



Can borders be justified?

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Introduction

On the 3rd October 2013 over 350 migrants from Libya were killed as their ship sank off the coast of the Italian island of Lampedusa.¹ The incident highlighted the drastic and dangerous measures that many of the world's most vulnerable are forced to undertake to circumnavigate border controls. Immigration is a highly contentious issue in almost western democracies. As a result many governments are placed under enormous pressure to reduce levels of immigration and subsequently enforce stringent entry criteria. This thesis will examine whether these border controls can ever be justified.

1 Thesis aims

This thesis will attempt to examine the arguments put forward in favour of the right of states to control their borders. These arguments tend to centre on the right of a state or the individuals within a state's political community to self-determination over immigration policies. Four distinct arguments will be examined, namely the right of states and their people to control cultural change, the right of a state to freedom of association, the right of a state to protect public services and finally the right of democracies to impose immigration restrictions. This thesis will argue that these arguments may only occasionally be used to support immigration restrictions. On the whole, these arguments allow for a more open immigration policy than that presently exists.

¹ The BBC, 'Italy boat sinking: Hundreds feared dead off Lampedusa', <http://www.bbc.com/news/world-europe-24380247> Accessed, (01/05/2014)

1.1 Key terms- Open borders, closed borders and partially open borders

This thesis will make frequent reference to the terms open borders, closed borders and partially open borders. It is therefore important to begin with a definition of these terms. The term closed borders will be used to refer to an immigration policy in which a state refuses to admit any immigrants. In a world with closed borders, individuals would be consigned to their state of birth and any attempts to cross borders would be prohibited. In the modern world it is rare for states to operate a closed borders policy, with perhaps North Korea being the closest example of a state with closed borders.

In stark contrast, the term open borders is used to refer to a situation in which a state abolishes its border controls and allows entry to all that seek admittance. Therefore, in a world with open borders an individual could move freely between states without obstruction and would be free to live, travel and work in the state of their choice. Examples of complete open borders are equally hard to find. Perhaps the closest example of an open borders policy can be found in the Schengen Area where European Citizens can move freely between the twenty six states that have committed to the Schengen agreement.² However, whilst the Schengen Area is fully open to EU members, its borders are only partially open to those from outside of the EU.

In reality, almost all states operate an immigration policy that sits somewhere in between these two positions. Therefore most borders can be seen as being only partially open. The status quo position appears to be for states to adopt stringent admission criteria that any potential entrant must meet to gain entry. States often allow admission to those

² Regine Paul, 'Strategic contextualisation: free movement, labour migration policies and the governance of foreign workers in Europe,' *Policy Studies* 34.2 (2013): 122-141.

that are highly skilled or perhaps possess a particular skill that is currently in short supply. In addition, many states impose a numerical cap on immigration in an attempt to control population size. This approach is typified by the immigration policy of the United Kingdom. Whilst the UK must allow entry to individuals from member states of the European Union, it enforces stringent entry controls on those who seek admittance from outside the EU. In particular, those from outside the EU seeking to immigrate to the UK are judged on a points based system.³ This system allocates points in relation to the skills that an individual possesses. Under this system, highly skilled workers are awarded the most points and thus have the highest chance of admission. In addition, those with a skill that is required to fill a gap in the UK workforce also score well.⁴ Put simply, immigration policies such as the UK's favour those who are highly skilled and make it incredibly difficult for those less well equipped to gain admission. The UK is therefore a typical example of a state with selective openness, with only those individuals who the government finds desirable granted admission.

1.2 Immigrants and Refugees

This thesis will make frequent reference to immigrants and refugees. It is therefore important to understand the distinction between these two terms, as the two are often treated differently in the migration literature. The term immigrant(s) will be used to refer to those who make a choice to migrate from one state to another. There are an array of reasons why an individual may seek to move from one state to another. Most commonly immigrants migrate for economic purposes, for example, to pursue a new career. Other

³ UK government, 'Visas and Immigration', <https://www.gov.uk/browse/visas-immigration/long-visit-visas>.

⁴ ibid.

non-economic reasons include a desire to experience a new culture or to be closer to friends or family. This is by no means an exhaustive list. The key point here is that the decision to migrate is voluntary.

In contrast, refugees are those who are forced to leave their homes and thus seek refuge in another state. The United Nations defines refugees as:

“any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to return, owing to such fear, is unwilling to avail himself of the protection of that country”.⁵

Therefore the crucial difference between refugees and immigrants is choice. Whilst both immigrants and refugees migrate in order to improve their life chances, only refugees migrate out of necessity. Due to this distinction, the price of excluding a refugee is higher. Whilst a state that excludes immigrants may well be accused of depriving individuals of better life chances, a state that decides to exclude refugees may be accused of threatening the life and liberty of individuals.

Chapter 2- Common Culture

This section will examine the argument that states should be able to limit immigration in order to preserve, maintain and protect their culture. The leading advocate of this theory has been David Miller, notably in his article ‘Immigration: The Case for Limits’. In addition, Sir Michael Dummett has put forward a more conditional version of this argument, where

⁵ The United Nations High Commissioner for Refugees, ‘Convention and Protocol relating to the status of Refugees’, p.14.

only those states with 'fragile' cultures are able to restrict immigration on cultural grounds. These have become some of the leading arguments in favour of the right of states to restrict migration. This section will offer a critique of these arguments and suggest that they fail to justify the level of immigration restrictions that are currently in place.

2.1 A common public culture

The argument put forward by David Miller is that states should be able to restrict immigration in order to preserve their 'common public culture'.⁶ It is not exactly clear what Miller means by a common public culture, as he does not provide a detailed definition of the term. Therefore this thesis will adopt the definition of public culture given by Will Kymlicka. Kymlicka defines public culture as a "territorially-concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life (schools, media, law, economy, government, etc.)."⁷ A common public culture therefore refers to "a common language and social institutions, rather than common religious beliefs, family customs, or personal lifestyles."⁸ Miller believes that this public culture is highly valuable to the political communities that make up states. He has also suggested that a common public culture "serves valuable functions in supporting democracy and other goals."⁹ Due to the value it holds, Miller believes that citizens within states have a

⁶ David Miller, 'Immigration: the case for limits', Contemporary debates in applied ethics (2005), p.193-206.

⁷ Will Kymlicka, Politics in the Vernacular (New York, NY: Oxford University Press, 2001),p. 25.

⁸ Ibid.,p25.

⁹ Miller, 'the case for limits', p.199.

strong interest in not only maintaining, preserving but also “controlling the speed of any cultural change”.¹⁰

At the heart of Miller’s argument lies an assertion that immigration can change the common public culture of a state. Miller believes that when an individual enters a new society they bring with them a set of cultural and political values that are different to those already held within that society. Whilst he accepts that many immigrants “absorb” elements of the culture of the society that they are joining and as a result begin to “modify” their behaviour, he argues that many others fail to assimilate. Therefore, they begin to “change the public culture in various ways”.¹¹ Put simply, Miller suggests that the different cultural and political values that an immigrant possesses filter into their new society and begin to influence and change the culture of the society of which they are now a part. This idea is not unique to Miller. For example, Will Kymlicka has suggested that “open borders would also make it more likely that people’s own national community would be overrun by settlers from other cultures, and that they would be unable to ensure their survival.”¹² Therefore, Miller and Kymlicka both believe that uncontrolled immigration can threaten a state’s public culture.

Miller uses two examples in an attempt to demonstrate both the value of a public culture and the threat posed to a state’s public culture from immigration. The first example is language. Miller paints a picture of a state whose native language is increasingly under threat and consequently its usage is becoming less widespread. In this scenario, the native language is under threat from a more widely spoken ‘international language’ such as

¹⁰ *Ibid.*, p.200.

¹¹ *Ibid.*, p.200.

¹² Kymlicka, ‘Politics in the vernacular’, p.215.

English.¹³ In such cases, English is often the language of business and commerce in that state. Subsequently, its usage becomes more widespread at the expense of the native language. Miller suggests that states have often responded to this threat by employing a series of measures designed to promote usage of the native language such as increasing its usage in the media or making it a compulsory component of the educational curriculum.¹⁴ This scenario put forward by Miller is not just a hypothetical example, with there being numerous examples of states seeking to protect their native language against the threat of English. For example, in Ireland and Wales the use of Irish Gaelic¹⁵ and Welsh¹⁶ respectively had been in steady decline but these languages have since been heavily promoted by the respective governments.

For Miller, uncontrolled immigration would pose a threat to these vulnerable languages and undermine the efforts made by governments to preserve their native language. This is based on a belief that immigrants will often not need to speak the native language to get by in such countries and will instead rely on a knowledge of an international language such as English.¹⁷ Therefore, Miller suggests that individuals within a state who see the preservation of their native language as paramount should be able to control immigration. This may constitute a complete ban on immigration or perhaps limiting immigration to those who speak the native language.¹⁸ An example of this given by Miller is from the Canadian province of Quebec, where French speakers are granted priority.¹⁹ Therefore, for Miller the

¹³ Miller, 'the case for limits', p.200.

¹⁴ Ibid.,p.200

¹⁵ Iarfhlaith Watson, 'Irish-language broadcasting: history, ideology and identity', Media, Culture & Society , 24.6 (2002), pp.739-757.

¹⁶ Kendall King, 'Language ideologies and heritage language education', International Journal of bilingual education and bilingualism , 3.3 (2000), pp.167-184.

¹⁷ Miller, 'the case for limits', p.200.

¹⁸ Ibid.,p.200.

¹⁹ Ibid.,p.200.

actions taken by governments to preserve native languages demonstrate the value that these languages hold as part of the public culture. To allow unchecked immigration would undermine these efforts and thus be detrimental to the public culture.

Furthermore in a more generic example, Miller suggests that there is a special link between a state's culture and everyday life. He argues that "there is an internal relationship between a nation's culture and its physical shape- its public and religious buildings, the ways its town and villages are laid out, the pattern of landscape and so forth".²⁰ The point here is that "people feel at home in a place in part because they can see that their surroundings bear the imprint of past generations whose values were recognizably their own." Both of these examples are therefore put forward by Miller to demonstrate the value of culture to the political community. Where culture is important for the political community, Miller suggests that they should be able to restrict and control immigration.

2.2. Mexican immigration in the United States

Samuel Huntington has also suggested that mass immigration can pose a threat to a state's culture. In particular, Huntington has focussed on the 'threat' of large scale immigration to the United States from Mexico and has suggested that "Hispanics will account for 25% of the American population by 2050."²¹ At the heart of Huntington's argument is a belief that Hispanic immigrants have failed to successfully assimilate into American culture and society. Therefore, he warns against a divide in the United States into "two peoples and two

²⁰ *Ibid.*, p.201.

²¹ Samuel Huntington, 'The Hispanic challenge', *Foreign policy* 141.2 (2004), p.32.

cultures”.²² Although Huntington concedes that the United States is a country historically built on immigration and as a result is a multi-ethnic’ and ‘multi-racial’ society, he believes that this new Hispanic ‘wave of immigration’ presents the United States with a new challenge.²³ He believes that the culture of the United States is built on a commitment to

“English language; Christianity; religious commitment; English concepts of the rule of law, including the responsibility of rulers and the rights of individuals; and dissenting Protestant values of individualism, the work ethic, and the belief that humans have the ability and the duty to try to create a heaven on earth, a city on a hill.”²⁴

Huntington believes that Mexican immigrants have and will continue to struggle to assimilate into American culture and suggests that Hispanic immigrants hold cultural values that are fundamentally different to those of the United States. For example, he suggests that the use of English as the primary language of the United States is under threat from immigration.²⁵ Huntington therefore shares Miller’s belief that immigration can change a culture and argues that this represents an adequate reason to restrict migration.

2.3 Fragile Cultures

A more restrictive version of this argument has been advanced by Sir Michael Dummett. Like Miller, Dummett also suggests that it is permissible for a state to restrict immigration in order to protect its culture. However, Dummett deviates from Miller’s argument by suggesting that only those states whose culture is “fragile” should be able to enforce these

²² *Ibid.*, p.31.

²³ *Ibid.*, p.31.

²⁴ *Ibid.*, p.31.

²⁵ *Ibid.*, pp.30-45.

restrictions.²⁶ Dummett believes that the majority of states possess a culture that is simply too strong to be “submerged” by any realistic level of immigration.²⁷ For example, he argues that the culture of the United States has become well renowned throughout the world and thus it seems highly implausible that it could be threatened by immigration.²⁸ Therefore Dummett does not believe that states such as the USA should be able to restrict immigration on the grounds of protecting culture.

In contrast, Dummett suggests there are a small amount of states whose culture can be described as ‘fragile’. This occurs in states with a “relatively small population, with a distinct but vulnerable culture”.²⁹ Furthermore, fragile cultures are often “not shared with other peoples of power and influence”.³⁰ Therefore, in such states, large scale immigration could lead to a state’s culture being “submerged”. An example of this occurred in Fiji, where large scale migration from India saw Fijians become outnumbered by Indians, and as a result Fijian culture became ‘submerged’.³¹ Therefore, for Dummett only those states whose culture is genuinely threatened by immigration should be able to restrict immigration. This argument is designed to only apply to a small handful of states.

2.4 How much immigration do these arguments permit?

Firstly, even if Miller’s and Huntington’s arguments are taken at face value, they do not appear to justify a blanket ban on immigration. Furthermore, they also appear to fail to justify the level of immigration restrictions that many states currently impose. Even if we

²⁶ Sir Michael Dummett, ‘Immigration’, *Res Publica*, 10:2 (2004) , pp.118-121.

²⁷ *Ibid.*,p.120.

²⁸ *Ibid.*,p.120.

²⁹ *Ibid.*,p.119.

³⁰ *Ibid.*,p119.

³¹ *Ibid.*,p120.

accept the central premise of Miller's argument, that immigration changes culture and that a state's culture is something that should be preserved, we can still find room for immigration. Put simply, Miller's argument appears to allow for unlimited immigration between states which share the same cultural values. If for example, there were two neighbouring states who possessed an identical common culture, the culture argument would appear to become inapplicable. Although in reality there will most probably be minor cultural differences even between neighbouring states, these differences are likely to be so negligible that they do not merit immigration restrictions or at least the level of immigration restrictions that are presently in place. Taking this argument to its logical end, when determining immigration policies, states would have to firstly measure how secure their culture is and secondly how close other cultures are to theirs and then from this deduce how many immigrants they should allow in from certain states. Not only would this be an almost impossible task, but also shows how arbitrary the culture argument is.

2.5 An overstated threat?

A major criticism that can be levelled at Miller and Huntington is that they appear to significantly overstate the threat to a state's common public culture from open immigration. In particular, Miller fails to take into account the strength of many states cultures and the ability of immigrants to assimilate into societies. On a similar note, he also fails to take into account how many individuals would feasibly be required to immigrate to constitute a threat.

Firstly, many states have strong and robust cultures that would appear to be immune to the threat posed by immigration. Whilst undoubtedly some smaller states with small

populations will possess cultures that are weak and easily threatened by immigration, it is hard to imagine that the level of threat is shared equally by all states. As highlighted by Dummett earlier, cultures such as that of the United States have spread round the world through forms of media such as film and television.³² The same applies to many other states. It therefore seems implausible to suggest that the culture of these states could genuinely be placed under threat from any realistic level of immigration.

Following on from this argument about cultural strength, for a threat to be credible it would require a huge level of immigration. If all states were to adopt an open borders policy, it is difficult to predict how much immigration each state would receive and whether this level could threaten a state's culture. The European Union does perhaps provide an insight into the levels of immigration that states could realistically expect. The European Union has a population of around 503 million. All of these 503 million European citizens have the right to live and work in any EU member state. It is therefore a close example of what an open borders policy would look like in practice. In 2013/2014 the United Kingdom received 209,000 immigrants from other EU states. Whilst this number may sound substantial, in the context of a population of around 63.7 million it is less so.³³ It is also just a minimal percentage of the EU's population, all of whom have the right to migrate to the UK. Therefore, in the words of Joseph Carens "open borders would threaten the distinctive character of different political communities only because we assume that so many people would move if they could. If the migrants were few, it would not matter. A few immigrants could always be absorbed without changing the character of the community."³⁴ The evidence of the European Union suggests that the levels of immigration are not

³² *Ibid.*, p120.

³³ Office for National Statistics, 'Migration Statistics Quarterly Report', February 2014, pp.1-35.

³⁴ Joseph Carens, "Aliens and citizens: the case for open borders", *The review of politics*, 49:02 (1987): , p.270.

overwhelming even with a policy of open borders and thus not enough to threaten states that are culturally strong.

Likewise, the idea that immigrants somehow threaten a state's common culture ignores the role of cultural assimilation. Miller's and Huntington's theories rest on an assertion that immigrants will bring about cultural change rather than assimilating into societies. If immigrants do indeed assimilate into society, then the threat to a state's culture is slim. A large part of a common public culture is encompassed by language. When Miller puts forward the example of a language under threat, he assumes that immigrants will make no attempt to learn the native language. He therefore ignores any attempts immigrants may make to learn the language and this approach is indicative of his failure to recognise the role of cultural assimilation. Similarly, Huntington is equally guilty of falling for the same assumptions. A large part of Huntington's fear about immigration is based on linguistic grounds. However, recent statistics appear to undermine this approach. For example, "the 2000 U.S. Census brief reported that out of the 28,101,052 people who spoke Spanish at home, 14,349,796 spoke English very well and another 5,819,408 spoke English well (72 percent in total)."³⁵ Huntington's fear of a split between an English and Spanish culture therefore seems to ignore the empirical evidence, with these statistics showing that most Hispanic immigrants are bilingual.

A final point worth noting on the issue of language, is that with English being the 'de facto' global lingua franca, those who are not native-speakers have to suffer significant costs in learning. Clearly this is a cost not shared by native English speakers. Therefore, any immigration policy that excludes non-English speakers could be seen as being fundamentally

³⁵ Alex Sagar, 'Culture and Immigration.', *Social Philosophy Today* 23 (2007), p.270.

unfair. Often those who do not speak English will be the less wealthy and less well educated and it is these individuals who will be excluded by those states that require entrants to speak English. Those who happen to be 'fortunate' enough to be born in states where English is the native language already have a natural advantage of speaking the global lingua franca and these immigration restrictions would serve only to reinforce this advantage.

More generally speaking, Huntington fails to explain why Hispanic immigration is incompatible with American culture. This is a view best expressed by Alex Sagar, who has suggested that;

"It is unclear why Huntington thinks Mexicans don't believe in rule of law or individual rights, reject Christianity (indeed, many Protestant churches offer mass in Spanish!) or the work ethic, and aren't pursuing some variation on the "American Dream."³⁶

The key point here is that Miller and Huntington fail to recognise the role of cultural assimilation. After all, the assertion that immigration threatens a state's culture is only true if immigrants do not assimilate. There is plenty of evidence to suggest that immigrants do attempt to assimilate into a state's culture. In particular, the example of Hispanic immigration in the United States shows that immigrants often learn the language of the state in which they are now a part.

2.6 Is there a common public culture?

³⁶ ibid.,p.74.

Furthermore, Miller puts forward the idea of a 'common public culture' without attempting to define what a common culture is. Many states are now multi-cultural societies and thus it seems a stretch to say there is a shared public culture, other than a shared belief in multiculturalism. Alex Sager has argued that "every culture is multicultural in important ways, something that is particularly evident in the present era of cultural globalization."³⁷ For example, when Samuel Huntington describes the threat posed to the United States by a new wave of Mexican immigration, he ignores the fact that the United States is a country based on immigration and its culture reflects this. This has led Sagar to suggest that "protecting culture at all is a rather odd notion—we can trace most of what we value about cultures to migration, exchange, intermarriage and intermingling."³⁸ The idea that immigration can alter a common public culture first requires a state to have a common public culture. In many cases, states may not have a common public culture or if they do the common public culture will reflect a history of immigration. Many states are multicultural societies and it seems strange to suggest that multicultural societies cannot incorporate further immigration and cultural diversity.

2.7 Cultural richness

Finally, Miller and Huntington both assume that cultural change is negative and something that should be restricted. They therefore fail to acknowledge the positive aspects of cultural change. Immigration can in fact supplement and enrich an existing culture, rather than serve as a threat. A policy of open borders could therefore end up creating more culturally diverse societies and subsequently this diversity may improve the life of communities. This

³⁷ *Ibid.*, p.72.

³⁸ *Ibid.*, p.82.

is a view that has been expressed by Joseph Carens. He has suggested that “open immigration would change the character of the community but it would not leave the community without any character. It might destroy old ways of life, highly valued by some, but it would make possible new ways of life, highly valued by others”.³⁹ This has undoubtedly occurred in many societies that have received significant levels of immigration. These changes range in scale. Immigration may make societies more religiously diverse, giving individuals more religious freedom or it may cause more subtle changes such as the introduction of new cuisines. A classic example of this is the introduction of Chicken Tikka Massala which has become a British national dish. In a famous speech former Foreign Secretary Robin Cook argued that this dish represents “a perfect illustration of the way Britain absorbs and adapts external influences. Chicken Tikka is an Indian dish. The Massala sauce was added to satisfy the desire of British people to have their meat served in gravy.”⁴⁰ Whilst a change in cuisine is a very minor cultural change, this example provides how cultures can be improved and supplemented by immigration. Whilst Miller suggests that communities should be able to restrict immigration to shelter themselves from cultural change he ignores that their lives could be improved by living in a more culturally diverse nation.

Therefore, the idea that states have a highly valuable common public culture, that this culture is severely threatened by immigration and that communities should therefore be able to restrict immigration can be challenged on a series of different fronts. Perhaps Miller and Huntington are guilty of overstating the threat posed to a state’s culture by immigration. This is not to say that culture is not important and has no value to a political

³⁹ Carens, ‘Aliens and Citizens’, p.271.

⁴⁰ Robin Cook speech to the Social Market Foundation in London, Thursday April 19th 2001.

community. Instead, the argument here is simply that the culture of many states is not always threatened by immigration. In addition, many states are multicultural and it seems illogical to suggest that multi-cultural societies should be able to restrict immigration on cultural grounds. However, in the rare circumstances in which a state's culture is genuinely at threat of being submerged by culture, I believe that there is adequate justification to restrict immigration. I therefore side with Dummett who supports the rights of those state with fragile cultures to restrict immigration. This is an argument that can only be applied to a very small amount of states. Therefore, the majority of states cannot justify immigration restrictions on cultural grounds.

Chapter 3: Freedom of Association

This section will focus on the argument put forward by Christopher Heath Wellman in his article 'Immigration and Freedom of Association'. In this paper, Wellman argues that freedom of association is something that states have a right to and that this right includes a freedom to disassociate. This argument is largely supported by the use of analogies designed to show the importance and everyday acceptance of freedom of association. This section will argue that this argument fails to address the harm caused by adopting such an approach. It will also argue that the analogies on which Wellman bases his argument are essentially flawed and that they cannot be used to support immigration restrictions.

In his article 'Immigration and Freedom of Association' Christopher Wellman suggests that states should have the right to self-determination over their immigration policies. This right

to self-determination is based on the right of a state to freedom of association.⁴¹

Wellman's argument is based on a few important components. The first is his belief that freedom of association is "highly valued" and "important".⁴² The second component is that freedom of association "includes the right to associate and even, in many cases, the right to dissociate".⁴³ Therefore, Wellman argues that states have a right to freedom of association/disassociation and subsequently this gives them the right to determine their own immigration policies.

Wellman's argument is heavily supplemented by the use of examples. These examples are designed to show the value and importance of freedom of association. They are also designed to show that freedom of association always entails a freedom to dissociate. The examples here are marriage and religion. At the centre of this argument is a belief "that each of us enjoys a morally privileged position of dominion over our self-regarding affairs", in the case of marriage, "one fully enjoys freedom of association only if one may choose whether or not to marry a second party who would have one as a partner".⁴⁴ Likewise, in the case of religion, Wellman suggests an individual has the right to decide who to practice and who not to practice their religion with. An individual cannot, for example, force another to allow them "to join them in worship".⁴⁵ Both these examples are designed to demonstrate that freedom of association is not only highly valued, but also cannot be separated from a freedom to dissociation. When this freedom is violated, it is often seen as morally abhorrent. Therefore, the argument here is relatively simple. Just as individuals have the right to freedom of association, Wellman believes that this right is also shared by

⁴¹ Christopher Heath Wellman, 'Immigration and Freedom of Association', *Ethics* 119:1 (2008), p. 109-141.

⁴² *Ibid.*, p.109.

⁴³ *Ibid.*, p.109.

⁴⁴ *Ibid.*, p.110.

⁴⁵ *Ibid.*, p.110.

states. He has stated that “just as an individual’s freedom of association entitles one to remain single, a state’s freedom of association entitles it to exclude all foreigners from its political community.”⁴⁶ Thus Wellman contends that a freedom to disassociation not only applies to states but can also justify immigration restrictions.

Wellman is aware that his argument can be challenged by those who believe he misses the crucial distinction between individuals and states. He therefore uses a further set of analogies to suggest that the right to freedom of association can also apply to groups of people and states.⁴⁷ The example he uses is that of a golf club. In particular, he discusses how a golf club maintains a right to accept and reject potential members. This according to Wellman demonstrates a collective right to freedom to disassociation.⁴⁸ Despite this, he acknowledges there is a distinction between clubs whose members make a conscious decision to be members and states whose populace happen to be born within their borders. In addition, he suggests that states also have a freedom of association and that it would be “unpalatable” to imagine a world in which states did not enjoy this freedom.⁴⁹ He describes how states are free to choose to enter or not enter trade agreements. For example, it would not be acceptable to force Slovenia to join the EU or Canada to join NAFTA. His second claim is that without this right states would be free to annex other nations. He gives the example of the USA and Canada. In this hypothetical example, the population of the USA support merging with Canada, whilst the population of Canada would prefer to maintain their independence. Wellman suggests the right of the Canadians to freedom of disassociation makes any attempts by the United States at annexation unacceptable.⁵⁰

⁴⁶ *Ibid.*, p.110.

⁴⁷ *Ibid.*, p.111.

⁴⁸ *Ibid.*, p.111.

⁴⁹ *Ibid.*, p.112.

⁵⁰ *Ibid.*, p.112.

Therefore analogies serve a crucial role in Wellman's argument. The marriage and religion analogies are essential for demonstrating the apparent value of freedom of association and the golf club analogy is essential for demonstrating that groups can also claim a right to freedom of association.

3.1 The level of harm

A major criticism of Wellman's argument is that he fails to adequately deal with the harm caused by the immigration restrictions that he supports and that this harm overrides the right of states to freedom of association. This is an argument that has been articulated by Sarah Fine. Fine latches on to a definition of self-determination given by Wellman in an earlier article. In this article, Wellman claims "it is not always clear when any given action is purely self-regarding, but, many people believe that we should be allowed to choose freely when our behaviour is not harmful to others."⁵¹ In contrast, Wellman excludes any mention of harm in his later article on immigration. Fine finds this exclusion problematic.

Therefore Fine's argument is that immigration restrictions cause a varying degree of harm to all of those that are excluded and this harm trumps any right to freedom of association. By its very nature exclusion is harmful.⁵² I accept this claim that exclusion is harmful. Whilst Wellman could attempt to draw a distinction between a state causing harm and failing to allow an immigrant to benefit, I believe the two are inseparable. For example, a state that denies an economic migrant admission denies that individual the benefits of a better wage and standard of living, which in turn harms that individual's life chances. Other

⁵¹Sarah Fine, "Freedom of Association Is Not the Answer", *Ethics* 120:2 (2010), p.345.

⁵²*Ibid.*, pp.338-356.

examples include an individual who is denied the chances of being reunited with family or the chance to experience another culture. Therefore being excluded from a state usually has a detrimental impact on an individual's life and causes them a significant degree of harm, albeit the severity of this harm will undoubtedly differ in each case.⁵³

A possible challenge to Sarah Fine's 'harm argument' is the idea that an open borders policy could also be harmful. Whilst Fine is critical of Whelan for ignoring the harm caused by closed borders, Whelan could contend that there is no such thing as a harmless approach to migration. A commitment to open borders could feasibly be harmful to some individuals. For example, open borders could lead to 'brain drain' within the world's poorest states. Alternatively, a government could take advantage of an open borders policy in order to drive down the wages of the working class.

Much has been written about immigration and 'brain drain' and there is not time here to adequately do justice to this issue. It is argued that 'brain drain' tends to occur in the world's poorest states. The idea here is that the most intelligent, best educated and highest skilled members of a state's society have the most opportunities open to them to migrate. As a result, the poorest states become 'drained' of their most intelligent assets and thus this has an adverse effect on that state. This claim has been subject to a number of challenges. Some have suggested that the possibility of immigration motivates individuals to obtain a higher standard of educational standard, in the hope that they too can one day migrate. Not all of these individuals end up migrating and thus the educational standard of the state subsequently increases. The second frequently given argument is that whilst the most talented individuals do migrate, they either return to their home state or transfer their

⁵³ *Ibid.*, pp.357.

wealth back home.⁵⁴ Therefore, it is not universally accepted that 'brain drain' has a detrimental impact on states. However, if we accept that 'brain drain' can be harmful to some states, then it seems likely that current immigration controls of only allowing the most skilled individuals admittance enforced by almost all states, serve only to perpetuate the situation. Thus, in a world with open borders, 'brain drain' would likely diminish as migration would be a viable option open to all, regardless of an individual's level of skill. However 'brain drain' would not necessary be completely eradicated by an open borders policy, as it is highly likely that the most skilled will still have access to the best employment opportunities in other states.

A second possible situation in which open borders could possibly be harmful, involves the wages of the working class being decreased due to increased competition for jobs from abroad. This scenario could be exploited by governments or occur naturally as a side-effect of open borders. In such an example, State A has relatively high wages for all, including the working class. In contrast, state B has very low wages. When State A opens its borders to those in State B, the working class migrate from State B migrate to State A. The working class from State B migrate to State A in order to earn a higher wag. Due to the high level of inequality between these two states, they begin to work for lower wages than the working class of State A. This would therefore harm the working class in state A as these individuals would be forced to suffer a cut in wages or risk losing their jobs.

Both of these situations would be mitigated slightly by a complete open borders policy and both are made worse by the status quo position of selective openness. For example, brain drain is exacerbated by states only allowing admittance to those with certain skills.

⁵⁴ An overview of the 'brain drain' literature can be found in Commander, Simon, Mari Kangasniemi, and L. Alan Winters. "The brain drain: curse or boon? A survey of the literature." *Challenges to Globalization: Analyzing the Economics*. University of Chicago Press, 2004. 235-278.

Likewise, the second example is most harmful when a state only has limited openness and misuses this in order to suppress the wages of the working class. Despite this, the overarching point of this section is to demonstrate that it can be argued that a complete open borders can potentially be harmful to some individuals. It is however difficult to envisage the level of harm caused by open borders coming close to the level harm of excluding the world's most vulnerable people.

3.2 The Refugee distinction

Arguably the most contentious element of Wellman's freedom of association argument is his suggestion that states have the right to exclude both immigrants and refugees/asylum seekers. He has stated that "even in cases of asylum seekers desperately in need of a political safe haven, a state is not required to take them in." Often in the migration literature a distinction is drawn between migrants and refugees. For example, Michael Waltzer a supporter of the right of communities to control their own borders, treats refugees as a special case and suggests there is a duty of care towards the world's most "helpless and desperate people".⁵⁵ According to Matthew Gibney this distinction has also emerged as an international norm. Whilst states are under no obligation to admit immigrants, Article 33 of the United Nations Refugee Convention asserts that "states must not refuse entrance to an asylum seeker if doing so would force that person back to a country where he or she would be likely to be persecuted".⁵⁶ The reason for this distinction is relatively straight forward. Refugees are forced to seek admittance to another state due to circumstances outside of their control, whilst immigrants seek to move out of

⁵⁵ Michael Waltzer, *Spheres of Justice*, (New York: Basic Books), p.22/23.

⁵⁶ Matthew Gibney, *The ethics and politics of asylum*, (Cambridge University Press, 2004) p.10.

choice. Likewise, the human costs of exclusion are magnified in the case of refugees. For example, when a state excludes an immigrant it denies that individual access to all the opportunities available in that state and therefore exclusion has an adverse impact on that individual's life. However, when a state excludes a refugee, it places that individual at a grave risk of harm and potentially death. Therefore to return to Sarah Fine's 'harm argument', the refugee case is the most extreme case of harm caused by a state's decision to exclude and thus this poses a serious challenge to Wellman's argument.

3.3 Exporting justice

Wellman attempts to respond to this challenge by claiming that states can 'export justice'. He recognises the "plight" and "political injustice" often facing refugees, but contends that there are methods of helping refugees other than by "sheltering them in one's political territory".⁵⁷ The argument here is that there is not simply a choice between exclusion and admittance. Instead, Wellman suggests that states can exclude refugees and still fulfil their duties to them through exporting justice. He has suggested that "even if we presume that wealthy societies have extensive distributive duties, these duties are distinct and can be kept separate from the societies' rights to freedom of association".⁵⁸ In the same way he believes a state can protect individuals from poverty through exporting aid, he believes a state can protect refugees by exporting peace and stability. He argues that "one can intervene militarily if necessary, in an unjust political environment to ensure that those currently vulnerable to the state are made safe in their homelands".⁵⁹ The plausibility of

⁵⁷ Wellman, 'Immigration and Freedom of Association', p.129.

⁵⁸ Wellman, 'Immigration and Freedom of Association', p.130.

⁵⁹ *Ibid.*, p.130.

this argument is at best questionable. States already provide economic aid to other states and this has failed to end global inequality. Likewise, his claim that states can intervene militarily to prevent the conditions that create refugee flows is hard to accept. Recent examples of humanitarian intervention in Kosovo in 1998 and Libya in 2011 show the problems states face when dealing with repressive regimes.⁶⁰ Furthermore, many refugee flows are caused by natural disasters, which are beyond the control of states, something that Wellman fails to adequately tackle. Therefore, Wellman fails to offer a convincing solution to the great level of harm caused to refugees through exclusion. However, even if we assume that states could somehow create a perfect world with no inequalities between borders and eradicate the causes of all refugee flows, Fine suggests there would still be some individuals who would seek to migrate.⁶¹ Put simply, there are plenty of reasons beyond economic inequality and forced migration as to why an individual might decide to migrate. These individuals would continue to be harmed by restrictive border controls even in an implausible hypothetical world.

3.4 Weak Analogies

Furthermore, another major criticism of Wellman is that his argument is based on analogies that fail to demonstrate the points that they are intended to make. These analogies are designed to demonstrate the value freedom of association holds and how this right can apply to groups of people as well as individuals. I believe that these analogies fail

⁶⁰ Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford University Press, 2000).

⁶¹ Fine, 'Freedom of association is not the answer', p.348.

to serve this purpose. Firstly, his marriage analogy ignores the clear difference in levels of associations.⁶² An individual who is compelled to marry another individual against their will, will more than likely have to associate with that person on a daily basis. In contrast, an individual who is 'forced' to share the same state as an immigrant will have little, or no association with the other. Put simply, marriage is a far more intimate association than sharing a state. Therefore any comparison that Wellman seeks to make, ignores this crucial distinction.

In addition, the analogy between states and clubs is weak. This analogy is designed to show that freedom of association can apply to groups of people as well as individuals. However, it fails to recognise that the impact of being denied admission to a club is not comparable to being denied admission to a state. When an individual is excluded from a state, their life prospects are likely to be systematically affected. Being refused membership of a state may for example consign an individual to economic inequality, deny them the chance to practice a certain religion or prevent them from reuniting with family and friends. In the case of refugees, the impact is even greater. A refugee who is refused admission by a certain state may in the most extreme cases have their chances of survival threatened. In contrast, being denied access to a club is likely to have a less severe impact on an individual's life.⁶³ Continuing with Wellman's golf club example, an individual who is refused membership of a golf club may well be disappointed. However, the impact on their life chances is minimal. Furthermore, an individual who is rejected from a golf club is likely to have the opportunity to join another golf club. It could be suggested that the same applies for immigrants, who may be rejected by one state but accepted by another. Whilst this may

⁶² *Ibid.*, p.349.

⁶³ *Ibid.*, p.350.

be the case, an immigrant's reason for seeking admission in many cases is country specific. For example, an individual who has a job offer or a family in a particular state is unlikely to be satisfied by the offer of admission to another state. An individual who wants to play golf, will of course have a preference which club they join, but will more than likely be appeased by other options.

Therefore, these analogies fail to serve the purpose for which they are intended. Wellman makes too great of a leap from these analogies to his argument in favour of immigration restrictions. Thus, Sarah Fine has suggested that these analogies demonstrate very different conclusions to the ones Wellman attempts to draw from them. She has argued that the marriage example can only be used to demonstrate that individuals have the right to freedom of disassociation in "intimate associations"⁶⁴. Furthermore, she has suggested that the club analogy can only be used to support exclusion when the impact is "generally fairly innocuous".⁶⁵ I agree with Fine's conclusions. Whilst Wellman's attempts to make the step from these analogies to a states right to exclude, this thesis has demonstrated that these analogies do not hold. These analogies are at the core of Wellman's argument and without them his argument is insecure. Put simply, his examples fail to show how states can legitimately invoke the freedom of association argument to restrict immigration.

To conclude, I believe that the freedom of association argument put forward by Wellman is insufficient to justify any form of immigration restrictions. In particular, his argument relies heavily on several analogies that fail to serve their intended purpose. It is simply a step too far to suggest that an individual being forced to marry another individual is

⁶⁴ *Ibid.*,p.352.

⁶⁵ *Ibid.*,p.352.

any way comparable to an individual being forced to associate in the same state as an immigrant. Likewise, being denied admission to a golf club has a much less severe impact on an individual's life than being denied admission to a state. Even if the problems with these analogies are temporally placed to one side, there is nothing in Wellman's argument to suggest that the right to freedom of association supersedes the level of harm that is inevitably caused by immigration restrictions. Most troubling of all his assertion that states can even invoke this right to exclude refugees. Whilst Wellman attempts to overcome this problem by suggesting that immigration restrictions are permissible as long as states can 'export justice', this argument is totally unfeasible. Thus Wellman fails to adequately demonstrate that freedom of association can justify any form of immigration restrictions.

Chapter 4: The Overburdening argument

This chapter will examine the argument that large scale immigration and the subsequent increase in a state's population size can have an adverse impact on the functioning of a state. In its most basic form this argument suggests that all states can only sustain a finite population size and once this level is exceeded states should be free to impose immigration restrictions. This section will focus on a more complex variation of this argument, the idea that states can only provide a well-functioning welfare state and high quality public services because they are able to exclude immigrants. Supporters of this view therefore oppose open borders because they argue that states would be unable to maintain these things in the face of widespread immigration.

4.1 Overpopulation

Firstly, it is important to note that the argument that states should be able to restrict immigration in cases of genuine overpopulation features heavily in the migration literature. These arguments suggest that every state has a finite population that it can support and that once this level is surpassed it will face severe problems. This finite population level can sometimes be surpassed by a rapid unexpected influx of immigration. Sir Michael Dummett who is broadly in favour of more open borders, has suggested that limiting immigration in these circumstances is acceptable. It is important to note the argument by Dummett is not designed to be used by the majority of states. Instead, this argument is geared towards extreme circumstances. For example, he points to the 2.5 million refugees fleeing from Afghanistan to Pakistan and Iran in 2002.⁶⁶ Put simply, the overpopulation argument only applies in extreme circumstances when a state receives a rapid influx of immigration that it cannot cope with. In such situations, it may well be a necessary evil and the only logical action to close borders. Allowing further immigration in such circumstances could have disastrous consequences.

4.2 Overburdening

A related topic concerns the impact of immigration on the ability of states to provide public services and a well-functioning welfare state. There are a number of arguments that will be examined here. The first argument is that immigration can increase a state's

⁶⁶ Dummett, 'immigration', p.119.

population to beyond a level that a state's public services and welfare state can cope with. The second is the idea that good public services and a generous welfare state act as magnets to immigrants. The third, is a belief that the political community attach plenty of value to public services and the welfare state and thus the community should be able to exclude in order to maintain these things.

The main argument here is that uncontrolled immigration undermines the ability of states to provide high quality public services and a well-functioning welfare state. In particular, this argument is centred on those states that regularly receive positive net immigration. These states therefore have a rising population due to immigration and subsequently demand increases for public services and the welfare state. A crucial part of this argument is a belief that these things are only designed to cope with a finite population and as the population grows the strain on these things increases. For example as a state's population grows it is likely that more people will require healthcare or more people will claim welfare payments. In addition, the welfare state and public services are often funded through taxation. Therefore newly arrived immigrants who use these facilities do so without having contributed to the tax system that is required to sustain them. These arguments have led prominent economist Milton Friedman to declare that "you cannot simultaneously have free immigration and a welfare state".⁶⁷ Likewise, many have claimed that the quality of public services will decline if immigration is not restricted.

Furthermore, some have suggested that access to a generous welfare state and high quality public services attracts potential immigrants. The argument here is that immigrants are often influenced in their decision to migrate by a desire to be able to take advantage of

⁶⁷Daniel Griswold, 'Immigration and the welfare state', *Cato Journal* 32.1 (2012), p.159.

generous welfare payments and better public services available in a foreign state. It seems logical that an individual who migrates seeks a better standard of life. Having access to higher quality healthcare or education is likely to enhance an individual's standard of life and thus immigrants will be attracted to states that can provide these things. Therefore authors such as George Borjas have often described welfare states and public services as "magnets".⁶⁸

It is also likely that the political community highly values and has a strong attachment to a well-functioning welfare state and high quality public services. After all, the majority of citizens will at some stage of their life have to rely on the welfare state. Similarly, almost all citizens and their family and friends will use public services such as education and healthcare. Therefore, if a state can successfully maintain a generous welfare state and high quality public services then this is likely to have a positive bearing on the standard of life of the political community. Likewise, if the standard of these public services begins to diminish then this is likely to have an adverse on the quality of life within a political community and be highly unpopular.

Therefore the argument here is that unrestricted immigration places a sizeable burden on the ability of states to provide high quality public services and a well-functioning welfare state and thus it is in the interest of both the state and the political community to restrict or prohibit immigration. For example David Miller, a supporter of closed borders, has suggested that the decision lies with the political community. Miller believes that the community should be able to decide whether or not a drop in the standard of quality of life

⁶⁸ George Borjas, 'Immigration and welfare magnets', Journal of labor economics, 17.4 (1999), pp.607-637.

due to immigration is acceptable.⁶⁹ If immigration has a detrimental effect on public services and the welfare state and subsequently an impact on the standard of life, then according to Miller the political community would be within its rights to impose immigration restrictions and protect those things that they hold dear.⁷⁰ The protection of public services and the welfare state is consequently seen as justification for states to impose border restrictions.

4.3 Impact on welfare and public services

In response, it is first important to note that it is by no means an empirical fact that a state cannot have large scale immigration and be able to maintain a welfare state and public services. This subject has been the subject of extensive economic debate and recent studies appear to suggest that immigration can be beneficial for states. Firstly, studies have suggested that immigrants contribute more to the tax system than they take out. Daniel Griswold has claimed that “the typical immigrant and his or her descendants pay more in taxes than they consume in government services in terms of net present value.”⁷¹ This view is backed up a 1997 National Research Council report on migration that found that “the typical immigrant and all of his or her descendants represent a positive \$80,000 fiscal gain to the government in terms of net present value”.⁷² Similarly, a study of UK immigration from the European Union between 1995 and 2011 has shown that immigration resulted in “a net fiscal contribution of about 8.8 billion GBP”.⁷³ The same report also found that “EEA immigrants contributed to the fiscal system 4% more than they received in transfers and

⁶⁹ Miller, ‘the case for limits’, p.202.

⁷⁰ Ibid., p.202.

⁷¹ Griswold, ‘immigration and the welfare state’, p,159.

⁷² Ibid.,p.163.

⁷³ Christian Dustmann and Tommaso Frattini, ‘The fiscal effects of immigration to the UK’ , Centre for Research and Analysis of Migration, p.27.

benefits”.⁷⁴ Finally, these studies have also found the impact on public services through immigration to be cost-effective. For example, the National Research Council report found that the cost of educating the children of immigrants was offset because “immigrant children grow up to be citizen tax-payers”.⁷⁵ The fact is a well-functioning welfare state and high quality public services are funded through a successful economy and taxation. These studies appear to suggest that immigrants contribute more to the tax system than they take out and also on the whole immigration is beneficial for a state’s economy. Therefore, any arguments about immigration and the alleged burden it places on the welfare state and services ignore these crucial facts. If states committed to a more open borders policy then this may not necessary result in the collapse of the welfare state and public services but instead could lead to a higher tax yield and a subsequent improvement in public services.

4.4 Immigrants come to work

Likewise the idea that immigrants move in order to take advantage of better public services and a generous welfare state can also be challenged. Instead, Griswold has argued that immigrants move to seek employment.⁷⁶ Statistics from the United States Department of Labor also confirm that immigrants are more likely to be in employment than native born Americans. Furthermore, a study on immigration patterns in the United States has found that immigrants tend to settle in states which boast high employment prospects and not states which offer the most generous welfare state or best public services. This research shows that “in the 10 states with the lowest per capita spending on public assistance, the

⁷⁴ *Ibid.*,p.27.

⁷⁵ Griswold, ‘immigration and the welfare state’, p,160.

⁷⁶ *Ibid.*,p.161.

immigrant population grew 31 percent between 2000 and 2009; in the 10 states with the highest per capita spending on public assistance, the foreign-born population grew 13 percent".⁷⁷ These results are striking. If welfare and services were truly a 'magnet' then one would expect to find the opposite results. Likewise, millions of individuals across the world live and work illegally in another state. These people often risk their lives to illegally cross borders. By their very nature illegal immigrants are not registered and have severely limited access to public services and the welfare state. In addition, millions of individuals have been prepared to migrate in order to work as 'guest workers' or 'migrant workers'. Illegal immigrants, guest workers and migrant workers all immigrate to other states in the knowledge that they will have no or limited access to the welfare state and public services. Their motivation is therefore purely economic. In summary, whilst some immigrants may move to take advantage of welfare payments and public services, studies such as the one carried out by Griswold seem to suggest that immigrations are primarily motivated by economic opportunities.

4.5 Exclusion from the welfare state

Therefore we need be extremely careful when discussing this topic, as the economic evidence appears to suggest that public services and the welfare state may well be able to cope with immigration. However, if we imagine a counterfactual case in which a state receives high net immigration and for some reason its welfare state and public services are undermined, should this state be able to close its borders? The argument here is often that it would be unfair for the political community to have their standard of living adversely

⁷⁷ *Ibid.*, p.161.

affected and subsequently a state should be able to restrict immigration in such circumstances. An alternative solution has been put forward by Chandran Kukathas. Kukathas has suggested that states should be able to exclude immigrants from the welfare states and charge them for public services.⁷⁸

Whilst the argument here is often that states should close their borders, an alternative solution has been put forward by Chandran Kukathas. Kukathas has suggested that states could decide to exclude immigrants from the welfare state and charge them to use public services. Kukathas clarifies that this argument is only aimed at poor immigrants and those out of work, those he describes as being “net consumers of tax dollars”. The wealthier immigrants are likely to be in high paid jobs and thus “contribute to the state’s coffers through direct and indirect taxes and may well pay for more than they consume”.⁷⁹ It is therefore those who place a burden on the welfare state and services that Kukathas seeks to exclude.

Ideally states would allow immigrants the same rights and benefits as they allow their own citizens. In many circumstances, immigration does not impact on the effectiveness of the welfare state and services. However, in a scenario in which it does, there appears to be three options. The first option is to close borders and impose a ban on immigration. The second option would be to continue to allow immigration, with the risk of undermining the ability of the state to provide a welfare state and public services. The third option is the one proposed by Kukathas, to allow immigration but to restrict access to the welfare state and to charge immigrants for public services. This option therefore prioritises a commitment to openness and free movement without imposing a detrimental impact upon those in the

⁷⁸ Chandran Kukathas, ‘The case for open immigration’, *Contemporary debates in applied ethics* (2005) p.214.

⁷⁹ *Ibid.*, p.213.

society that receives immigration.⁸⁰ Many states adopt such policies, with the United States for example, requiring five years of residence before an immigrant is eligible for full welfare payments. I believe that such an approach does provide a viable solution in the rare scenario where a state is overburdened by immigration. Whilst it may seem unsavoury to create a second class citizenship, this option seems more palatable than the alternative of closed borders. Given the choice many immigrants would prefer the opportunity to be able to work and earn more than they would at home, even without access to the welfare state and public services. As put by Kukathas “for many it would be better than no opportunity to move at all. Certainly, immigration with limited entitlements would be attractive to young and able people with dependents, since the opportunity to work abroad and remit money home might significantly improve all their lives.”⁸¹ Therefore I believe that the overburdening argument does not justify immigration restrictions but may occasionally justify restrictions on access to welfare. There are obviously ethical implications of such a policy. These could be perhaps offset slightly by states guaranteeing a minimal safety net to all immigrants such as access to emergency healthcare. There is also no reason for states to continue to exclude immigrants from the welfare state once they begin to contribute significantly to the tax system as this argument is only to be used to protect against overburdening.

4.6 A Paradox?

A major criticism that could be levelled here is that such an approach is paradoxical. In particular, denying access to services and the welfare state in order to prioritise openness

⁸⁰ *Ibid.*, p.213.

⁸¹ *Ibid.*, p.2.14.

could be seen as illogical and self-defeating. The argument here would appear to be that those who advocate open borders do so as they believe individuals should be given the chance to improve their lives and overcome inequalities through migration. For example, Joseph Carens sees immigration as a way of overcoming what he describes as “feudal privileges”.⁸² Therefore, if a state takes away access to the welfare state and public services it makes it harder for an individual to improve their life through immigration and in a sense defeats the point of an open borders policy. I contend here that whilst such an approach will undoubtedly make immigration less attractive for individuals, it is not self-defeating. As highlighted in this section, the primary motivation for immigration appears to be economic.⁸³ For example, millions of immigrants enter and reside in states illegally. These immigrants cross borders at great risk and once they arrive they have no access to public services and the welfare state. Likewise, millions of immigrants have taken on jobs as ‘guest workers’ or ‘migrant workers’ in which they are given a job in a state but no benefits or rights. Therefore evidence suggests that individuals will continue to migrate as long as borders remain open. Furthermore, if an individual has the right to work in another state, then economic inequalities can be overcome. For example, the reason many Mexican immigrants illegally enter the United States is so they can earn higher wages. For these reasons, I believe that whilst far from ideal, restricting immigrants from accessing the welfare state and public services would not defeat the purpose of an open borders policy.

To conclude, I do not accept that the overburdening argument can be used to justify closed borders. The argument that immigration overburdens a state’s resources is at best questionable, with economic figures appearing to suggest that this is not the case. Instead

⁸² Carens, ‘Aliens and citizens’, p.252.

⁸³ Griswold, ‘Immigration and the welfare state’, p.159.

immigration appears to be beneficial for states. It tends to help their economy and often results in a net positive taxation yield. However, even in the case of an unlikely example arising where a state's welfare state and public services are legitimately overburdened by immigration I still contend that there can be no justification for border restrictions. Instead, I contend that states in this rare situation can still maintain a commitment to open borders but may be forced to withdraw access to the welfare state and public services. Whilst this is far from an ideal situation, the alternative appears to be closed borders. However, this argument only applies to a small number of states. The majority of states do not face this problem thus they have no reason to close borders or to impose restrictions on access to the welfare state and public services.

Chapter 5: Democratic theory

The final argument that this thesis will address is the belief that democracies should have a right to self-determination over their immigration restrictions. This is an argument that has been articulated by Frederick Whelan. Furthermore, it will explore the challenge to this argument by Aresh Abizadeh and response to Abizadeh's argument from David Miller. It will argue that there are problems with both Abizadeh's argument and Miller's response and that there is a middle ground to be sought between the two positions.

5.1 Democratic justification

The traditional view of democratic theory holds that democratic sovereign states should be free to determine their own laws and affairs. Frederick Whelan has used this argument to suggest that states should be free to control their own borders. Whelan believes that democracies are “a determinate community of persons (citizens)...who are collectively self-governing with respect to their internal and external affairs.”⁸⁴ In addition, he suggests “the operation of democratic institutions should amount to ‘self-determination,’ or control by the people over all matters that affect their common interests.”⁸⁵ Whelan in his article ‘Democratic Theory and the Boundary Problem’ accepts that it can be difficult to determine who the demos are in democratic theory. Despite this, he argues “practically requires the division of humanity into distinct, civically bounded groups that function as more or less independent political units.”⁸⁶ In modern form, these units tend to take the form of sovereign states.

Therefore, Whelan suggests that this argument enables democracies to determine their own border restrictions. His argument is relatively straightforward; “democracy as a set of procedures of self-determination, then, appears to imply a power in the present citizen body to control immigration.”⁸⁷ He believes that immigration can have an adverse effect on the political community and thus the ability to control immigration represents a common interest.⁸⁸ For Whelan a democracy must have self-determination over its affairs. In the case of immigration, a democracy should be able to decide how much immigration, if any, is acceptable. Democratic justification therefore is not necessarily an argument in favour of

⁸⁴ Frederick Whelan, ‘Democratic Theory and the Boundary Problem’, in Liberal Democracy, eds. Pennock, J. R., and Chapman, J. W. , New York and London, New York UP, 1983.p.13.

⁸⁵ Frederick Whelan, ‘Citizenship and Freedom of Movement: An Open Admissions Policy?’ In Open Borders? Closed Societies? The Ethical and Political Issues, M. Gibney (ed.), London: Greenwood Press, 1988, p P.28.

⁸⁶ Whelan, ‘boundary problem’,p16.

⁸⁷ Whelan, Citizenship and Freedom of movement,P.28.

⁸⁸ Whelan, Citizenship and Freedom of movement,P.29.

closed borders. For example, the demos could feasibly vote in favour of a more open borders policy. However, often immigration is unpopular and thus democratic justification is frequently used to justify closed or restrictive borders.

The Swiss referendum on immigration of February 2014 provides a clear example of democratic justification in action. Switzerland is a state with a high amount of immigration in relation to its relatively small population size. On average, it receives around 80,000 immigrants per year, many of which come from neighbouring states such as Germany, Italy and France. The referendum asked Swiss voters if they wanted to curtail this immigration by imposing a numerical cap on immigration. A cap on immigration was supported by the finest of margins, with 50.4% of the electorate in favour of increased restrictions.⁸⁹ This example may be hindered by criticism of the miniscule margin of victory. Therefore, it may be better to consider a hypothetical example, in which a similar referendum returned the same outcome but with a more convincing margin of victory or similarly an election where a party supporting closed borders is victorious. In such cases, supporters of democratic justification such as Whelan would claim that any resulting immigration restrictions were justifiable because they reflected the political will of the demos.

5.2 Aresh Abizadeh's response

However, Aresh Abizadeh has challenged the argument that 'democratic justification' in its present form can be used to justify immigration restrictions. Instead, Abizadeh has suggested that democratic justification can only legitimise immigration restrictions if the

⁸⁹ The Guardian, 'Switzerland Backs immigration quotas by slim margin', <http://www.theguardian.com/world/2014/feb/09/swiss-referendum-immigration-quotas>, accessed (10/05/1992)

demos is expanded to include all those subjected to coercive border controls. Thus, the citizens of a state voting in favour of immigration cannot justify immigration restrictions. Instead, the democratic process must include all those directly impacted by coercion for any restrictions to be justifiable.⁹⁰

Abizadeh's argument is based on a number of assertions about autonomy and coercion. The first is that autonomy has an intrinsic value and is always undermined by coercion. The second is that acts of coercion require democratic justification from all of those who are subject to coercion. To begin his argument, Abizadeh claims that the "core value of both liberalism and democratic theory is personal autonomy".⁹¹ To define autonomy, Abizadeh draws heavily upon the work of Joseph Raz. Like Raz, Abizadeh believes that autonomy "is the vision of people controlling, to some degree, their own destiny."⁹² Furthermore, he also shares Raz's belief that there are three essential conditions that must be met, in order for an individual to lead an autonomous life. These three elements are as follows;

"the person (1) has the appropriate mental capacities to formulate personal projects and pursue them (2) enjoys an adequate range of valuable options, and (3) is independent, that is, free from subjection to the will of another"⁹³.

Crucial to Abizadeh's argument is a belief that "coercion always invades autonomy".⁹⁴ In particular, Abizadeh believes that the three core elements of autonomy can all be undermined by acts of coercion. Specifically, the first element can be undermined if coercion prevents an individual from free thinking. Furthermore, the second element can

⁹⁰ Aresh Abizadeh, 'Democratic Theory and Border Coercion No Right to Unilaterally Control Your Own Borders', *Political theory*, 36.1 (2008): 37-65.

⁹¹ *Ibid.*, p.39.

⁹² *Ibid.*, p.39

⁹³ *Ibid.*, p.39

⁹⁴ *Ibid.*, p.40.

be undermined as individuals subject to coercion have the range of options open to them reduced.⁹⁵ It is important to note that Abizadeh recognises here that this element only requires an “adequate range of valuable options”, and thus this element is only undermined when coercion leaves an individual with an “inadequate range of valuable options”.⁹⁶ Finally, the third element, an individual’s independence, is for Abizadeh always “invaded by subjection to coercion, because it subjects one agent to the will of another.”⁹⁷

As autonomy is a core value of democracy and is undermined by coercion, Abizadeh suggest that acts of coercion always require justification. He argues that “practices that subject persons to coercion-must either be eliminated, or receive a justification consistent with the ideal of autonomy.”⁹⁸ In democratic theory, this justification is provided by some form of participation in the democratic process; “the exercise of political power is legitimate only insofar as it is actually justified by and to the very people over whom it is exercised, in a manner consistent with viewing them as free (autonomous) and equal”.⁹⁹

5.3 Coercion, border Controls and an unbounded demos

According to Abizadeh a state can subject an individual to coercion in two ways, through “coercive acts” and “coercive threats”.¹⁰⁰ A coercive act occurs when a state directly prevents an individual from pursuing an action they otherwise would have pursued. Coercive acts therefore inevitably involve the use of ‘physical force’. They are acts in which

⁹⁵ *Ibid.*,p.40.

⁹⁶ *Ibid.*,p.40.

⁹⁷ *Ibid.*,p.39

⁹⁸ *Ibid.*,p.40.

⁹⁹ *Ibid.*,p.41.

¹⁰⁰ *Ibid.*,p.40.

“the person’s body and physical environment are acted on by an agent.”¹⁰¹ An example of a coercive act would be the police restraining an individual to prevent them from committing a criminal act. In contrast, coercive threats occurs when the state threatens an individual with potential action in an attempt to discourage them from performing a certain action. Coercive threats therefore serve as deterrents. An individual may for example be discouraged from breaking the law, for fear of the ramifications such as incarceration.

Therefore, for Abizadeh borders controls represent both a coercive act and a coercive threat. Almost all states actively police their borders, often with a heavy armed presence. Thus, Individuals who seek to illegally enter the territory of another state will inevitably be met with a physical response and will face a high risk of arrest, injury or death. For Abizadeh, these individuals are therefore subjected to coercive acts. Furthermore, Abizadeh suggests that the threat of these borders controls to those in other states equates to a coercive threat. The risk associated with attempting to illegally enter another states thus serves as a deterrent.

Thus, Abizadeh suggests that immigration controls, like all other coercive measures, require a form of democratic justification. This justification must come from democratic participation by all of those subjected to coercion. Therefore, it is simply not enough for a state such as Switzerland to ask its members in a referendum whether they would like to restrict immigration. Instead, for Swiss border restrictions to be justifiable, all of those coerced by these controls would have to be involved in the democratic process. Put simply, “the democratic justification for a regime of border control is ultimately owed to both

¹⁰¹ *Ibid.*, p.39

members and non-members".¹⁰² Therefore, this represents a major breakaway from the traditional 'bounded demos' theory supported by Whelan. Instead, Abizadeh supports the idea of a potentially 'unbounded demos'. Abizadeh's theory is therefore not a rejection of the idea of self-determination, but simply represents an expansion of the 'self' to include all those coerced.

5.4 David Miller's response

The response to this argument comes from David Miller. Miller does not attempt to disagree with the premise that acts of coercion require democratic justification. Instead, he attacks the idea that border controls amount to coercion. Therefore, he challenges the central idea in Abizadeh's argument, that border controls require democratic justification from an unbounded demos.¹⁰³

Miller begins his argument by suggesting that Abizadeh fails to prove that 'coercion always invades autonomy'. In particular, he argues coercion as defined by Abizadeh, does not always undermine the three core elements of autonomy. For Abizadeh, "P coerces Q when he communicates to Q that if Q does A (which he would otherwise do), P will bring about consequences that are seriously bad for Q; as a result Q does not do A."¹⁰⁴ This definition therefore accepts threats as a form of coercion. For example, the threat of a violent response can prevent P from performing an action Q would otherwise have done.

¹⁰² *Ibid.*, p.44.

¹⁰³ David Miller, "Why immigration controls are not coercive: a reply to Arash Abizadeh." *Political theory* 38.1 (2010), p.111-120.

¹⁰⁴ *Ibid.*, p.116.

In particular, Miller focuses on how the second and third elements of autonomy are not always undermined by this form of coercion. An individual who is 'coerced' into performing an action, can still maintain their independence and is not automatically "subject to the will of another".¹⁰⁵ Miller demonstrates this with the example of an individual seeking to go for a meal with a friend. In this scenario, the friend refuses to eat a certain type of cuisine. However, there are plenty of other available options to choose from and thus the individual maintains his independence and does not become subjected to the will of his friend. He may not be able to choose his preferred choice, but he still maintains a relatively free independent choice¹⁰⁶. Likewise, if the individual has plenty of adequate alternative options, then the second element of autonomy is not compromised. Therefore, Miller argues that Abizadeh's definition fails to show that 'coercion always invades autonomy'.¹⁰⁷

Therefore, Miller suggests an alternative definition of coercion is required. Miller adopts a narrower conception of coercion, arguing that "we normally speak of coercion when P forces Q to undertake some relatively specific course of action by communicating an intention to cause bad consequences if that action is not performed."¹⁰⁸ Coercion under this definition is designed to always undermine autonomy. To illustrate his argument, Miller gives the example of a mugger forcing his victim to a cash machine at knife point. In this scenario, the second and third elements of autonomy are clearly violated by coercion.¹⁰⁹ There are no other acceptable options open to the individual being mugged and the individual is clearly subjected to the will of the mugger. Miller has therefore attempted to draw a distinction between coercion and prevention. Coercion is limited to acts "forcing a

¹⁰⁵ *Ibid.*, p.117.

¹⁰⁶ *Ibid.*, p.117.

¹⁰⁷ *Ibid.*, p.117

¹⁰⁸ *Ibid.*, p.116.

¹⁰⁹ *Ibid.*, p.116.

person to do some relatively specific thing” whilst prevention “involves forcing a person not to do some relatively specific thing while leaving other options open”.¹¹⁰ Therefore, Miller concedes that prevention can slide towards coercion when prevention fails to leave open a sufficient array of other options.¹¹¹

5.5 Hypothetical coercion- The Landowner example

The final conceptual argument made by Miller is that Abizadeh confuses being subject to coercion with hypothetical coercion.¹¹² Miller defines hypothetical coercion as “cases where a person would expose themselves to coercion if they were to decide to pursue a particular course of action”. Furthermore, he suggests that hypothetical coercion is “omnipresent, and for that reason not destructive of autonomy”. The argument here is that hypothetical coercion occurs when an individual “would expose themselves to coercion if they were to decide to pursue a particular course of action” and when “the course of action involves doing things we would never contemplate doing and have probably never given a moments thought to”. Therefore being subject to hypothetical coercion has “no bearing on our autonomy”.

In order to demonstrate this argument, Miller gives the example of the landowner of a “remote Scottish island”. In this example, the landowner publicly declares that he will shoot any individual who attempts to step foot on his land. For Abizadeh, this would be a clear case of coercion. Abizadeh argues that “such a threat invades a person’s autonomy, regardless of whether she has any interest in carrying out the proscribed action A, and

¹¹⁰ *Ibid.*, p.116.

¹¹¹ *Ibid.*, p.117.

¹¹² *Ibid.*, p.119.

regardless of whether she is left with an otherwise adequate range of valuable options, because such a threat invades her independence".¹¹³ In contrast, Miller suggests that for the majority of individuals this threat would have no bearing on their autonomy. The argument here is that if X has no intention of trespassing on Q's land, then their autonomy is not undermined by Q's threat. Therefore, for an act to be coercive it must prevent an individual from carrying out or attempting to carry out an action that they actually desire to do.

This point can be demonstrated by a slightly altered version of Miller's Scottish island example. In this example, the landowner once again publicly declares that he will shoot all of those who seek to enter this land. However, in contrast to Miller's example, entry to the remote island is now attractive to a few individuals. For example, if we imagine that these individuals have family who live on the remote island and therefore seek to be reunited. In this scenario, the threat from the landowner appears to shift from being hypothetically coercive to being a coercive measure because it prevents an individual from carrying out an action they otherwise would have carried out.

Finally, whilst Miller's example may appear to be abstract, it can easily be altered to provide a more realistic example of immigration controls. In this latest scenario, the remote Scottish island is replaced by a state, for example Australia. In this example, the Australian government announce that only those individuals who meet a certain criteria will be granted entry. Similarly to the Scottish landowner, the Australian government announce that all those who attempt to gain admittance who fail to meet the entry criteria will be forcefully excluded. As a well-developed state, Australia undoubtedly offers far greater

¹¹³ Abizadeh, 'Democratic theory', p.59.

opportunities than the remote Scottish island. Despite this there will still be many individuals who have no intention or interest of ever attempting to migrate to Australia. These individuals would therefore not be at all concerned by the threat of being forcefully excluded and thus these measures amount to nothing more than hypothetical coercion. It is only those individuals who seek to migrate to Australia and do not meet the entry criteria who are subject to coercion and have their autonomy invaded.

5.6 Does immigration require democratic justification?

Therefore there is a difference in opinion between Miller and Abizadeh on whether border controls amount to coercion and consequently whether they require democratic justification. I will contend that neither of these views is correct and there is a middle ground to be sought. Firstly, the majority of immigration controls amount to nothing more than 'hypothetical coercion'. An individual living in one state who has no intention of emigrating is not coerced by the border controls of a distant state in which they have no intention of ever attempting. For example, an individual in England, who has no intention of emigrating to Australia, is not coerced by Australian border controls. Therefore, it would appear to be implausible to suggest that all English citizens should be able to participate in the democratic process to set Australia's immigration policies. This is a major problem with Abizadeh's argument.

The next question that needs answering is whether those who do seek admission are coerced by border controls. If an individual living in Mexico desires to immigrate to the neighbouring United States, but is dissuaded from doing so through fear of border controls, are they subject to coercion? In such a scenario, Abizadeh would certainly suggest that

these individuals are coerced and thus would argue they are owed democratic justification. In contrast, Miller would suggest that denying a Mexican access to the United States does not undermine an individual's autonomy and is not an act of coercion. For example, the second element of autonomy is not undermined as plenty of other 'adequate' options remain for the Mexican. These include all the options available inside Mexico and all the options in other states that may grant that individual admissions. Likewise, the third element is also not undermined, as the individual maintains their independence to make decisions. Therefore for Miller no democratic justification is required. I believe that Miller is right to reach this conclusion. Abizadeh's argument rests on a belief that coercive acts always undermine autonomy, but Miller has sufficiently demonstrated that this is not the case. If border controls cannot be proved to be coercive, then Abizadeh cannot suggest that justification is required for them.

However, I disagree with Miller's assertion that border controls never amount to coercion. Instead, I suggest that in certain circumstances border controls do indeed invade autonomy and therefore become coercive. By Miller's own admission preventive measures can merge into coercive measures when a lack of adequate options cannot be provided. I will contend here that in many cases, potential immigrants and refugees who are refused admission do not have access to adequate options. To these individuals, democratic justification may be required. Take for example an individual who seeks to immigrate to a particular state in order to be reunited with their immediate family. It would be hard in such a situation to argue that an offer to immigrate to a state other than the one in which their family are based would constitute an adequate option. Therefore, this would appear to undermine the second element of that individual's autonomy and as a result would constitute a coercive measure. Likewise, a refugee who faces death if they remain in their

home state has limited options. They certainly do not have adequate options in their home state. Miller may argue here that they have a choice of states in which to seek refuge and as such one state denying admission does not undermine the second element of their autonomy. But this denies the reality of the situation facing many refugees. Imagine for example, a refugee in a landlocked country who flees to the nearest border to escape violence. If on arrival at the border the state refused to grant them admission, then this surely would violate the second and possibly third element of that refugee's autonomy. Therefore, the solution appears to lie somewhere in between the position adopted by Miller and Abizadeh. Abizadeh seeks an almost unbounded demos. Miller thinks that the demos should be restricted to the nation state. Instead, it may be better to conceptualise a demos that includes all of those coerced by border controls, but where the definition of who is subject to coercion is limited to those individuals who are most in need and have no other adequate options available to them other than to seek admission.

The idea that democracies should be able to control their own borders is based on a traditional conception of democratic theory and a demos limited to sovereign states. The argument put forward by Aresh Abizadeh is therefore an interesting challenge to a conventional theory. In practice, I believe there is a lot of weight to Abizadeh's argument that all those subject to coercive border controls should have to justify their existence. The problem facing Abizadeh's argument centres on his definition of coercion and how it must always invade autonomy. I believe that David Miller has successfully proven that Abizadeh fails to demonstrate how border controls always invade autonomy. I do however also reject Miller's claim that border controls are not coercive. Instead, I believe that border controls can invade the autonomy of some individuals who have a strong, specific interest to reside in a particular state and therefore are indeed highly coercive to these individuals.

Conclusion: more open borders

In conclusion, this thesis has examined some of the leading arguments put forward to support the right of states to close their borders. It has found that many of these arguments fall short of justifying immigration restrictions. In the modern world, the status quo position on borders tends to lean towards closure. Whilst there are examples of open borders policies such as the Schengen Area, almost all states enforce some form of entry criteria. This position is on the whole is unsatisfactory. When a state excludes an individual from entering its borders, it prevents that individual from accessing all the opportunities available within that states borders and therefore it has an adverse impact on that individual's life. For example, exclusion may consign an individual to a lifetime of economic disparity, it may prevent them from reuniting with family or friends or it might prevent them from experiencing a new culture. Sometimes, the cost of exclusion can be even higher. When a state prevents a refugee from entering its borders, it exposes that individual to a serious risk of harm or even death. Therefore, states should be able to offer compelling reasons to justify exclusion or be prepared to open their borders.

Many of the arguments in favour of closed borders focus on the rights of states or the political communities that make up these states to self-determination over their own affairs and by extension control over border restrictions. The four arguments that are explored here are frequently referenced in the immigration debate not only by academic papers, but also in the media and by politicians. Sometimes these arguments are given in isolation but they are also frequently put together with other arguments in order to make a 'compelling'

argument in favour of immigration restrictions. This thesis has however demonstrated that these arguments fail to justify the level of immigration restrictions that currently exist.

The idea that a community should be able to restrict immigration in order to preserve its culture is the first idea explored in this thesis. The idea here is that the common culture of a state is meant to be intrinsically valuable and this culture is presumed to be threatened by immigration. I believe that this threat is significantly overstated and therefore the majority of states cannot justify immigration restrictions on these grounds. Another argument addressed in this thesis that also invokes the rights of communities to restrict immigration is the overburdened services and welfare state argument. This argument suggests that communities value these things and thus should be able to impose immigration restrictions in order to protect them. I contend here that this argument has little empirical evidence. In situations where services and the welfare state are at genuine risk of overburdening then I believe the solution is not to close borders but to prevent immigrants from accessing the welfare state. Another argument explored here, put forward by Christopher Wellman, is that states have a right to freedom of disassociation. Once again this argument fails to justify immigration restrictions. It is based on weak analogies and ignores the level of harm that immigration restrictions can cause. The final argument addressed in this thesis refers to the right of democracies to self-determination over their own affairs and subsequently the right of democracies to determine their own border controls. Building on Abizadeh's argument and adapting Miller's critique of Abizadeh, I contend here that democratic theory only holds if those who are genuinely subject to coercion are included in the democratic process. In reality, they are not and thus democratic theory also fails to justify border controls.

Therefore this thesis supports a position of more openness between borders. Although it stops short of arguing in favour of complete open borders, as it is important to recognise there are a few occasions where border controls are justifiable. In particular, in the situations described by Michael Dummett; where a state faces a genuine risk of overpopulation or where it has a fragile culture that could be submerged by immigration. However, on the whole, individuals should be free to live, work and reside in the state of their choice. Any state that seeks to exclude an individual from its territory should be able to offer a strong reason for doing so and often this is not the case. Immigration continues to be a contentious issue in most societies and therefore it is of the utmost importance that the arguments frequently put forward to support the exclusion of immigrants are heavily scrutinised.

Bibliography

Abizadeh, A., 2008, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory*, 36: 37–65.

Bader, V., 2005, "The Ethics of Immigration," *Constellations*, 12: 331–361.

Barry, B. and Goodin, R. (eds.), 1992, *Free Movement: Ethical Issues in the Transnational Migration of People and Money*, Hemel Hempstead: Harvester Wheatsheaf.

BBC, 'Italy boat sinking: Hundreds feared dead off Lampedusa', <http://www.bbc.com/news/world-europe-24380247> Accessed, (01/05/2014)

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

Buchanan, Allen. "The egalitarianism of human rights." *Ethics* 120.4 (2010): 679-710.

Borjas, George J. "Immigration and welfare magnets." *Journal of labor economics* 17.4 (1999): 607-637.

- Carens, J., 1987, "Aliens and Citizens: The Case for Open Borders," *Review of Politics*, 49: 251–273.
- Carens, "Who Should Get in? The Ethics of Immigration Admissions," *Ethics & International Affairs* 17: 95–110.
- Dustmann, C and T Frattini, 'The fiscal effects of immigration to the UK' , Centre for Research and Analysis of Migration, p.27.
- Dummett, M., 2004, 'Immigration', '*Res Publica*' 10, pp.115-122.
- Gibney, M., The ethics and politics of asylum, (Cambridge University Press, 2004) p.10.
- The Guardian, 'Switzerland Backs immigration quotas by slim margin', <http://www.theguardian.com/world/2014/feb/09/swiss-referendum-immigration-quotas> , accessed (10/05/1992)
- Daniel Griswold, 'Immigration and the welfare state', Cato Journal 32.1 (2012), p.159.
- Fine, S., 2010, "Freedom of Association is Not the Answer," *Ethics*, 120(2): 338–356.
- Huntington, S., 2004, *Who Are We?* New York: Simon & Schuster.
- Huntington, S 'The Hispanic challenge', Foreign policy 141.2 (2004),
- King, K. 'Language ideologies and heritage language education', International Journal of bilingual education and bilingualism , 3.3 (2000), pp.167-184.
- Kukathas, C. 'The case for open immigration', Contemporary debates in applied ethics (2005) p.214.
- Kymlicka, W. Politics in the Vernacular (New York, NY: Oxford University Press, 2001)
- Miller, D., 2005, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, A. Cohen and C. Wellman (eds.), Malden, MA: Blackwell Publishing, pp. 193–206.
- Miller, D., 2010, "Why Immigration Controls are not Coercive: A Reply to Arash Abizadeh," *Political Theory*, 38(1): 111–120.
- Nagel, T., "The problem of global justice." *Philosophy & public affairs* 33, no. 2 (2005): 113-147.
- Nickel, James W. "How human rights generate duties to protect and provide." *Hum. Rts. Q.* 15 (1993): 77.
- Nickel, James W. "Poverty and rights." *The Philosophical Quarterly* 55.220 (2005): 385-402.
- Paul, R., 'Strategic contextualisation: free movement, labour migration policies and the governance of foreign workers in Europe,' Policy Studies 34.2 (2013): 122-141.

- Rawls, John. *A theory of justice*. Harvard university press, 1999.
- Oberman, Kieran. "Immigration, global poverty and the right to stay." *Political Studies* 59.2 (2011): 253-268.
- Oberman, Kieran. "Can Brain Drain Justify Immigration Restrictions?*" *Ethics* 123.3 (2013): 427-455.
- Office for National Statistics, 'Migration Statistics Quarterly Report', February 2014, pp.1-35.
- Robin Cook speech to the Social Market Foundation in London, Thursday April 19th 2001.
- Sagar, A., 'Culture and Immigration.', *Social Philosophy Today* 23 (2007) , p.270.
- Singer, P., 1993, *Practical Ethics*, Cambridge: Cambridge University Press.
- United Nations High Commissioner for Refugees, 'Convention and Protocol relating to the status of Refugees', p.14.
- Vitale, Alessandro. "The Contemporary EU's Notion of Territoriality and External Borders." *European Spatial Research and Policy* 18.2 (2011): 17-27
- Waldron, J in Goodin, Robert E., Philip Pettit, and Thomas W. Pogge, eds. *A companion to contemporary political philosophy*. Vol. 105. John Wiley & Sons, 2012.
- Walzer, M., 1983, *Spheres of Justice*, New York: Basic Books.
- Watson, I., 'Irish-language broadcasting: history, ideology and identity', *Media, Culture & Society* , 24.6 (2002), pp.739-757.
- Wheeler, N., *Saving Strangers: Humanitarian Intervention in International Society* , Oxford University Press, 2000).
- Whelan, F. G., "Democratic Theory and the Boundary Problem", in *Liberal Democracy*, eds. Pennock, J. R., and Chapman, J. W. , New York and London, New York UP, 1983.
- Whelan, F., 1998, "Citizenship and Freedom of Movement: An Open Admissions Policy?" in *Open Borders? Closed Societies? The Ethical and Political Issues*, M. Gibney (ed.), London: Greenwood Press, 1988, pp. 3–39.