae* that also includes non-pantherine cats such as domestic cats. Analogically the spectrum starts from those arguments that lead to viewing membership in terms of it being attached to a very exclusive/narrow group of people, moving towards those arguments that view membership in more inclusive/broad ways. This being said, the spectrum starts from a very parochial version of nationalism that has its roots in racial and ethnic grounds and move towards the complete denial of

parochiality in the most abstract form of cosmopolitanism. Though the arguments next to the poles can be charged with being the most radical ones and having no relevant subscribers, this cannot be said with respect to those presented under the heading of, for instance, “Economic Stability”, “Political Self-Determination, State Sovereignty and Jurisdiction” and “Multiple Memberships”. David Miller, for example, with his multidimensional approach to issues of migration and justice, is represented in more than one place on the spectrum because his theory mixes elements of nationalism and statism. The list will not be exhaustive, nor will the spectrum provide an accurate map of the different arguments, because the topic of migration is simply too vast and illustrations like that can never be accurate. I am entirely conscious that in order to map the arguments with more accuracy I would need to use other types of illustrations able to capture more complex and non-sequential types of relationships; graphic models such as *gephi* would probably allow for more accuracy. My goal, however, is not to build a cartography of arguments. Many important authors and arguments are missing from the spectrum. My goal rather consists in offering a brief overview of the main issues later analytically discussed in the thesis.

Ethnic and Racial Homogeneity

According to my judgment, arguments on ethnic and racial homogeneity are the closest to the most parochial pole, i.e. they

have the most limited or narrow scope when viewing citizenship as connected to a small group of people with restricted flexibility for expansion. Many of these arguments labelled as ‘white nationalism’ are based on racism and on the myth of ethnic supremacy. These arguments can be directly dismissed for violating the fundamental principle of human equality and dignity. Rather than a rebuttal, they reveal a concern and express the need for an enlightened debate on the matter. Here, I will discuss a less radical branch of nationalism that will be useful for discussions on open borders and welfare states directly engaged in the fourth chapter of this thesis, i.e. a branch that is not relying on ethnic and racial homogeneity *per se*, but on the symbolic force generated by this type of homogeneity within a community. In this branch, Freeman (2013), for example, argues that the perceived ethnic and racial heterogeneity negatively affects the levels of trust and solidarity within the states to the point of hindering the public support for social policies and interfering in the regime of the states. He claims that the European Welfare States are at risk of being dissolved due to the loss of public support for social policies provoked by the increasing number of immigrants occupying its territory. He believes that the reason why the US have so far been unable to establish more robust welfare schemes can be explained through their multi-ethnic and multiracial formation. In this sense, international human mobility is said to interfere with the

capacity of states to promote trust and collective solidarity within their borders and should, therefore, be discouraged.

Although this type of argument gained significant strength after the majority of the voters in the Brexit referendum chose to leave the EU in an attempt to regain autonomy over border control, the problems with this way of reasoning are, from a philosophical point of view, manifold. First, although it is intuitive to think that people do not trust strangers, it is counter-intuitive to assume that a simple ethnic or racial difference can hinder the building of trust through co-existence over time. Of course, some immigrants are unreliable persons, but so are some native-born, and this cannot be generalised to characterise whole groups as trustworthy or not. Second, empirical studies commonly used to support the claim that ethnic heterogeneity weakens welfare states' public support conducted by Alesina and Glæser (2004) are now challenged by more recent and complete studies (e.g. Mau and Burckhardt 2009). These more recent and complete studies do not rely only on social spending for measuring trust and solidarity, but also on subjective questions on how people feel and think when confronted with strangers. They indicate that ethnic heterogeneity might not significantly obstruct the support for social policies even when it can be verified that immigrants do rely more on welfare benefits than natives, as in the case of Denmark. Thus, the reasons for preventing freedom of international human mobility grounded on

the negative effects on trust and solidarity caused by ethnic and racial heterogeneity at the state level are shown to be at least debatable and can no longer serve as a basis for justifying exclusion without discussion. Third, even if Freeman's argument does not rely on a direct account on ethnicity and race, it can be read as follows: because heterogeneity fuels racism, states have to prevent racial and ethnic diversity within their territories in order to avoid conflicts arising from this mismatch. However, from a philosophical point of view that reflects on democratic procedures, if the people, i.e. the subjects of a state, confuse ethnicity and race with character at the level of prejudice, their majority judgment is not an obvious reason for states to rule based on that. Prejudice is a morally condemned practice in our societies that can be classified as a case of an abandonment of rationality. In "The Right to Ignore the State", Herbert Spencer (1851[2014]:§4), illustrates the problem of governments strictly following the public opinion in cases of abandonment of rationality. He says:

"Suppose, for the sake of argument, that, struck by some Malthusian panic, a legislature duly representing public opinion were to enact that all children born during the next ten years should be drowned. Does anyone think such an enactment would be warrantable? If not, there is evidently a limit to the power of a majority."

To avoid the states becoming instruments of irrationality, a smarter solution should perhaps consist in clarifying the reasons behind the prejudice instead of reinforcing it in societies that are more and more pluralistic.

To conclude, no reconciliation between freedom of international human mobility and territorial states is achieved here. The point of the argument on ethnic and racial homogeneity is to show that this reconciliation is not possible and that uniform territorial states and border control should be privileged over freedom of international human mobility. The views based on such uniformity, however, rely on a model of society that might not account for the contemporary changes that globalisation imposes.

What we can learn from here is that to achieve the reconciliation searched for in this thesis, although we should not underestimate the destructive potential of public opinion, we should neither be so quick when considering some commonsensical assumptions on the negative effects of increasing ethnic and racial diversity in communities. This is because (1) it is possible that trust can be built in ethnically and racially diverse settings; (2) new empirical research shows that ethnic and racial diversity are not necessarily leading to the loss of public support of welfare policies as one once assumed; and (3) even when the majority judgment points in one direction, we have philosophical reasons to challenge such judgment if it entails the abandoning of reason.

Cultural Identity, Common Language, and Religious Uniformity

The other branch of nationalist arguments that I want to consider here is the one based on cultural identity, common language and religious uniformity. This branch is identified as being less parochial than the previous one because the elements of ethnic and racial homogeneity were replaced by a subtler and more flexible and integrative form that is cultural identity, common language and religious uniformity. If ethnicity and race are considered more static and restrictive features, culture, language and religious can be, in principle, changed. Membership would not be viewed as a status for the ethnic and racially equals, but for those sharing a common culture, language and/or religion. These arguments start with the premise that, derived from nations (i.e. people with shared history, common culture, same language...), there is, in fact, such a thing as a national identity at the state level. There is also the assumption that this identity is something worth preserving and that the state must respond accordingly. Before we move to a more detailed account, it is important to remember that nations and states are not the same institutions. If nations were built upon a cultural identity, a common language and religious uniformity—and this is also contestable—this is certainly not the case with states. In fact, many states are multinational. That is the case, for example, in the US, Canada, UK, France, Belgium, Switzerland, Norway, Russia, China,

Brazil, India and Europe, which, in itself, has been referred to as a multinational state (Peleg 2007). Second, even if culture is something worth being preserved by the states, which I agree with, it does not automatically follow that these states must be monocultural themselves. As nations and states are not the same institutions, neither nations equal to cultural identity. Cultural identity may take many other forms than the form of national identity. This means that arguments of this branch have to address the large gap between cultural identity and state unity and this is done through the defence of the significance of the idea of national identity.

David Miller (e.g. 2008; 2002), who perhaps presents the most prominent account on this branch, recognises the difference between states as political unities and nations as ethical ones, but argues for the co-extension of both in the building of nation-states. The distinction between national identity and cultural identity seem, however, to be very much blurred. The assumption behind that argument rests upon the social function of shared public identity formed over time. Individuals with a shared identity are said to be more prone to sacrifice themselves for helping the group. This cohesion achieved at the level of the nation due to culture distinctiveness would have implications affecting the functioning of the states. Social cohesion and social cooperation are then the reasons for arguing for the co-extension of nations and states. Since

nationhood is dependent on cultural identity, for the states to function well, they must preserve their cultural distinctiveness. Immigration would disrupt cultural identity and thereby break social cohesion, schemes of cooperation and welfare programs. The result would be the discomfort of nations and the unstable functioning of states. In order to avoid these negative effects, it is argued that international immigration should be restricted so long as it reflects the wish of the people to protect their identity and to maintain the way they organise their societies.

This argument has been criticised for not offering a strong support for border control. This is because as long as immigrants are not culturally different, they would not disturb social cohesion and thus, there would be no reason to restrict their mobility and membership. This means that, on the basis of this, Miller would have to accept that states would not be able to restrict the mobility and membership of culturally similar immigrants. Furthermore, it can be argued that cultural distinctiveness is already strongly affected by globalisation and increasing interconnectedness. Considering this, it is difficult to say how immigration would worsen the situation if immigrants are also subjected to the effects of globalisation wherever they are. Other critics question how different cultures would need to be in order to impede assimilation at a suitable level for creating social cohesion and cooperation. Common markets might well today have the effect of creating

spaces of social cohesion and cooperation in spite of culture differences. But this is not all. It can also be said that Miller's argument relies on a romanticised conception of the nation that overlooks the role of immigration in its historical formation, creating a false impression of homogeneity in contemporary nations, which does not correspond to the contemporary state ideal. This romanticised conception of nation also creates the illusion that the only meaningful connection among individuals able to foster social cohesion and cooperation occur at the national level and that this occurs rather "naturally". But once we agree that national identity is constructed, the same pedagogical means used to create the idea of nation in the past could well be used to foster attachments to larger levels of belonging. If it is difficult to accept that national identity is constructed, which I do not think it is, we can minimally agree that, even if this is the case, just because something happens "naturally" this does not mean that it is static and it does not evolve with time. The conflicts that this restrictive role of national identity is provoking today show, as we saw earlier, the need of our times for larger spaces of social cohesion and cooperation than the past.

Another important problem that I see with this argument is that it mixes up multiple levels of political membership and expects to apply justifiable claims at a particular level to a more general one; it is like trying to fit the big Russian doll inside a smaller one instead of the other way around. As a result, on the urge of

promoting cultural distinctiveness, these approaches end up oppressing minority groups that might be too weak and small to be considered a nation and that do not seek political autonomy within a territory, but rather, recognition. On this basis, we see that cultural arguments are relevant and should be taken into account when considering bordering processes at multiple levels. However, as it will be argued in chapter three, national identity should not be seen as a necessary criterion for granting immigrants the right to settle and become full members of the state where they reside.

In conclusion, these arguments on national identity do not attempt to reconcile international human mobility with territorial states, but aim to show that this reconciliation, as a matter of justice to the defined groups, should not be pursued. What we can learn from it is that cultural identity still plays an important role in forming communities and ought to be preserved for this reason. This does not mean, however, that cultural identity should be preserved when nurturing exclusion and blocking the emergence of larger circles of belonging where these identities can co-exist and flourish together.

Multicultural co-existence

Another branch of liberal nationalism that deserves our attention here is the one that, although assuming that national identity does

matter as an expression of one's cultural identity, questions *how* this identity should matter in order to be compatible with our multicultural and pluralistic societies. The most known proponent of this branch can be said to be Will Kymlicka in the thesis defended in "Solidarity in diverse societies: beyond neoliberal multiculturalism and welfare chauvinism" (2015). This branch is here considered as being less parochial than Miller's liberal nationalism because cultural distinctiveness is not used as a reason grounding exclusion, but multicultural co-existence. In this article, Kymlicka aims at reconciling national solidarity with support for immigration and multiculturalism. In order to identify the prospects for reconciliation, he contrasts two radically opposed views, the neoliberal model of multiculturalism that privileges mobility and diversity over national solidarity and the welfare chauvinism that privileges national solidarity over mobility and diversity. He draws attention to the fact that national solidarity does not only have a regressive side with the purpose of excluding immigrants, but also a progressive political side when aligned with liberal nationalism. As a progressive political project, nationhood can contribute to, among other things, securing democracy, and establishing and maintaining a welfare system. But in order this not to provoke segregation and exclusion of immigrants, liberal nationalism must, according to him, be supplemented and constrained by multiculturalism (Kymlicka 2001). The challenge is to make this supplement not

weaken the positive effects of nationhood. Kymlicka's strategy in responding to this challenge is to show that historically multiculturalism emerged within the social democratic project. Only later, it was transformed into a neoliberal tool in favour of market inclusion irrespective of citizenship provoking a welfare chauvinistic reaction. The key is, he says, to explore these older roots and develop a multiculturalism following the Canadian model of "nation-building", i.e. a model that "enables immigrants to express their culture and identity as modes of participating and contributing to the national society" (Kymlicka 2015)².

This view is criticized for idealising the conditions of the past and neglecting the strength of the contemporary transformations towards internationalisation. Bauböck (2016)³ argues that a multicultural liberal nationalism does not resolve the conflicts between nationalism and contemporary democracy regarding territory and membership. While nationalism relies on the idea of group self-determination, a separate territory and exclusive membership, democracy today has the potential of binding together

² The open access electronic version contains no pagination. The paper can be accessed here (last accessed July 2016):
<http://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-015-0017-4>

³ The open access electronic version contains no pagination. The paper can be accessed here (last accessed July 2016):
<http://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-016-0031-1>

different territorial units that share overlapping memberships. To Bauböck, a balance could be struck when “individuals regard themselves as multiple citizens across all levels of the polity and accept that those who move across borders are transnational citizens who belong simultaneously to territorially distinct polities”. This would imply in dropping nationality as a criterion for the access to political membership.

To sum up, Kymlicka’s attempt to reconcile immigration and territorial states fails because of the insistence on keeping actual configurations of the past. Although Kymlicka is right when he says that nationhood still matters nowadays, he does not seem to realise that this might be part of the problem, not of the solution. To continue to determine political membership in a globalised world within the limited scope of nationhood will only exacerbate cultural conflicts. Multicultural co-existence becomes then an arena of combat. What we can learn from here is that even if nationality still matters today as a remnant of other times and even though people should be free to identify themselves in the ways they wish, these forms of identification should not matter for determining state membership and the access to basic rights.

Political Self-Determination, State Sovereignty and Jurisdiction

Moving forward in the spectrum according to the level of parochiality, we find positions that attempt to justify border control by replacing the significance of nationhood and cultural distinctiveness for political self-determination and state sovereignty. They are not necessarily more open or closed to human mobility across borders than the previous accounts (all defend the state's right to exclude immigrants), but the reasons grounding it are less provincial in the sense that they appeal to a political framework using the neutral vocabulary of rights. Michael Walzer's (2008) account provides one of the most well-known examples of such positions and David Miller (2012) and Michael Blake (2013) some of the most recent ones. To Walzer, state membership is a social construction. Relying on a built commonality, the members who created this construction in the first place have the right to limit and distribute membership to strangers according to their conditions. The questions that arise from that, though limited by certain moral constraints, are merely related to how this distribution of membership should be done, which sort of strangers would be entitled to it, and what should the admission policies of the states be on the matter. But the questions do not go as far as disputing who should determine membership. Blake questions it, but this issue is, for Walzer, settled. Derived from previous social binding around the rules the people imposed on themselves, the

distribution of membership is a decision of the state members. Immigration control then emerges as a claim for the states' right to self-determination on which depends the exercise of their sovereignty. Sovereign states are seen, by definition, as having the legitimate right to exclude immigrants from their territories. In this context, state membership is clearly the states' choice. But this is not primarily because this choice corroborates the fulfilling of national interests, but because it reveals the deepest meaning of the collective self-determination for its members. In these terms, the states' right to political self-determination is raised as a moral right and as such, is related to the promotion and protection of human rights of the state members.

In Walzer's account, the nature of state membership is disclosed by comparison with more simple forms of memberships such as neighbourhoods, clubs, and families. Neighbourhoods have free admission. Residents might not like the newcomers, but they cannot prevent them from moving in. Because of this incapacity of controlling membership that reveals a lack of power to self-determination, Walzer argues that states should not engage in the same loose form of membership that neighbourhoods do. The reason behind this is that the same discontentment provoked by the moving in of unwanted newcomers would be magnified at the state level. The consequence of this discontentment at a large scale would be the unintended closure of the smaller communities, resulting in

a state formed by a bunch of small ‘fortresses’. To him, states are better compared with clubs and families rather than neighbourhoods. Like clubs, they are said to have the right to settle their own admission criteria. And like families, they are said to rely on mutuality and obligation, authority and obedience. The only difference is that states, being liberal democracies, are morally constrained to admit certain kinds of newcomers such as refugees and asylum seekers.

This argument can be contested on various fronts. The main objection that can be listed is the rebuttal of its initial premise that says that state members should have the right to determine state membership. One way of attacking this premise is to challenge the scope of the right to self-determination. It can be argued that even if state members should have the right to self-determination, it does not necessarily follow that they can limit the right to the self-determination of others. When restricting mobility across their borders, state members are determining not only their fate, but also the fate of other persons. Those excluded persons are affected by rules they did not even have the chance to help shape—a violation of popular sovereignty that, according to Arash Abizadeh (2008), illegitimately coerces people. Abizadeh reminds us that, as it is in the essence of the democratic thought, to be legitimate, coercion should be democratically justified by everyone subjected to it. A key point to be mentioned here is that self-determination is understood

primarily as an individual right shared by every human being, irrespective of whether they are natives or immigrants. From this perspective, it is not a right that can be transferred to groups, co-nationals, compatriots or entities as such. Thus, as state members, non-members also have a right to determine themselves, and the self-determination of state members does not justify the right to unilateral exclusion, as will be discussed in the second chapter of this thesis.

Another way to attack Walzer's initial premise has to do with the qualifications for membership. When comparing states with neighbourhoods, clubs, and families, Walzer captures something inherently right about the constitution and classification of different types of memberships. He shows that we engage differently and for different reasons while participating in different kinds of collectives. However, as will be discussed more closely in chapter three of this thesis, club and state membership are not analogous to the case of liberal democratic states as he argues. This is because the consistency to universal moral values to which liberal democratic states are committed compel them to conceive a more inclusive form of membership at the state level than the ones engaged by particular groups. Group members might have a right to exclude. If they do, this is because this kind of membership seems to be dependent on the fulfilment of some conditions and on the external attestation of the group members. For example, to be a member of

the traditional Freemasonry, one has to be an affluent man, believe in the brotherhood of man, intend to regularly attend the ceremonies in one of the assigned lodges, and so on. Besides the fulfilment of these conditions cited above, the aspirant member must be invited by the brotherhood of man and the recognition of his membership must be progressively attested by several rituals of initiation. However, state membership in liberal democracies cannot actually be comparable to group membership in these terms. While it seems permitted for groups to rely on some kind of homogeneity expressed by the required conditions for membership, liberal democratic states have to expand their scope according to the values they stand for. In such a context, as liberal democratic states have a commitment to equality and freedom and the aspiration of asserting tolerance as a fundamental value and englobing pluralism, their task differ largely from the task of particular groups. Instead of promoting one particular set of values, the task of these states should be to manage the plurality of values of particular groups, sometimes conflicting, that coexist in their territories. A condition that seems to be coherent to impose for state membership in these terms is residency in the states' territory as a sign of willingness to participate in the life of the states. This residency, however, should not need to be pre-approved by the state members. This is because the states, being the managers of pluralism, cannot intend to directly avoid the discontentment provoked by the encounter with

the otherness, but rather, to administrate it in the best way possible.

Related to state sovereignty, there is another important argument supporting the restriction of international human mobility that I want to contest here. That is the argument on territorial rights recently defended by David Miller (2012), among others. As will be discussed in chapter two, according to this view, state sovereignty is defined as being essentially composed of territorial rights, being the right to jurisdiction and the right to control the movement of persons across borders among them. International freedom of mobility would, in this sense, inflict a loss of sovereignty to the states and should therefore be avoided. The problem with this argument is that the right to exclude is presented as being parasitic to the right to jurisdiction. As the right to jurisdiction equals state sovereignty, it looks like it is impossible to deny the right to exclude without compromising the whole institution of the state. However, this parasitic relationship is questionable today with the rise of new forms of understanding sovereignty driven by the increasing influence of supranational and global structures. Thus, rather than showing the need to control the borders, this argument brings to light the need to update the territorial rights of internationalised liberal democratic states.

Blake (2013) presents a subtler version of these two arguments in the sense that he questions what Walzer takes for granted,

namely the state's right to exclude immigrants, and relies on a less demanding conception of state than Miller does, which does not appeal to a strong meaning of sovereignty or group self-determination. Following Abizadeh's condition (2008), Blake concedes that the right to exclude immigrants is a coercive right that must be justified by respecting the moral equality of all. As opposed to Abizadeh (2008) and also Carens (2008) and Cole (2000), he argues that such a justification is possible within the liberal egalitarian framework, derived from a conception of state based on territorial and legal unity marking the state's jurisdiction. Evoking the article IX of the Montevideo Convention (1933), he connects to jurisdiction the state's obligation to protect everybody within this space that constitutes a jurisdiction, being them nationals or immigrants. Such an obligation would impose some restrictions to the freedom of the current inhabitants that would have to extend protection to the newcomers. The imposition of the extension of protection to newcomers appears then as a violation of freedom of the current inhabitants. This is because while current inhabitants of a certain jurisdiction have obligations not to violate the rights of persons outside their jurisdiction, they only have obligations to *protect* the rights of those within such a jurisdiction. This means that newcomers, coming from a stable state, are already protected in their original jurisdiction. They can choose to deny it and seek protection at another jurisdiction. Current inhabitants are,

in this context, not obliged to accommodate the preferences of those newcomers that already enjoyed protection before moving. Such newcomers would not have the right to impose their choices of getting a new protector without the consent of the current inhabitants. Thus, in order to avoid such a violation of their freedom, current inhabitants would acquire the right to exclude immigrants. The right to exclude is then presented as a question of freedom of choice to the current inhabitants, i.e. a right to have a say and accept or not to extend the protection to others. This right to exclude is, however, limited by certain conditions in ways strong enough to make the current practices on border control condemnable. Immigrants that do not enjoy of protection in their states of origin, for example, would fall into one of the limiting conditions.

One problem with Blake's argument is that, although it questions the state's right to exclude immigrants and it does not appeal to a strong meaning of sovereignty and group self-determination based on ethnicity, culture distinctiveness or shared interests, it still defines the states in an excessively rigid way. States are defined as closed territorial and legal units; downplaying the emergence of multiple and overlapping political communities in larger levels and undermining the significance of freedom of choice for immigrants in such a context.

As in the previous accounts discussed above, the restrictive role of the state is still taken for granted and a reconciliation between international human mobility and territorial states is still seen as unworkable; specifically, for disrupting the right to group self-determination of the state members, being incompatible with state sovereignty in itself or violating the freedom of current inhabitants. What we can learn from it is that in order to achieve the reconciliation that we search for in this thesis, we need to rethink the role of the state as a more dynamic institution capable of responding adequately to the challenges of increasing internationalisation. In order to do this, the state's territorial rights and the meaning of territory itself must be contested; and this is done in the second chapter of this thesis.

Economic Stability

Less parochial arguments than the previous ones are the ones attempting to justify border control based on economic reasons and not relying on any particular account privileging either natives or immigrants. Though economic reasons are still restrictive in the sense that it creates a divide between rich and poor that it is not easy to overcome, one wants to believe that the market has an integrative power since money is money no matter to whom it belongs. In this connection it is important to note that the

objections to freedom of international human mobility are mathematical and rest on the assumption that there are a limited number of persons that a state can accommodate. Jobs, housing, and welfare benefits are, for example, limited, and an overload of people, especially those whose need of assistance is greater than their contributions, would provoke domestic economic instability. Such instability would then make everybody, natives, resident aliens and some newcomers alike, worse-off. In this context, borders should not be strictly closed, but admission policies should take these limitations into account.

The economist Martin Ruhs (see 2013), for example, subscribes to this position. He defends the position that states, as institutions responsible for providing for the people within its jurisdiction, should act in the best interest of their citizens and residents and that admission policies should be rationally designed according to that goal. This gives the states the right to select the type of immigrants that should be admitted (e.g., skilled or unskilled workers, according to the dynamics of labour shortages), the number of immigrants, and also the allocation of rights offered to the different categories of immigrants. This argument is very compelling from the state governments' point of view because it provides guidance for safe policies, but the argument is limited to labour migration and can be refuted in various ways. Some of these counter-arguments will be developed in the fourth chapter of this

thesis, but here, I would like to briefly mention that even if free international mobility would possibly inflict some harm to the domestic economy of some states in particular, there is strong evidence showing that globally, under certain circumstances, the effects would be overall positive. In a global perspective, migration can be seen as part of the developmental process of our unequal societies moving towards equilibrium. Economically, this equilibrium would be led by the optimisation of production factors and by the international wage convergence. Border control could then be refuted by the libertarian and utilitarian arguments on mobility of human capital as argued by, for example, Milton Friedman (see 1978). In my view, however, the success of this equilibrium, different from the libertarian argument, depends on a clear distinction between freedom of mobility of workers and the weakening of the labour laws and welfare policies that protect them, as will be discussed in the fourth paper. But, considering the economic arguments in favour of border control in the name of economic stability, the reconciliation that we search for is here seen as possible, but non-desirable, considering the role given to the states to preferably protect their citizens and residents over others and resist globalisation. What we can learn from this objection is that the process towards globalisation is not exactly smooth sailing. Some workers, e.g. those living outside big centres have their skills made dispensable by technology or their labour laws weakened by

international competition, will inevitably suffer some negative consequences. This means that even though globally most people would benefit economically from freedom of mobility and membership, some people would be made worse-off; an outcome insensitive to a Pareto-optimal solution. In the chapter four, I argue that these negative consequences should be addressed (prevented or repaired) by stronger welfare policies.

Multiple Memberships

Reaching the range of the more cosmopolitan arguments, the common assumption is that all human beings belong to the same community. As this is a rather vague formulation, it is not a surprise that it is interpreted in many ways. The first division that can be made is between its literal and metaphorical interpretation. The literal interpretation derives the right to freedom of mobility directly from our common belonging to the world, or, in other words, from the radical denial of our particular forms of belonging as shielding mobility. Due to its radical approach, this view, as you can imagine, is placed at the cosmopolitan pole of the scale and will be discussed later. Here, I will consider the metaphoric and subtler approaches placed in the middle of the cosmopolitan side of the continuum. This is because these approaches will introduce the most fruitful possibilities for a conciliation between free

international human mobility and territorial states as examined in this thesis.

These views are influenced by the so-called positive cosmopolitanism originated by the Stoics. Greek and Roman Stoics had different approaches to the question, but what can be generalised for our purpose here is that for both of the schools, our common belonging to the cosmos did not entail the rejection of other forms of membership, such as the membership in the polis. This possibility to concomitantly engage in multiple memberships emerged from their moral philosophy. Based on the idea of virtue, the virtuous person was able to transcend parochialisms and to connect with the whole of humanity. Membership in parochial communities were, for the virtuous person, not conflicting with the membership in the cosmos. The borders dividing one community from another were interactive and dynamically understood. It expressed the current idea that even if we belong to a particular community, we also belong to humanity and are connected to those who are not our compatriots or co-nationals, for instance. This connection to the whole of humanity generated a moral obligation to recognise every human being as equal, irrespective of nationality. Today, no sound theory disagrees with it. As Gillian Brock (2013) remarks, this view is not distinctive to cosmopolitans anymore. The deeper disagreements arise when questioning the political implications that such commitment towards humanity generates.

Kant (2000), as will be discussed more closely in the first chapter of this thesis, argued that our belonging to humanity gives rise to the right to hospitality, which means the right every individual has to not be treated with hostility when peacefully visiting a foreigner country. This right was introduced by Kant as part of the foundation of the cosmopolitan law. As opposed to the existing international law, the cosmopolitan law was meant to regulate not the relationship among states, but the relationship between states and foreign individuals. One consequence of the right to hospitality was the limitation of the states' power over foreigners, which led to the need for rethinking the meaning of sovereignty. Through these lenses, sovereignty was not only seen from the domestic perspective, but had to be expanded to the international level as part of the movement towards a cosmopolitan constitution. The right to hospitality, however, also imposed some limitations to the claims of foreigners. What was protected under this right was the opportunity to visit a foreign country, but outsiders could not claim residency or citizenship based on that right. State membership was part of another deal, called the contract of beneficence. Consequently, for Kant, settlement remained a discretionary right of states.

Criticising this limitation of the right to hospitality, Seyla Benhabib (2004) proposed to expand the Kantian idea of cosmopolitan law. She wanted to ground state membership on a

moral as well as a legal right instead of on a contract of beneficence. To her, our belonging to humanity commits us to recognise that individuals, in Hannah Arendt's terms, have the 'right to have rights' (Benhabib 2004: 49-69). According to Benhabib, although the right to hospitality progressed towards the achievement of this idea, it was still restricted to rules of sociability and did not respond to the needs of establishing political inclusion as a right. As in the case of Kant, Benhabib's proposal also brought some advancements and accepted some limitations to both states and foreign individuals. In her view, states should be obliged (indeed, punished, if violating it) to settle transparent, consistent and non-discriminatory conditions for the acquisition of state membership. Foreigners, on the other hand, would have to observe and fulfil these conditions in order to be eligible for state membership.

The problem with Benhabib's approach, as we are going to see more closely in the first chapter, is that in the urge of reconciling international human mobility and territorial states, the advancements were too modest when reverted to immigration policies. The states' right to exclude was not challenged at a significant level and, despite the tensions it produces, states kept the discretionary right over immigration control. More specifically, in such an approach, states were allowed to remain the institutions deciding the conditions of eligibility for state membership. As we know, these conditions can be pretty arbitrary without necessarily

being characterised as obscure, inconsistent or discriminatory. This is the case of the 'good character' criterion currently used in the UK or the restrictive condition based on the right of blood still particularly important in Germany. Such problematic conditions are seen as an expression of the states' right to decide the requirements for the acquisition of state membership. The margins of what is acceptable as just conditions for state membership are not clear or are too demanding. Once the aspiring members meet the requirements, the states would have the duty to grant them membership. But as the requirements are still decided by the states with a lot of room for interpretation, the right to membership seems to be very close to the old contract of beneficence. When keeping the states' right to exclude, Benhabib concedes too much and ends up weakening the legal meaning of the right to membership. As it stands, the claim for the right to membership is too general and its defence equals the claim for the right to a nationality that is already an acknowledged human right. The meaning of domestic sovereignty is not reinvented or transformed; it is just negotiated. The problem with that is that it ignores the transformations that have already taken place in the meaning of sovereignty. As David Held (2010) shows, the space between domestic law and international law is already being filled with a cosmopolitan law that aims to protect and promote the rights of every individual. Institutions like the United Nations, the European

Union, The European Court of Human Rights, The International Criminal Court and several multilateral agreements between and among states have already changed the meaning of state sovereignty in many ways. So, instead of trying to preserve elements of the classic concept of sovereignty, the efforts should, in line with Habermas' thought (2008), be directed to explore new ways in which to adapt national sovereignty to the emerging forms of governance beyond the state level. What should be brought to the front, then, are discussions on ways of surpassing old internal or domestic conceptions of sovereignty still based on the right to protection against foreigner domination, towards an external and international one based on states' ability to cooperate. Thus, it seems that the possibility of a reconciliation between international human mobility and territorial states might lie in the development of a stronger conception of external sovereignty. Considering this, we see that in Benhabib's approach, this reconciliation is compromised due to its excessively state-centric character, still based on the protection of an internal view of sovereignty.

The reason behind this cautious advancement of the right to membership was the belief that political membership necessarily entails exclusion. Although Benhabib advocates for porous borders, she concedes to the states the right to exclude in order to enable the functioning and accountability of democracy. In my view, however, as it will be argued in the first and second chapters of this thesis, it

is not because political membership necessarily entails exclusion that this exclusion needs to be done unilaterally by the states. Self-exclusion might also be possible when state membership is understood as a question of individual choice.

World Citizenship

Reaching the opposing edge of the spectrum and contrasting the most parochial arguments, we find the so-called negative cosmopolitanism. This view can be illustrated by the fascinating figure of Diogenes of Sinope: the cynic, the beggar, the vagrant, and the ostracised criminal. Diogenes is portrayed in Raphael's fresco, *The School of Athens*, sitting in the middle of the stairs of the open Agora in a very loose and carefree position. His head is on Plato's side and his feet, on Aristotle's side. In the fresco, he is clearly provoking some uneasy reactions from people around him. One person in the Agora is perplexed, pointing to him with both hands facing upwards and expressing their puzzlement to somebody else towards whom his/her face is directed. Apart from Heraclitus, Diogenes is the only one portrayed alone. He is shown as being rootless and isolated. When asked where he came from, Diogenes replied that he was a citizen of the world. What he meant by that was not accepting any allegiance to his fatherland or to any other place as a defined territory with recognised authority. This

illustration is mind-blowing. But the obvious problem with this view of world citizenship is its anarchic consequences. Thus, even if this conception of cosmopolitanism does offer support for the case of open borders by drastically rejecting the meaning of membership, this support is not strong because it compromises the rise of the political. What can be brought to the forefront from this account today is a critical view of the arbitrariness of national citizenship when relying strongly on one's place of birth as the main focus of allegiance. Gerard Delanty, for example, describes this contribution of negative cosmopolitanism as being twofold: "an act of individual freedom and a recognition of the external category of the world" (2009:21).

This detached understanding of belonging influenced the later development of other forms of cosmopolitanism and it is taken very seriously by, for example, luck egalitarian perspectives on borders such as the one advanced, though not reduced to, by Joseph Carens (2013). The simple accidental fact of being born, for example, in Norway or in Angola has profound impacts on one's life's prospects. The impacts are so significant that they can mean a 30-year gap in life expectancy, a huge difference in income per capita, abysmal differences in educational and career opportunities, and so on. Citizenship, in this sense, is comparable to a valuable inheritance that cultivates deep and unjust inequalities. One way of overcoming these injustices, then, is to enable the mobility of persons across

borders. The problem with the luck egalitarian account when used to defend open borders, however, is that freedom of mobility is not the only way of overcoming these injustices and, according to Pogge (2010:114-133), not even the most effective one. What is required to overcome injustices are compensations. And compensations can actually be done in other ways than allowing mobility. International aid and cash transfers are obvious ways of compensating for structural inequalities. This means that, from this perspective, developed countries could still keep their borders closed if they used other schemes of solidarity. Furthermore, a different obligation would affect developing and low-income countries. Deriving from this argument, latter countries would not have the need to allow immigration because they are seen as not being the ones promoting such injustices. In this sense, it seems that their duty would be restricted to letting their people emigrate to more developed countries.

Another problem is that even if we admit that enabling mobility of persons would be one of the important ways of overcoming inequalities, this argument does not actually support the thesis on open borders when confronted with circumstantial objections. This is because global inequalities could also be used to show that, in practice, open borders would overstretch developed countries due to the arrival of more immigrants that they can actually support. At the same time, open borders would deprive

developing and low-income countries of an important labour force. In this sense, open borders would then be possible only after having achieved a more equal world.

Carens' position faces this problem. He admits that the implementation of open borders is dependent on the reduction of inequalities among states (2013:280). But then, if open borders already sound to some like a utopian idea, what is to be said about relying on a, perhaps, even more utopian idea because its implementation is said to depend on the previous achievement of a more equal world? In my view, a more promising egalitarian argument on open borders should reverse this argument. In order to do that, we have to evaluate how utopian open borders really are. First, we must remember that state borders are political constructions. They are currently the central ways in which distribution schemes are organised, but in different times and different conditions, these schemes were organised in different ways: in empires, city-states, villages, tribes, and so on. So, to change the centrality of the role of states is possible and not utopic in this sense. Second, with globalisation, times and conditions are changing. The increasing interconnectedness is imposing demands on the development of supranational structures and pressing states to allow more mobility of persons across their borders. This means that a change of centrality of the role of states in controlling their borders is today also likely and not utopian in this sense either.

Keeping in mind that open borders might not be a distant ideal anymore, as we might have wanted to imagine from our cocooned perspectives, opening the borders before having a more equal world could lead to a more equal world instead of being dependent of it. Open borders would, from this perspective, serve as a strong and real incentive for high-income countries to distribute resources in order to create similar life conditions and opportunities abroad and avoid the risk of being overwhelmed by immigration.

Although these arguments and counter-arguments on cosmopolitan egalitarianism press to some advancement towards justice for individuals, it is still important not to reduce international freedom of mobility to a question of distribution. Virtually, the defence of many fundamental rights can rouse queries on distributive justice, but some are not limited to that. The right to freedom of speech is, for example, engaged in such a debate on distribution when it is argued that the owner of a TV Channel can exercise it more than a househusband. But the right to freedom of speech is itself not a mere claim for distribution of resources or opportunities, but a claim for individual freedom. Analogically, equality of opportunities enrolled in the claim for free international human mobility is not a claim that justifies migration from poor to rich countries. The question of human mobility is much broader than that. It includes the poor and the rich, nationals and foreigners, as human beings of equal standing, holders of individual rights, who

can create and transform their lives. Thus, what we can learn from it is that the needy might have a claim for mobility, but not because they are needy, but because they are human beings of equal standing.

4. My Response: State Membership as a Question of Individual Choice

From the arguments discussed in the previous section, we could see that the reconciliation between the increasing international human mobility and territorial states was either considered impossible, non-desirable, unworkable or the attempts to reconcile them were unable to respond adequately to our current challenges in a globalised world. The problem was not that they were pending more for one or another side because reconciliation does not necessarily require an equal or proportional compromise by all the involved parties. It is not because one loses something that the other party has to lose something of same or similar value in order to enable the reconciliation. We are not talking about restoration of justice, which demands some kind of proportional reparation for the previous losses. It is actually compatible with reconciliation that sometimes one of the parties has to accept to lose something in order not to lose everything. Rather than reparation, reconciliation involves a certain acquiescence in something undesirable that one no longer opposes: e.g. I reconcile myself to my limited cognitive

capacity and decide to do the best I can with my ape-like brain; I reconcile myself to the fact that I will have no summer holidays this year and decide to rebound to my lovely job.

In personal relationships, for example, a sphere where reconciliations are very common: after the bounds are broken due to the misconduct of one of the parties towards the partner, a reconciliation between both does not entail that the affected partner have the right to equally misbehave in order to re-establish the relationship. Though this can sound fair from one perspective, the result will probably be even more damaging for the relationship in itself. The success of their reconciliation seems to depend more on their capacity of accepting the changes provoked by the conflict and of reframing their new roles in the relationship. In this sense, reconciliation seems to demand only that the bond between the parties is renewed and remains, for all purposes, solid.

This can be also seen in a different setting than personal relationships, such as in socio-economic relationships. Think about the conflict between large companies and small shops generated by capitalism. The conflict is generated when large companies threaten the existence of small shops because they are able to charm the customers by offering them better services and more diversity of products at lower prices. Owners and sympathisers of small local businesses might want to fight out the large companies, but in reality, because of the increasing demands of the global market, it is

hard to believe that they stand a chance. I would not, at least, bet on that being the case. Their production might be too small; their products too expensive; distribution too restricted; and the consumption of their products appears to be decreasing. On the other hand, large companies might want to smash the competition of the small businesses as soon as possible in order to increase their profits, but in doing so they would lose important local knowledge and personal contact that would actually help them grow. Certainly these parties are not both in the same bargaining position and they would probably not end up with an exactly proportional deal. A reconciliation would most likely only create a link of interdependence between both parts that would be able to secure their co-existence. This could be achieved if, for example, instead of smashing the small businesses, large companies embraced them. It is like a large company buying milk from several small farmers to brand them together and distribute it at large, instead of producing the milk itself and breaking down the small farmers. They reconcile themselves in order to enable their co-existence and when they do, even if some party apparently lost more than the other in relation to the past, the new bond of interdependence will promote the flourishing of them both in the future.

It is this kind of reconciliation between the increasing international human mobility and territorial states that I am proposing here: a reconciliation that is attentive to the current

challenges and that will renew and secure the bond between the parties for the future. The proposal consists in arguing that mobility and membership at the state level should and can become a question of individual choice. Such a proposal is attentive to the current challenges because the individual freedom of mobility and membership will fulfil with content the space between domestic and international law that is already being filled formally with a cosmopolitan law that aims at protecting and promoting rights and freedoms equally to every individual irrespective of place of birth. At the same time, it creates the conditions to renew and secure the bond between all parties. This in the sense that the individual choice in this connection has the capacity to reshape territorial rights of sovereign states so that they are not dependent on the unilateral right to exclude immigrants without demanding sovereign states to cease to exist. In fact, considering state membership as a matter of individual choice would, in this sense, strengthen rather than weaken sovereignty if this latter is conceptualized in terms of the states' capacity to create a system for individual self-development. This is because, sovereignty would then be asserted by the recognition of the states' capacity to attempt to provide the conditions for human flourishing to whomever resides under their jurisdictions and not by the states' capacity to expel equal and free individuals from such jurisdictions.

As in the examples of reconciliation, personal and socio-economic, discussed above, I see the parties as not being in the same bargaining position. Their reconciliation would thus probably not entail an exactly proportional accountability of losses and gains. At the moment, it is a fact that little can be done to significantly curtail immigration; and this little does have very high costs (financially, e.g. costs with border patrol and physical walls in relation to the GDP, and psychologically, e.g. xenophobia and terrorism). The driving forces behind the increasing human mobility such as globalisation, wars and climate change are simply too strong to be fought back at the state level. Experience, confirmed once again with the current refugee crisis, shows that when people need or want to move, they will do so whether it is legal or not, whether it is dangerous or not, and whether they are welcome or not. Today, to significantly reduce immigration to a desired level for territorial states that understand immigration as a threat to their sovereignty, if possible, would require an aggressive politics of security and hostility against the Others that is, by now, inconsistent with the values liberal democracies are committed to.

A reconciliation at that point thus seems to require an acquiescence to increasing international human mobility as an imposition of our times followed by a reaction that aims at rebounding ourselves to our institutions in a new way. Territorial states must, I argue, be reinvented in a way that they are no longer

consist in the sovereignty of a people that has exclusive rights to settlement and membership; but rather in an externally recognized sovereignty of well-functioning institutions for setting adequate conditions to create a system for the development of personal autonomy of free individuals that can choose their state membership. If not reinvented in this way territorial states can risk to become obsolete before we have a new functional system in place. This could well lead to the loss of effective protection of individuals since it today is still centred at the state level. It is true that one has to recognize the advancements of NGO's and international organizations in protecting the rights of individuals around the globe, but such institutions are financed by charity and not taxes, which would create an unstable and easily overwhelmed source of protection. Given this, we see that a reconciliation appears to be important not because the institutions of the past must be preserved untouched in the name of some sort of tradition, but because, reinvented, they become an important tool to ensure a smooth transition to the future.

To accomplish this reconciliatory task, I explore the possibility of state membership being a question of choice in four perspectives that correspond to the four self-contained papers composing the thesis, outlined in more detail in the next section. I start by introducing the possibility of thinking of state membership as a question of individual choice from a critical investigation of the

meanings of cosmopolitanism throughout the history of Western political thinking (Ch. I). The main contribution of this first chapter to the overarching thesis is to show that even if it can be argued that membership necessarily requires exclusion of non-members, this does not serve as a sufficient justification for the states' right to exclude immigrants from their territories. This is because, in principle, exclusion could also be self-inflicted by individuals able to choose the state to settle and become a member. Membership would still be exclusive as the concept requires, without violating the equality and freedom of individuals across state borders. I continue the next chapter by challenging the states' right to exclude immigrants from their territories in more specific settings, material and non-material: (1) a setting that conceives *territory* as a meaningful piece of land capable of justifying the exclusive right to settlement; and (2) a setting that conceives *territory* as the physical result of civic boundaries capable of justifying the exclusive right to membership (Ch. II). The main contribution of this second chapter to the overarching argument of the thesis is to propose the detachment of the meaning of *territory* from the right to exclude and conceiving it as a matrix, i.e. as a set of conditions that provides a determined system for the development of free and equal individuals. The following chapter is dedicated to contest not the criteria of exclusion as the first two, but the criteria of inclusion (Ch. III). It contests naturalisation procedures, i.e. the process of

turning the ‘alien’ into ‘natural’, as the access door for full political membership at the state level. The main contribution of this chapter is to show that naturalising practices cannot determine state membership and the access to basic rights that should follow that. In the final chapter, I deal with the economic arguments attempting to justify the states’ right to exclude through the need of securing the borders of the welfare in order not to break the system. This argument operates on two levels: circumstantial and normative. At the circumstantial level, it shows that open borders might not be incompatible with a welfare state as commonly assumed. Thus, as the alleged trade-off is shown to be, at least, questionable, it cannot serve as a solid grounding for the justification of the states’ right to exclude. At the normative level, it challenges the instrumentalisation of human mobility for maximisation of either global or national outputs and it proposes a reframed question for economics that addresses human mobility for promoting the wellbeing of free and equal persons willing to lose to help the other.

5. Outline of the Chapters

Chapter I- Right to Hospitality, Right to Membership: A Critical Review of Kant’s and Benhabib’s Accounts on Immigration and Borders

Task: To expand the scope of the right to state membership and open the possibility for state membership to be seen as a question of individual choice.

The first paper explores the different conceptions of cosmopolitanism in the history of Western thinking in order to use them as analytical tools for the establishment of a suitable basis for a concrete idea of cosmopolitanism that would comprise a dynamic structure of multiple and interactive borders. The goal is to introduce the possibility of conciliating the increasing demands for free international human mobility with territorial states through the expansion of the scope of the right to state membership. This expansion will show that, if reframed, state membership does not necessarily require the states' right to exclude. Laying out the main subject of this thesis, I argue that this conciliation between free international human mobility and territorial states can be achieved if state membership becomes a question of individual choice.

I start the paper by examining the two Western origins of the concept of cosmopolitanism: Cynicism and Stoicism. While Stoicism conceived individuals as members of several communities concomitantly, Cynicism conceived individuals as detached from them. Although the critical value of Cynicism is acknowledged, due to its negative consequences for the political dimension, its contribution to my thesis remained limited. Following the Stoic tradition, I focused my attention to the modern context in which the emergence of state sovereignty turned the former conception of dynamic interactions among multiple borders more static, and to

the current context in which state borders have become, more accurately, shields. Of course, in ancient times, not everybody could evenly enjoy the right to mobility. As Alan Dowty (1987) shows when describing the history of borders, mobility, at the time, was a distinctive right of free men in relation to slaves. Later, it became a form of distinction between masters and serfs. However, when serfdom was replaced by wage labour during the early Renaissance, the mobility of workers, especially unskilled ones, continued to be restricted. In this period, instead of the expansion of the right to mobility and membership, states became more powerful and took over control over their borders. This power started to be contested, first by John Locke and then by Adam Smith, but it was Kant who proposed the foundation of a cosmopolitan law regulating the rights and duties of states and foreign individuals regarding mobility and border control; and that is why the discussion on Kant becomes an important part in this chapter. The right to hospitality represents the first stages of what would later become the right to membership in cosmopolitan law.

The Kantian cosmopolitan law, however, was restricted to the right to hospitality, a concern for sociability rules among nations, and a respect for individuals' rights that did not include a claim for political membership. In an attempt to overcome this limitation,

Seyla Benhabib (2004) proposes an influential and prize-worthy⁴ expansion of the Kantian cosmopolitan law to integrate the individual's right to state membership. Membership is defended by her as a human right. Built upon Hannah Arendt's principle of 'right to have rights' (Benhabib 2004:49-69), the right to membership was asserted as a moral right shared equally by every individual to be protected by legal rights. However, according to Benhabib, the right to membership is to be taken with caution when confronted with state sovereignty. She acknowledges that the increasing international human mobility has challenged state sovereignty in many domains such as the "economic, military and technological" (2004:6), but she seems to accept the fact that such sovereignty is still asserted through border control. This is because, according to her, new forms of globalisation transforming sovereignty in terms of border control are not yet in place. Based on that, she argues that the claims for membership cannot be exaggerated. The right to membership, in this sense, should not entail a regime of complete freedom of mobility and membership, but of porous borders instead; a regime in which the achievement of human rights would be advanced one small step further, but in which the states would still keep this last bit of sovereignty over their borders.

⁴ Winner of the North American Society for Social Philosophy's award for best book in social philosophy in 2004 and of the Ralph Bunche Award of the American Political Science Association.

The problem with the porous border approach is that, in practice, this means that borders are still selectively managed. This leaves space for states to allow mobility for only certain kinds of immigrants, i.e., those who could bring benefits to the hosting states, at the expense of others. When looking into the history of borders and seeing how mobility was restricted for slaves and serfs, it is difficult to see how the porous borders approach would improve this unfair practice since 'porous' would mean different things for white- and blue-collar workers, for instance. For the latter, the porous border is more likely to mean a restriction of mobility than an open possibility for it.

The cautious account of the right to membership is imposed based on an assessment that borders are necessary to ensure the functioning of democracy. As states are still seen as the basic structure in which societal wellbeing is founded, the promotion of this wellbeing seems to be dependent on the institution of the state, which requires the maintenance of their territorial, civic and political borders. Civic borders are, according to Benhabib, built through democratic iterations between the people and the state (2004: 19; 176-182). Through these iterations along time, people create a space of jurisdiction around them and acquire the right to protect it. In order for this space to be protected, mediated by the members' right to self-rule, the states acquire the right to exclude.

This argument for porous borders, in defence of the states' right to exclude, brings other problems. First, it fails to account for the emerging forms of membership that surpass the scope of the state. Democratic iterations are already escaping the scope of the state, i.e., persons with similar interests are already able to connect with each other irrespective of state borders. This might create a space for democratic iterations at the international or global sphere. Thus, democratic iterations between the people and the state in itself should no longer be seen as barriers for the expansion of a more positive meaning of the right to membership. This means that, democratic iterations might no longer be a reason to understand state borders as necessarily fixing civic boundaries and we could start to envisage other possibilities of organising political representation in higher levels.

Another problem is that the pure meaning of 'membership' is here problematic. Membership is understood as necessarily implying the right to exclude. But even though membership necessarily implies a kind of exclusion, i.e., a member of the group A will necessarily be a non-member of the group non-A, this does not imply that the members of the group A must hold the right to determine who should be a member of A. With the advancement of universal human rights in a more positive direction, the individual's right to choose must be highlighted. Paying attention to individual rights, it seems that the exclusion provoked by membership should

rather be self-inflicted. This means that individuals, through the exercise of the choice of being a member of A, would self-exclude themselves of being a member of non-A. Membership would still be exclusive, but the exclusion should be a consequence of individual choice. Based on that I expect to have opened the possibility to think of state membership as being a question of choice.

Chapter II- Territorial Rights of Liberal Democratic States: Challenging the Right to Exclude Immigrants

Task: To challenge the territorial rights of contemporary liberal democratic states for lacking a justification for the right to exclude immigrants from their territorial and civic borders and to propose a new way of conceiving them.

In the second paper, I argue that liberal democratic states are no longer able to consistently maintain the right to exclude immigrants from their territorial and civic borders. I challenge two key arguments in favour of border control related to meanings commonly attributed to territory: (1) territory as a piece of land, and (2) territory as the physical result of civic boundaries. These arguments are: (1) supporting the states' exclusive right to determine settlement in their territory; and (2) defending the exclusive right to determine membership in their civic borders. I argue that contemporary liberal democratic states (1) do not hold a

distinctive connection to a particular piece of land that enables them to justify such exclusive right to settlement, and (2) that actual states' members can no longer consistently maintain the right to unilateral coercion capable of restricting access to state membership. Finally, (3) I outline an alternative understanding of territorial rights by proposing to understand territory as being a matrix, i.e. a set of conditions that provides a determined system for individual self-development.

In the first section, I argue that contemporary liberal democratic states do not have a restrictive relationship to a particular piece of land, which is capable of justifying the exclusive right to settlement. This is because, when looking into the history of state borders, we see that the present configuration is the result of a variety of contingencies, such as wars, asymmetrical power relationships, contracts, luck and hazard, among others. This shows that the present border configuration should not easily be taken for granted as fixed structures when attempting to justify states' exclusive right to settlement in a determined area. Borders are contingent and change according to the political context. If we then admit that the emergence of liberal democratic states is changing the context together with the reframing of sovereignty, we seem to have reasons to challenge the attempt to justify the right to exclusive settlement today, based on the context of yesterday. The same movement has happened with other concepts that have

become more inclusive. Different contexts produce different concepts. Because state borders are settled, for reasons of political stability, we might not want them to change, at least not abruptly, when the main structures for promoting the wellbeing of the people are still organised at the state level. But it seems to be possible to keep the state territorial borders as jurisdictional unities for individual self-development without sustaining their right to prevent people to move in and settle in these territories. This is the way cantons and member states of federations already work.

In the second section, I show that even when territory means political membership in a democracy, the demos does not have to be bounded, as is often argued. Actually, this position of a bounded demos leads to serious conceptual, internal and external contradictions that can be overcome by conceiving the demos in an alternative way. Internally, political power is only legitimated by the people's will, but the holders of this will are not democratically grouped themselves. Externally, popular sovereignty demands that power legitimacy requires that the subjects participate in the shaping of the laws and rules they are supposed to follow, but a bounded demos would give the members the illegitimate coercive power to rule over non-members as well. Considering these inconsistencies, I then examined the directly opposed alternative to a bounded demos, i.e. of conceiving an unbounded demos instead. In this perspective, members and non-members could vote

anywhere, anytime, forming a global demos. This alternative, however, proved to be inimical to democracy when understood as more than a procedure, i.e. as a set of values and principles; and to be unviable due to practical limitations of the democratic structures being still, to a certain extent, confined to the state level. After dismissing both, bounded and unbounded conception of the demoi, I introduced my alternative: conceiving what I called a non-pre-bounded demos: a demos that is still formed by defined members, but where membership is not determined by the state's unilateral decision, but rather becomes a question of individual choice.

Chapter III – State Membership: Contesting Naturalisation as the Access Door to Electoral Rights at the State Level

Task: To argue that, within liberal democracies, naturalisation should not be a necessary condition for the granting of electoral rights for state members.

In the third paper, I contest the political borders of liberal democratic states. Given that such states are committed to the promotion and protection of individual rights, pluralism and tolerance and universal suffrage, we can see that the restriction of electoral rights at the state level from non-naturalised residents violates the coherence between the values they stand for and their policies. This is because naturalisation, as the process of

transforming the 'alien' into 'natural', is a kind of nationalising practice blending with the ideal of a non-nationalised model of citizenship. These violations can be expressed as follows:

- (1) It denies the status of political equality to non-citizen residents that are already state members and eligible to most civil and social rights once attached to national citizenship.
- (2) It imposes the nationalisation of state members through naturalisation in a context in which states are progressively being denationalised, mixing up state membership with nationhood.
- (3) It denies suffrage for state members in a context in which universal suffrage is acknowledged by human rights law (UDHR Article XXI).

My proposal to overcome these problems is to claim that electoral rights should be detached from a national conception citizenship that is dependent on naturalisation and be based on domicile instead. Citizenship has become an ambiguous and static concept incapable of dealing with the new emerging forms of membership of a globalised world of increasing mobility across borders. Defined as a status that grants civil, political, and social rights to citizens, citizenship has lost much of its meaning with the strength of human rights. Many of the civil and social rights as defined by T.H. Marshal (1950) are today acknowledged human rights that cannot exclude

non-citizen residents from its entitlements. In this sense, we can see that the national conception of citizenship is progressively being replaced by a cosmopolitan citizenship. A citizenship that is not only based on moral obligations towards every human being, but that moves towards the expansion of the political equality that derives from that. Political rights, however, are, to a certain extent, still restricted to national citizens, but as prolonged alienation is not desirable in liberal democracies that benefits from attracting skilled migrants, electoral rights have already been expanded to non-citizens at the local and regional levels. Electoral rights at the state level, however, remain exclusive for citizens and access to them depend on naturalisation.

With this in mind, I start the paper by contesting naturalisation procedures for not being coherent with the values to which liberal democracies subscribe. Even if these procedures have been weakened, the Netherlands being an exception, naturalisation still has a strong symbolic meaning that constrains the relationship between mobile individuals and states. Based on an idea of national identity, these procedures call for the standardisation of plurality and a proof of worthiness and loyalty at the very personal and subjective level. In the ceremonies of naturalisation in, for example, the UK or the US, non-citizen residents are placed in a room full of flags and pictures of authorities. There, they are welcomed to the 'super-family' by an often strangely, formally, dressed man and have

to swear allegiances to the new country, promising to be loyal subjects and to respect the law. But this is not all. To be at the ceremony, non-citizens have to meet, among others, requirements such as “good character” in the UK or “Dutch values” in the Netherlands.

Some will defend that these requirements are important for social cohesion and political stability, but also for the protection of the national identity of the nation-states. Others will argue for the abolition of citizenship tests and of subjective requirements for naturalisation. For the latter, naturalisation should be either automatic or purely based on the time of residency. I, on the other hand, argue that not only should citizenship tests and subjective criteria for naturalisation be abolished, but also naturalisation in itself as the access door to electoral rights at the state level.

In the second section, I discuss the problems arising from immigration policies that restrict electoral rights to citizens, disqualifying other state members that domicile in the states' territory. The first problem is one of democratic legitimacy. This is because non-citizen residents are directly affected by laws they have not had the chance to help shape. Self-determination is defended as an individual and not a collective right. Therefore, non-citizen residents, as well as resident citizens should be entitled to it. Second, naturalisation, through the lenses of liberal democratic thinking is a coercive practice in itself when imposing the

standardisation of identity into a ‘natural’ form for those not seeking it. Third, naturalisation does not promote social integration.

In the third section, I analyse the responses of other liberal democratic theorists and consider them unsatisfactory because, through the support to naturalisation procedures, they still link electoral rights at the state level with a national conception of citizenship; this despite proposing considerably weakening the requirements for naturalisation.

In the fourth section, in a maximalist approach towards the abolishment of naturalisation and achievement of political equality for non-citizen residents, I disaggregate different forms of membership in order to show that state membership differs from nationhood. Therefore, even if naturalisation would be a reasonable requirement for the acquisition of nationality, nationality should not be a necessary condition for the access to basic rights such as electoral rights at the state level.

Chapter IV - Open Borders and Welfare States: Can't They Really Get Along?

Task: To contest welfare states' objections to international freedom of mobility.

After having problematized the borders of states and political membership at the normative level and pointed to the need of rethinking them in more inclusive ways that better correspond to the commitments to liberal democratic values, I move to the circumstantial level in order to contest the borders of welfare states. Assuming that, at this point in my thesis, some readers might sympathise with my overall argument that argues that open borders should ideally be compatible with state political membership, they could still reject the thesis based on practical limitations. Thus, even if open borders appear as the just idea to have in the back of our minds, the consequences of its implementation in the real world today could still be said to be disastrous.

At the risk of being more vulnerable to criticisms than in the first three chapters, I decided to address this age-old gap between 'should' and 'can', 'theory' and 'practice', 'ideal' and 'real'. This is because I do believe that there are realistic ideals, i.e., ideals which we are to pursue concretely, and open borders might be one of them. The list of circumstantial objections to open borders is indeed extensive. Open borders are said to threaten national security, public order, national economy, among others. All these issues are very complex and I do not undermine them. But I had to make a choice here and my choice was to deal with the circumstantial objection to open borders that I considered to be the most challenging: the welfare states.

Since Milton Friedman, the incompatibility between open borders and welfare states has been largely assumed. Even today, libertarians argue that open borders would boost global economic growth, but that the consequences would be the dismantling of welfare regimes, particularly of the social democratic ones. This is because as this regime is based on the active promotion of high levels of social equality, they would work as magnets for immigrants seeking social benefits. As this social equality is achieved mainly by redistribution of tax money, the magnet would work only in one direction, i.e., attracting those immigrants that use more benefits than they pay tax and deterring immigrants whose contributions outnumber the social benefits received. Assuming that individuals would migrate to places where they would benefit most, social welfare states would receive more tax receivers than taxpayers and their economies would break down. To avoid this tragic end, social democratic welfare states are advised to change their regimes in the direction of liberal market models when facing increasing immigration.

The problem is that, even if open borders emerges as a requirement of individual freedom of mobility as advocated by libertarians, and even if it would boost the global economic growth as advocated by utilitarians, we know that social democratic welfare states today, due to their increased capacity to promote equality, perform better in many important segments that constitute a well-

functioning society, such as lower levels of health problems (mental and physical), lower rates of criminality, unemployment, child mortality, poverty among the elderly, among others. This means that, inside their borders, such welfare states appear to be able to promote freedom and equality of opportunities in more meaningful ways than other economic systems. Considering this, it appeared problematic to me to endorse Friedman-like positions for open borders if this had to be done at the expense of welfare states.

I then looked at the view of another economist, Martin Ruhs, who endorses the opposite of Friedman's view, i.e., given the trade-off between open borders and welfare states, he defends the protection of welfare regimes at the expense of open borders. The argument is that in order to promote national economic growth, borders should be controlled. My idea was to approach both directions from where a trade-off was conceived in order to examine whether a window to contest it would open. I found a window. In fact, I found two. One in which I could look inside the dynamics of economics and the other that allowed me to look outside it. This way of expressing my methodology might appear too metaphoric, especially because in the paper, I used the metaphor of boxes instead of windows. But these metaphors are useful to explain my two-level argument and show that they are not contradictory, but complementary.

The look inside was useful in order to engage in a more instrumental debate that affects immigration control ‘here’ and ‘right now’. Looking inside, I found not only economic objections based on fiscal stress sustaining the trade-off between open borders and welfare states, but also social objections based on the risk of welfare states losing public support when facing the increase of heterogeneity led by immigration. The look outside brought the moral philosophical contributions to the front of a debate that affects immigration control in relation to an ideal of justice. The goal was to make the link from a ‘can’ that indicates possibility to a ‘should’ that is more concrete than the one expressed in the first three chapters.

My response to the fiscal problem was to show that instead of producing fiscal stress, immigration is currently contributing to the fiscal balance of countries (or unions) with low or negative natural population growth. One might think I am saying that free immigration is the solution to the fiscal problem, but I am not. I am saying, instead, that immigration is not part of the problem and will not be part of the problem for the next 20 years. Of course, instead of increasing human mobility across borders in order to decrease the dependency ratio between workers and dependents, we could incentivise the increase of births in such countries where natural growth is low or negative. But the question then would be: can we really go in this direction on a planet that is already overpopulated

and suffering the consequences of climate change due to that? I think not. Of course, instead of increasing human mobility across borders in order to decrease the dependence ratio, we could still substitute public pensions for private ones. But, relying on Bowman's comparative studies (2014), I argue that this solution is not suitable either. And this is because social problems require collective responsibilities. No matter how many private pension funds are available, there is always going to be someone that is not able to afford it. Should we then blame the elderly for not being "entrepreneurial" enough to secure their own pensions? I think not.

My response to the social problem was first to confront old empirical studies based on a misguided methodology with more complete and recent ones that demystified the correlation between increasing heterogeneity and the decrease of welfare states' public support. Then, I further investigated the reasons behind the hypothesis that holds such a correlation, be it negative or positive. The reason behind this is the assumption that solidarity could be negatively affected if the identity of the group is disrupted by the inclusion of strangers. But I argue that the worse the stranger is pictured, the stronger would the welfare states' public support tend to be. Allied with Luhman's sociological interpretation on risk, the inclusion of strangers conceived as a strong threat to natives' social security would give the latter a stronger, not weaker, reason to support the welfare regime. Of course, it can be argued that natives,

being part of a community built over time, have the right not to be exposed to such threats; that, based on the protection of this alleged common identity, they could determine who is equal and who is different from a political point of view. But even if they have the right to have their homogeneity protected by liberal democratic states, does that mean that these states should be homogeneous themselves? I think not.

For these complex problems, we need more sophisticated solutions and that is why the look outside becomes so important. What is contested in this perspective are the conditions that bring the trade-off between open borders and welfare states into existence. These conditions are imposed by an intrinsic take on economics and extrinsic take on human lives. The intrinsic take on economics imposes target-oriented actions and decisions on individuals that are given no choice but to aim for success in certain terms, i.e., at the expense of others. These target-oriented ways are said to be rational, but I argue that, in fact, they are the opposite. They impose a negation of our rationality that goes beyond strategic abilities and is expressed through deliberation and choice. It delegates it to numbers, evidences, and facts that necessarily point in one direction: one that brings most benefits to the self at the expense of others. The capacity of distinguishing between right and wrong eludes in a sentence: 'we did what we had to do'.

The extrinsic take on human lives is problematic for several reasons that I call ‘the forgotten obvious’: (1) human beings are not commodities; (2) the meaning of life cannot be reduced to a monetary value; (3) human rights should not be for sale; and (4) human rights should not be inheritable. To bring this forgotten obvious to light, I evoke Sandel’s critique of economics (2013) to argue that a clear line between what is intrinsic and extrinsic needs to be drawn urgently. Based on this need, I argue that economics should be subordinated to universal morality when expanding its initial scope of dealing with production, distribution, and consumption of goods to deal with human rights and mobility. In this sense, economics should not lead us to evade the responsibility to respect individuals as free and equal persons. With this in mind, I proposed a new starting question for economics, taking mutual respect into account. If we commit to that responsibility, we see that open borders and welfare states might not be contradictory to each other, but complementary. Both move towards a common goal, which is to promote equality. The domestic challenges that social democratic welfare regimes face to promote internal equality can be expanded. Newcomers might change the quantity, but not the quality of the challenge, and this indicates that we might already have an answer to overcome the alleged trade-off when looking at the inner functioning of social democratic welfare states. This means that, guided by mutual respect, individuals might be more

responsive to redistribution and become more supportive of welfare regimes. With the spread of such regimes worldwide, welfare would not be the magnet for tax receiving migrants it is alleged to be.

To conclude, I want to expand my argument a little bit more in order to refute the vision of the tragic end of the welfare states in the case of opening the borders, as defended by Friedman. I would like to remark that even if economics does not reformulate its starting question and continues to assume this radically egotistic view of individuals' ability to empathise only with themselves and their kin, it could still be argued, with the same speculative tools used by Friedman, that open borders, rather than posing a problem for social democratic welfare states, would threaten liberal market regimes. I explain how: seeking the most benefits, immigrants with lower skills could perhaps prefer to migrate to states where they can work and accumulate as much as money as possible to send to their families abroad whom they plan to re-join one day. Considering that not everybody is willing to bear the psychological and economic costs of migration, even in times of adversity, there will always be someone who prefers to stay and are in need of assistance. In social democratic welfare regimes, working hours are regulated and social benefits do not come in the form of cash transfers, but as benefits such as education, health care, and public services. The costs of living in social democratic states are very high and with high taxation. Based on that, we could think that this might make it hard

to accumulate money and satisfy the immediate needs that would benefit low-skilled workers and their families abroad the most. On the other hand, immigrants who do not have dependents abroad, and are usually more educated, would possibly find most benefits in social democratic regimes that provides them with a higher quality of life. Thus, contrary to Friedman's prediction, another possible result of open borders would then be that liberal market regimes would attract low-skilled migrants and become countries of production of basic goods, while social democratic states would attract more skilled migrants and become countries richer in human capital and production of technology and services. What would be tragic, in this sense, is that liberal market regimes would become the third-world. In order to avoid this, they should be advised to change their policies towards more robust welfare regimes.

6. Methodological Considerations

In this section, I aim at clarifying the structure and argumentative methodology I will use throughout my thesis. Regarding the thesis structure, it is important to remark that it does not follow the format of a monograph, but the format of a paper collection. Accordingly, this is not a study of a unified theme structured in sequential chapters, but it has a broader focus on an overarching theme that is structured in self-contained articles published or publishable separately. These self-contained articles are subject to a

series of limitations that monograph chapters are not. They must, for example, be adapted to size limit, literature and to the ongoing debate in the journal their publication is aimed at. These different demands might have caused a lack of continuity in the chapters composing the thesis, so readers should not expect specific arguments engaged in one chapter to contribute directly with the argumentative chain of the other chapters as in a monograph.

Another important remark regarding the structure is that the chapters follow an order of discovery and show the progress of my thinking. They were written in very different stages of my PhD—being the first in 2012 (the year I began) and the last in 2016 (the year I finished). The chapters are based on papers and were revised to compose the thesis, in some cases, substantially. The first chapter, for example, is more historical and investigative. It does not defend the main thesis in a strong sense. On the contrary, the thesis is there born from an historical investigation of the different foundational types of cosmopolitanism and the unveiling of a specific type that allows multiple memberships. The historical approach started from Cynics (negative cosmopolitanism), Stoics (positive cosmopolitanism), Kant (legal cosmopolitanism) and ended with a contemporary take on it with Benhabib. Though the first three choices seemed to be necessary, I could have chosen other contemporary authors that follow the same historical chain than Benhabib such as Habermas, for example. But her prize-

winning approach on the right to membership appeared to be a good representative of a complex thought that mixes particularists and universalist elements. The chapter already had a very large scope throughout the history of Western thinking and I was constrained by time and space to consider other contemporary authors. The second chapter was substantially revised for the thesis in order to clarify the argument and further develop its positive part. The third chapter contains important conceptual distinctions that were implicit in the original version. And the fourth chapter, contains a few specifications to clarify my approach. For instance, in the latter chapter, I am not arguing that open borders *are indeed* compatible with the welfare state. The verbal sentence “to be compatible with” was never used to describe this relation in the original version, but I included now some italic forms to highlight the scope of my claim. I also never wanted to suggest a complete reorientation of economics devaluing empirical research, but only to propose that this research should be put in a larger perspective when theorising on human mobility.

Regarding the argumentative methodology, its clarification is important because, since I am arguing for open borders, it can appear as if I am engaging in a purely abstract and theoretical project that has little to do with the real world, but I am not; at least, not entirely. First, I admit I have an idealised project in the background of my thesis that aims at achieving justice in terms of

freedom and equality for all, natives and foreigners, citizens and immigrants, insiders and outsiders. I blur these differences and connect them as human beings of equal standing. Second, I admit that, to some extent, I consider that our moral universal commitment towards this equality entails political commitments to achieve them. However, as in Thomas Pogge's (2005) methodology, my starting point is not a theory of justice in itself, but rather the diagnosis of injustices occurring in the real world due to illegitimate exclusions. In this sense, my claim arises from the conclusion that, because these exclusions in the real world are illegitimate according to the ideal world, we must attempt to revert them.

The linkage between an ideal and a real world, i.e., between moral universal commitments to political ones, is not direct in my thesis, but contextual. I am not arguing that because we are morally committed to consider every human being as equal and free, borders should necessarily be open. My claim is rather mediated through the context in which liberal democracies currently engage with these universal values and aim at protecting and promoting the values politically. The foundation of the European Court of Human Rights, for example, is a clear indication that liberal democracies have taken a stand towards political commitments to achieve and implement moral universal values. Going in this direction, my claim is not based on an argument of necessity of open borders, but on one of consistency between values and practices of liberal democracies. Of

course, there is much disagreement about how to define what these liberal democratic values are in the first place. And, of course, theory and practice will never match completely. Nevertheless, I believe that I am not being excessively demanding when expecting the compliance to no more than individual rights, pluralism and tolerance, and universal suffrage. I hold the view that I am not being too demanding when expecting this compliance, not because I believe these values are easy to achieve, but because they seem to be at the very core of the definition of liberal democracy; and this, in a way, that if we exclude one of these values, we will be endorsing a regime other than liberal democracy. Joseph Carens (see [1987] 2008) and Philip Cole (2000) apply a similar methodology. This claim can be expressed as follows:

- (i) Liberal democracies are defined as X, Y, and Z.
- (ii) They are engaged to X, Y, and Z morally as well as politically.
- (iii) Politically, in the real world, liberal democratic states violate X, Y, and Z.

Therefore, there is an inconsistency between their values and practices that needs to be addressed.

The solution to this inconsistency can, however, go in different directions. Weakening my claim for open borders, liberal democratic states could decide to drop political commitments to X, Y, and Z in order to achieve consistency. They could also drop the whole liberal democratic project and redefine themselves according to less ambitious values. If one of these things happened, my argument for open borders would be seriously compromised. However, I have good reason to think this will not happen besides the fact that my fingers are crossed. The reason is that the commitments to these liberal democratic values do not arise from a simple good heart; they are the conditions that will enable the realisation of a larger project of promoting social progress and economic development. Historic-structuralists rooted in neo-marxism criticise the fact that liberal democratic values are essential to the development of capitalism and globalisation. Although the critique is fair when arguing that freedom of mobility of persons across borders would give room to a lot of exploitation by large corporations, some liberal democratic regimes have shown how it is possible to balance the negative effects. Liberal democracies, despite having a common political plan and all being capitalists, differ considerably when it comes to more specific economic projects. Some liberal democracies are based on the liberal market as in the case of the US, but not all. Others are conservative welfare states, such as Germany, and others are social democratic welfare states, such as Norway (Bowman 2014).

While Carens, after years of migration scholarship and a background in sociology, argues that the solution to such an inconsistency between the values and practices in liberal democratic states can be found in the contextual analysis that more closely considers the specific cases where tensions between peoples and territories emerge (Carens 2000), Cole proposes to reformulate political theory as a whole (Cole 2000). My proposal is to try to bridge the gap between theory and just practices, by focusing on the attempt to make theory feasible through the institutions that we currently have in place. This, despite the risks that a more practical account entails in terms of vulnerability of the argument to criticism when confronting changeable circumstances from all sides. There is never merely one solution to practical problems, and they are never final.

Like in Allen Buchanan's (2004) methodology, I presuppose the current reality in which we are organised through a system of states and I do not idealise its abolition. In fact, I presume that its abolition would probably cause quite a lot of trouble today as states are still the basic structure for the distribution and enforcement of rights and duties. This is to say that, in my thesis, open borders do not equal the complete absence of borders. It means rather that state borders should be open for free movement of persons across them. The states' jurisdictions are to remain as long as their reality actually lasts. And in this sense, I do not aim at idealising the

necessity of states either, but rather consider them as Saskia Sassen (2008) does, i.e., as contingent institutions. Thus, even if I have a normative goal, i.e., to offer some guidelines for what we should do to achieve justice, this is in relation to the current injustices generated by flaws in our contingent institutions. By dropping the concept of national citizenship and conceiving it in the broader terms of state membership, I am not only dropping an ambiguous concept that is embedded with a controversial and potentially exclusionary idea of national identity, but also opening space for thinking of other forms of political memberships that might arise if states cease to exist.

Another important dimension to be considered here is that I propose to discuss immigration policies directly when, for example, criticising naturalisation procedures and the restriction of electoral rights at the state level for non-citizen residents. But more generally, I discuss policy, because border control is a policy, not a necessity.

When attempting to move beyond theoretical reasons and ask whether and how is it possible to implement realisable ideals into the real world, I needed to draw upon more specialised fields of knowledge than philosophy in itself. In an interdisciplinary effort to enlighten a problem, and not just a concept, I engaged with other fields such as economics, sociology, anthropology, political science, and geography. Adrian Favell (2007:260) argues that “there could

hardly be a topic more naturally ripe for interdisciplinary thinking than migration studies.” Interdisciplinary studies are, however, still seen with a certain degree of scepticism due to failed attempts to promote it in the past. A failed attempt, however, does not imply that interdisciplinarity is a failed enterprise in itself. The reasons for that failure were several, among them: (1) confusion between interdisciplinary and multidisciplinary research; (2) lack of a defined community of experts that could assess the quality of the interdisciplinary research; (3) lack of agreement of regular disciplines that coined the use of some terms in specific ways; and (4) lack of depth in the name of breadth.

(1) Despite the willingness of undertaking interdisciplinary research, researchers did not venture into other fields while trying to connect and integrate contents from different disciplines. Instead, they kept working within their domains and organised the final research product grouping the individual work of several experts in determined fields. This gave rise to multidisciplinary, but not truly interdisciplinary accounts. From one perspective, this can be seen as a failed attempt to conduct interdisciplinary research, but it can also be seen as one step towards it. Readers of multidisciplinary volumes, for example, certainly benefitted from such multi-focal accounts aiming at being problem-, and not discipline-oriented. Women’s Studies, Environmental Ethics and Ecological Economics are examples of this successful transition. In many universities,

these are not part of the curricula of determined disciplines anymore, but having exceeded the scope of them, acquired a life of their own.

According to Carole L. Palmer (2001:vii), “the real-world research problems that scientists address rarely arise within orderly disciplinary categories, and neither do their solutions.” Considering this, I identify my topic of study, migration and borders, as one of these multidimensional research problems that requires integration between ideas and concepts from one side, and empirical data and information from the other side. From this perspective, it seems that the limitations of my ‘field of origin’, philosophy, does not have to dictate the limitations of my contributions to a topic that is too broad and complex for a single-sided discipline.

(2) It might be that in the past, interdisciplinary studies lacked a defined community of experts. This posed some difficulties of how to evaluate the merits of a research project through single-sided disciplinary lenses. Bibliography can lack some cornerstone references in one area and include alien ones that single-sided experts never have heard about and are not really willing to engage with. Philosophers might be critical to the methodology employed by empirical studies (e.g. the induction problem), and empirical researchers might be critical to the methodology employed by philosophers (e.g. the delusional problem). But this initial

discomfort is natural, since the aim is to operate beyond these restricted areas.

Migration Studies, however, might have already passed this level since a community of interdisciplinary experts in the field already exists. At the University of Oxford, for example, there are three interdisciplinary centres of Migration Studies, which I had the pleasure to visit: The Centre on Migration Policy and Society (COMPAS) founded in 2003, The Refugees Study Centre founded in 1982, and the International Migration Institute founded in 2006. In these centres, they start from the presupposition that migration and borders are complex issues. There, political scientists, anthropologists, economists, geographers, and sociologists, among others, have successfully undertaken this task of deconstructing migration and borders from many perspectives and using different methodologies together. While they have been using empirical data to illuminate and advance theory, political philosophy seems to still be disconnected from it, i.e., disconnected from the realities of the topic. But immigrants do have names and faces. They are not abstract entities and theories detached from reality will not help them overcome their problems here and now. National identity, citizenship and state borders, for example, are all social constructs that were built at particular times in our history. They are not concepts that can be abstracted from reality and granted a necessity-status just because the object of philosophy is said to be the

necessary instead of the contingent. In order to properly contribute to these relevant contemporary issues, I believe, philosophers must address this gap by engaging with other fields of knowledge.

(3) The lack of a common understanding of key concepts, such as the meaning of migration in itself, might pose some problems for communication between fields. For a biologist, for example, human migration might mean a strategy to improve chances of survival in the same way used by birds, whales and reindeers. For sociologists, migration might be understood in terms of movement of persons in time and space loaded with a meaning. For economists, human migration seems to be tied to the aim of improving living conditions and opportunities. For geographers, migration can perhaps be defined in terms of changing landscapes. For historians, human migration might be divided into periods: the first large migration, the second large migration, and so on. In political science, migration is viewed more in terms of tensions: tensions between migrants and states, migrants and communities, and migrants and citizens. We might have to adapt to a new vocabulary and language when working across disciplines, but why does this sound so difficult? In philosophy, we are used to starting with definitions and when we do not find one, things get very confusing. But, after all, we are also used to build new concepts and to concede some others just for the sake of the argument. The capacity of proper abstraction from philosophy might help here in

the task of laying the ground for a common debate across disciplines, occupied with contemporary questions, not with burial ones. Until then, we can operate together with a general definition of migration that consists simply of human mobility.

(4) The last point that I would like to raise here is the criticism that interdisciplinary studies receive for compromising on depth for breadth. I do not think that this is a fair criticism. First, because the research is still done by experts, i.e., by persons that have spent at least 10 years of their lives, from their bachelor's to doctoral degree, in academia. It is hard to see how highly educated academics can become intellectually handicapped and lose their ability to seek depth just because the picture is suddenly more complex and the boundaries of the topic not very well defined. Second, we might have to ask: What is depth and what is breadth in such a context? Depth might not be the achievement of a formulation of a sound theory of justice that operates perfectly only in an idealised world, nor the achievement of the collection and analysis of long-term data. Depth might actually be the opposite and achieved only through breadth. This is because cognitive advancements and the progress of knowledge are not tied to single, but rather, are dependent on the capacity to integrate knowledge and methodologies across disciplines (see Mansilla 2005:16). Third, the world did not change just because we started to see it fragmented into disciplines of specialisation through positivist

lenses. The world is still complex and to understand it in depth we will need to cross the boundaries of expertise and create and cultivate more interdisciplinary fields of experts in problem-oriented topics. In my thesis, I expect to reclaim some of this interdisciplinary contents back to philosophy in order to deal with the circumstantial objections to open borders not at the expense of depth, but to truly search for it.

This interdisciplinary aim is engaged, not solely, but particularly in the fourth paper, when discussing the welfare states' objections to open borders. Through the interdisciplinary lenses, it might be that my approach is still too conservative and field-oriented. But after having found a new route, I will pursue this approach further in future research. To conclude, I would like to go back to the two background assumptions I mentioned at the beginning of this section: (1) conceiving justice in terms of equality and freedom for all, and (2) implying that moral commitments to equality and freedom for all entails political commitments to achieve them. I would like to remark that maybe these assumptions might not, after all, be too controversial. Regarding the first assumption, it is relatively broadly agreed that human beings are free and equal and that they deserve justice. The second assumption, however, requires a little more justification. One way of justifying it is to appeal to a political cosmopolitan view, which is the one I engaged with in my thesis. Another way that I will briefly

mention here is to appeal to the fact that universal commitments to universal equality and freedom did not emerge first as a moral claim that now needs to be transposed into political ones, but the opposite. According to the historian of law Samuel Moyn (2012), these commitments emerged first in the political discourse after the WWII in order to counter-balance non-democratic ideologies. Hence, if they were political in the first place, they can become political again, I hope, with genuine efforts.

Open borders are not only possible in an “ideal world”. The European Union is not an ideal world. I come from a developing country, once called the Third World, and so far, borders have not been closed to me. I moved to whichever countries I wanted; seven thus far. Of course, this does not mean that borders are already open for all, but this certainly means that they are already open for some. There is only a little bit further to go in order to make human mobility across borders just for all in the real world. The consideration of these realities of the world, however since they are complex, cannot be properly done through the lenses of a single-sided discipline. Political philosophy, for example, would be unable to guide policy-making and attempt to promote effective social transformation if not engaging or dialoguing with other more specialised fields of knowledge such as economics, sociology, political science, geography. I contend that this limitation is especially evident in my topic (immigration and borders), when the

responsibilities of the researcher towards the society derives from the discussion of a very current problem that is affecting so many lives today.

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Concluding Remarks and Prospects for Future Research

Guided by the need to contribute to enlighten the salient debate on immigration, I aimed, in this thesis, to offer an alternative understanding of states' borders compatible with freedom of human mobility and membership across them. I undertook this task puzzled by the conflict between the increasing pressures for international human mobility and states' sovereign right to border control. This conflict currently generates serious tensions for both individuals and states. From one side, driven by globalisation and war, among other factors, individuals are becoming more and more mobile. On the other side, compelled to preserve their sovereignty, states attempt to restrict this mobility. The outcome of such a conflict is unilateral coercion and the limitation of individual freedoms, which is accompanied by uncontrollable consequences. Among these consequences are the increasing numbers of unauthorised immigrants, human trafficking, hostility against immigrants, and fatalities related to border crossing as highlighted by the Mediterranean incidents.

Due to the magnitude of the challenge, in addition to other global issues, states are cornered into relying on international

agreements that take away from them the right to determine immigration policies solely according to their national agendas. With the consolidation of international law, states, particularly liberal democratic ones, are bound by human rights that are increasingly enforced; violations are brought to international courts (e.g. European Court of Human Rights) or subjected to international interventions. Human rights already grant several rights of mobility to individuals (e.g. the right to emigrate; right to seek asylum; right to regional immigration; right to return to the country of origin; right to citizenship), leaving the bounded states with not much space for unilateral policy-making on the matter. With this in mind, I proposed a possible line of inquiry that would reduce this friction between individuals and states.

In order to reconcile international human mobility with territorial states, my proposal consisted of opening the possibility for conceiving of state membership as a question of individual choice. State borders would not be abolished, but redefined in terms of jurisdiction that does not depend on border control or unilateral exclusion. As we saw when discussing states' territorial rights, the right to jurisdiction is commonly seen as inseparable from the right to border control. However, these rights are distinct from one another. While the right to jurisdiction is a right to rule everything and everyone within the borders, the right to border control is a right to rule outside them. Communitarians, but also some

cosmopolitans, have argued that, although different, these rights cannot be exercised independently from one another. According to them, this is because the right to rule within borders depends on the right to determine the subjects. This perspective, considering the right to jurisdiction and the right to border control dependent on one another initially allowed for two solutions: (1) to defend border control in order to protect state sovereignty, or the sovereignty of states' national citizens over a state jurisdiction; and (2) to reject both rights implying the rejection of the institution of the states as sovereign entities. None of them, however, were conciliatory enough to reduce the friction between mobile individuals and states. The first was too conceding to states and state members (state-centric) and the second, too conceding to mobile individuals (individual-centric). The problem with the second solution was not exactly excessive individual freedom, but the lack of structure to promote and protect mobility and other individual freedoms that are today still organised at the state level.

In the first paper, among other conceptions of cosmopolitanism, I analysed Seyla Benhabib's cosmopolitan account, which aims to conciliate the tensions between mobile individuals and states. However, although defending the right to state membership, by proposing "porous borders" and keeping the states' discretionary right to border control, Benhabib's argument falls into the first type of solution listed above, ending up with

being excessively state-centric and failing to find the reconciliation sought for. This is because, despite the exigencies for transparent admission procedures, porous borders, in practice, are still prone to be a selectively unjust mechanism favouring, for example, skilled immigration at the expense of others. A system not very different from what we have today, which is generating many problems for states and individuals. The gap seemed to still be open. In order to attempt to fill it, I showed that even if state membership necessarily entails exclusion, a more reconciliatory solution, sensitive to individual freedoms, should allow this exclusion to be self-inflicted.

This possibility of thinking of state membership as a question of individual choice opened the space for a third solution. From a cosmopolitan approach, I argued that the claim to determine the subjects, in the context of liberal democracies, is to be detached from the right to rule. This is because liberal democracies are defined by the commitment to some values that, as opposed to classic sovereign states, compel them to be more inclusive in their practices in the name of consistency. In the thesis, this detachment was discussed according to three perspectives: territorial (consisting of geographic and civic borders) (Ch. II), political borders (Ch. III), and the borders of the welfare states (Ch. IV).

Discussing the role of territorial borders, I argued that the objections to mobility being conceived of as a question of individual choice supported by states' territorial rights are outdated and,

therefore, inconsistent with the contemporary ideal of liberal democracies. This is because, as opposed to nations, liberal democratic states do not have a connection to a particular geographical piece of land that is meaningful enough to enable them to justify exclusive right to settlement without compromising individual freedom, nor can they coherently maintain their right to unilateral coercion over non-members without compromising democracy. The main objection to this argument is to say that democracy needs borders and civic distinction as practical requirements of representative systems. Thus, state membership cannot be a question of individual choice, because of the need for a bounded demos. However, because this view violates the individual self-governing principle, existing alternatives have explored the possibility of conceiving a rather unbounded demos. These alternatives, although claiming to achieve theoretical consistency between liberalism and democracy, have not solve the problem of representability that a global demos would impose. My original solution was then to propose the institution of what I called a “non-pre-bounded demos”, a demos that would still be composed by defined members, but where membership would not be determined by the states, but rather, by individual choice to participate in the life of such states. This proposal would not encounter the same problems as the other two alternatives, since it does not seem to violate the individual autonomy principle, nor does it fall into the

representability problem that an unlimited demos might pose. The idea of conceiving a “non-pre-bounded demos” still needs to be further developed in future research, but for the purposes of this thesis, it certainly embodies the core aim of opening the possibility for thinking of state membership as a question of individual choice. State members would then become something similar to the passengers of a bus. The bus has a fixed trajectory, but the passengers change constantly throughout the day.

Discussing the role of political borders, I argued that the objections to state membership being a question of individual choice are, to a great extent, mistakenly justified through the appeal to nationhood. There are different forms of membership that require different justifications. Nationhood requires the fulfilment of some conditions (i.e., conformity to a certain cultural identity) and the external attestation of actual members (i.e., the recognition and acceptance of such conformity by the group one wants to become a member of). State membership in liberal democracies committed to tolerance and pluralism, on the other hand, should not impose such cultural conformity on its members and national identity should not affect the distribution of rights entitled to state members. This is because the role of these states should no longer be one of manufacturing homogeneity, but rather, of managing heterogeneity within a certain jurisdiction and enabling the exercise of choice. The main objection to this position is that the

multicultural project has failed and that is why culture is increasingly being politicized today. However, the argument defended here could then be reframed in the context of to the Human Rights Declaration as a claim for non-discrimination.

Discussing the borders of welfare states, my concern was directed towards addressing the kind of objections that could attack my claim for producing harmful consequences if it was implemented. That is, those objections that, even if accepting that state membership should be a question of individual choice, could stress the gap between theory and practice and claim that the implementation of such a theory would be disastrous. Many objections fell into this category, such as the arguments on national security and public order. But because of the limited scope of this thesis, they could not be addressed here. My choice was to deal with the objection that I considered the most challenging and, therefore, the most controversial: the welfare states. Since Milton Friedman, the established understanding is that free mobility of persons across borders is incompatible with a welfare state. I problematized the certainty to which this trade-off has been portrayed in order to show that the welfare objection to international freedom of human mobility could potentially be overcome.

I first argued from the perspective of economic theories that consider immigration as a tool either for global or national economic growth, where the trade-off seems to emerge as economic

and social strains. As we saw, economic strain was based on the risk of overwhelming fiscal stress provoked by the outnumbering of tax receivers over taxpayers, and the social strain lay in the danger of social heterogeneity to compromise welfare states' public support. However, these strains were both shown to be contested. From the economic perspective, rather than provoking a fiscal stress, immigration has contributed to maintaining the fiscal balance of countries with low or negative natural population growth. From the social perspective, the old empirical studies used to support the claim that heterogeneity provokes a loss of public support for welfare regimes are now challenged by more complete studies that take into account dynamic and more subjective factors relating to the causes and consequences of immigration. Furthermore, even if the increase of social heterogeneity was perceived as a threat for the wellbeing of the natives, it is possible that the overwhelmed threat would increase rather than decrease the welfare states' public support since a bigger safety net would be more needed in unstable times. In this sense, removing the legal barriers that prevent human mobility across borders would not necessarily hinder welfare states as commonly expected. More empirical research is needed to establish this relationship, but what we already can say is that the alleged trade-off is, at least, questionable.

I then argued from outside the perspective of economics in order to show that this trade-off between freedom of international

mobility and welfare states is based on an over-simplistic conception of the individual as a selfish being, incapable of accepting economic losses to improve the wellbeing of others. I contested the approach on rationality for imprisoning human beings into being always target-oriented for success in pre-determined ways. Rationality is thought to allow for thinking and the exercise of the choice of whether to gain or to lose. I rejected the intrinsic role attributed to economics in human affairs and showed that economics, and not human mobility, should be a tool for improving the overall wellbeing of free and equal persons. Considering the intrinsic value of human mobility, state membership being a question of individual choice would enable persons to exercise their full rational capacity as autonomous beings.

I am entirely conscious that my response might not be the only way of achieving this reconciliation between international human mobility and territorial states and I do not intend to be conclusive on the matter either. Indeed, writing a few hundred pages in four years on this vast topic of migration and borders could not exhaust the theme. The circumstantial objections to international freedom of mobility are several. Concerns with national security and public order, for example, escaped the scope in this work entirely. My goal was, rather, to reject some of the influential arguments that endorse restrictions on human mobility or the abolition of states' jurisdictions, and to offer an account on

some of the aspects that a reconciliation may entail. Although the implementation of freedom of mobility across borders certainly needs a deeper understanding of its conditions and consequences, we can already see how conceiving of state membership as a question of individual choice seems to emerge as a promising alternative for a possible line of activity in the future when analysed under the perspectives discussed in this thesis. Further research with reconciliatory purpose on the matter is urgently needed and essential; urgently needed because border control is already on its way to collapse independently of the theories that attempt to justify it, and essential, because interdisciplinary approaches can contribute to securing a stable transition from border control to freedom of mobility across borders and reduce the frictions that a natural process will produce.

Abstract

The growing hostility against immigrants around the world has brought the debate on immigration and borders back to the core of moral and political philosophy. On the one hand, there is increasing pressure for international human mobility driven by, for example, globalisation, war and conflicts, economic development, family union, career development, and climate change. On the other hand, there are territorial states attempting to control the movement of persons across borders in order to preserve their sovereignty. The tension arises when, bound by human rights, liberal democratic states can no longer manage the effects of these pressures and determine emigration and immigration policies only according to their national agendas without compromising international relations. This thesis aims to examine some ways in which the free movement of persons across borders could be reconciled with states' jurisdictions. While international human mobility is defended as a claim for freedom of choice and equality of opportunities, states are seen as contingent institutions currently responsible for the distribution and enforcement of these rights. The main claim of the thesis is that freedom of mobility across borders can be reconciled with territorial states if state membership becomes a question of individual choice (Ch. I). The rest of the thesis is devoted to arguing that state membership should (Ch. II, III) and can (Ch. IV) become a question of individual choice. At the normative level, I contest the role of state borders (Ch. II) and of state membership (Ch. III) as endorsing legal barriers for international human mobility and political participation. At the circumstantial level, my concern was directed to addressing the welfare objection to freedom of mobility and membership (Ch. IV).

Keywords: Cosmopolitanism; Citizenship; Political Membership; Territorial Rights; Liberal Democracy; Justice; Freedom of Mobility; Equality of Opportunities; Open Borders; Welfare States; Neoclassical Economics.

Appendix: Research Dissemination. Newspaper article. 'Er det en løsning for flyktingkrisen?' In Nordlys, 14 October 2015, p.3.

Er det en løsning for flyktningkrisen?

Melina Duarte
Stipendiat ved Institutt for filosofi
Medlem av Pluralisme, Demokrati og Rettferdighet Research Group
(www.uit.no/pdj)
UiT Arktis Universitetet i Norge
melina.duarte@uit.no

Den 29. September publiserte prosjektet Missing Migrants en rapport som viser at til nå i 2015 har det vært nesten 4.000 dødsfall i verden knyttet til grensepasseringer. Dette betyr at i år har gjennomsnittlig 14 personer per dag mistet livet i håp om et bedre liv. For en knapp måned siden ble verden sjokkert av bildet av den tre år gamle gutten Aylan Kurdi liggende livløs på en tyrkisk strand. Antallet slike hendelser er stigende i likhet med graden av fortvilelse. Hendelsene i Middelhavet er en tragedie i seg selv, men andre steder i verden dør mennesker i samme situasjon når de prøver å krysse stengte grenser. Noen dør av kvelning på lasteplan, andre av vannmangel i en ørken mens andre blir skutt av grensepoliti eller av smuglere. Disse tilbakevendende hendelsene har provosert frem flere typer reaksjoner: fra sterke uttrykk av

humanistisk medfølelse og solidaritet, og til proteksjonistisk, intoleranse og rasisme.

I den proteksjonistiske argumentasjonen blir flyktninger ofte sett på med skepsis. De blir oppfattet som upålitelige vesener som, til forskjell fra Aylan Kurdi, ikke har navn, alder eller ansikter. De blir heller fremstilt som en uønsket gruppe i transitt eller , som «rømte fanger». På det økonomisk planet blir flyktninger fremstilt som en fare for bærekraften i velferdsstaten, samt at de som får jobber «stjeler» disse fra vestlige borgere, eller det som blir sett på som «våre egne slektninger». På den andre siden finner vi imidlertid de som også inntar et humanistisk perspektiv i debatten om og rundt flyktninge-krisene. Her ses ikke flyktninger på som ansiktsløse rømte fanger, men som mennesker med både en historie og håp om en bedre fremtid for seg og sine, men som uforskyldt har havnet i en desperat og kritisk livssituasjon.

Etter min oppfatning som immigrasjonsforsker, mangler begge disse perspektivene en full aksept av andre som frie og likeverdige personer. Innenfor det velmenende humanistiske perspektivet synes det som om at oppmerksomheten først og fremst blir rettet mot hjelp til mennesker som er påført en form for funksjonshemming, og ikke selvstendige mennesker som simpelthen er fordrevet fra hus og hjem. I stedet for å se på flyktninger som selvstendige personer med individuelle evner, forutsetninger og preferanser, synes det humanistiske perspektivet å

redusere dem til en hjelpetrengende gruppe. Noen av dem er høyt kompetente leger; andre er snekkere. Enkelte liker pasta mens andre foretrekker poteter; noen foretrekker klassisk musikk mens andre har en preferanse for hip-hop. Vi kan også gå ut fra at flyktninger, på samme måte som oss, ønsker å bestemme selv når man skal dra på en konsert eller på kino, og ikke la valget bli tatt av velmenende administratorer av flyktningmottak. Med andre ord, det er gode grunner til å anta at flyktninger, her forstått som "de andre", ikke er radikalt forskjellig fra våre egne slektninger.

Her vil jeg understreke at jeg ikke mener at skillet mellom "de andre" og "slektninger" er eller bør utviskes, og at det alltid er moralsk galt å gi et fortrinn for den ene over den andre. Poenget mitt er at selv om det normalt er slik at moralsk upartiskhet er å foretrekke, vil det også finnes situasjoner hvor det motsatte er rett. For eksempel, dersom min søster blir syk og ikke har ressurser til å betale for behandlingen, så vil det være forventet av meg å støtte henne dersom jeg kan (i dette tilfellet økonomisk). Dersom jeg skulle unnlate å gjøre dette, og i stedet bruke pengene på å hjelpe haitianere i Brasil, vil unnlåtelsen med rette kunne kritiseres. Poenget her er at jeg simpelthen ville bli betraktet som en hjerteløs og dårlig søster, selv om nettoeffekten av hjelpen vil være større dersom jeg valgte å hjelpe flere mennesker enn min søster for samme sum penger. Et sannsynlig utfall i dette eksemplet er at jeg trolig ville blitt utstøtt av min egen familie fordi jeg ikke klarte å

gjøre det som forventes av et godt menneske i forhold til sine nærmeste.

Selv om vi bør ha de sterkeste moralske forpliktelsene overfor våre nærmeste, så følger det ikke av det at vi ikke også kan eller bør ha moralske forpliktelser overfor de som står utenfor den nærmeste sirkelen. Dette tyder på at en ren proteksjonistisk tilnærming vanskelig lar seg begrunne moralsk. På den andre siden virker det også som det humanistiske perspektivet omgår den egentlige årsaken til flyktningkrisene vi opplever. Den viktigste assistanse som flyktningene trenger er ikke donasjon av private penger eller en tur til en konsert, men like muligheter og frihet til å velge hvor og hvordan de skal leve sine liv. Like muligheter betyr at en person født i et underutviklet land kan kompensere for dette ved å flytte til mer lovende steder. Denne typen av likhet kan oppnås bare ved å fjerne de juridiske barrierer som hindrer deres bevegelsesfrihet, noe som er den faktiske årsaken til flest antall dødsfall knyttet til grensepasseringer. Bevegelsesfrihet, som allerede er anerkjent i Menneskerettighetserklæringen (ennå begrenset til nasjonalt nivå) betyr at uansett hvor en person blir født, skal hun være i stand til å flytte til et annet sted som bedre svarer til hennes ambisjoner i livet. Rasisme er galt, og flyktningene trenger ikke bare medfølelse som et middel for å løse krisen. De fortjener rettferdighet i sted.

List of Publications Not Included in the Thesis

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25.8

1 FEB 2013
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16 JUL 2013
HEATHROW (1)

27.11.06
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WFS 256
No work or recourse

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OP LDSTILLTELSE SERVADOMHÅNDLING
chavren er gitt opplyst til de under opplyst i innstillingen (samt
dengang i de tilknyttede saks
holdningsansvar holder inn i innstillingen er gitt for
dimpedimentet.

12.00.646
No work or recourse to public funds

HEATHROW (1)

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or recourse to public funds
ENT UN FOR

DSII
DOB: ANTHELLI, Maria
01.07.2012
Tidligere passnummer: 02.10.2012
navn: Multistilling og pasningsansvar, Lufthavn-1
Pass type: Standard
Nationalitet: Brasil
YAA: 46748
Passnummer: 2079 000000 00
02.02.15 Pellig
02078375

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EMISSOR COUNTRY
EXPIRES / PASSPORT NO
YA4



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GRAND OFFICE
7749
1 JUL 2013
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