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## **Coercion at the border: whether the freedom of association argument can justify unilateral border control**

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# **Coercion at the border: whether the freedom of association argument can justify unilateral border control**

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## Introduction

Since 1648, states have recognized each other's sovereignty through the Peace of Westphalia, essentially making states the supreme authority over their territory. Ever since states have become sovereign political bodies ruling over their own territory, the question of whether states have the right to exclude prospective immigrants from their territory has been a much discussed topic, both in civil society and in politics. Today the topic seems to be more relevant than ever, with millions of people fleeing from violence and seeking refuge in foreign states. One scholar defending the right of states to exclude is Wellman. He has written an article on immigration and freedom of association in which he uses the freedom of association argument to argue in favor of states' right to control immigration over its territorial borders (2008). He believes that the freedom of association argument, grounded in the idea of collective self-determination can justify unilateral border control. Wellman explains the importance of these idea's by giving examples of why we find the individual right to freedom of association, grounded in individual self-determination and autonomy so important. He goes on to give examples of why the collective form of these rights, relevant for states, are thought of as important as well. However, his theory suffers from a gap and has been subject to criticism. He assumes the "self" to be members of the state, but offers no insight in his reasoning leading up to this conclusion. Filling this gap is important, as demarcating the "self" allows us to see which group has the right to determine their own affairs. It also allows us to see whether the group that is subjected to coercion because of unilateral border control can democratically justify this exercise of coercive power, this is important because the collective freedom of association argument is grounded in democratic principles.

The goal of this thesis is to answer the main research question: *Can the freedom of association argument justify unilateral border control?* I will try to answer this question through four steps. First, I present an extensive summary of Wellman's theory, based on his 2008 article. Through this summary the reader can first create an understanding of not only Wellman's theory on why freedom of association can justify unilateral border control, but also on why his theory is incomplete. In the second chapter, I try filling the gap in Wellman's work by looking at several articles written by Abizadeh who demarcates the "self" through a coercion approach (2008, 2010, 2012). In this thesis I will try to demarcate the "self" by appealing to the coercion principle, as suggested by Abizadeh. In order to do this, it is necessary to analyze the concept of coercion as different understandings of coercion impact the scope and nature of coercion, and makes for different demarcations of the "self". In the third chapter, the academic debate on coercion is discussed. The scholars discussed here offer definitions of coercion that are different from Abizadeh's, resulting in a different demarcation of the "self". In this chapter I engage in the academic debate on the nature and scope of coercion in order to determine whether the "self" in the freedom of association account is consistent with only the members of the state, like Wellman argues. In the fourth and final chapter, I analyze the definitions discussed in the third chapter and develop my own position on who is coerced by a state's unilateral regime of border control and therefore makes up the "self", eventually answering the research question accordingly.

## **1. Freedom of association, self-determination and unilateral border control**

In this first chapter I will introduce Wellman's theory that defends unilateral border control through the freedom of association argument, grounded in self-determination. I will explain how Wellman progresses from the individual right to freedom of association to arguing that every legitimate state has the right to unilaterally exclude all foreigners as they wish, with minor exceptions. The most important aim of this chapter however is not to focus on those exceptions, but to focus on the reasoning that leads to Wellman's theory justifying unilateral border control, and to give a clear overview of what his theory really entails.

Although the term is not used very often in Wellman's article, autonomy is important in understanding freedom of association, self-determination and other important topics in this thesis and therefore I introduce the term right away in this chapter. Wellman's theory rests on individual self-determination, which we value because of the importance of individual autonomy as will be explained by Wellman's examples in the coming paragraphs. To elaborate on this point, I will briefly explain Raz's definition of autonomy. This definition of autonomy will be used throughout this thesis. According to Raz, an individual can be said to be autonomous if three conditions are met. First, one has to have the appropriate mental capacities to formulate personal projects and pursue them (1). One also has to enjoy an adequate range of valuable options (2), and finally, one has to be independent, meaning, free from subjection to the will of another through coercion or manipulation (3) (Raz, 1986, pp. 372-378). If individuals are not granted the right to freedom of association, than these individuals cannot be said to be self-determining, autonomous individuals. These individuals are no longer independent from coercion or manipulation if they are not free to associate through their own will. And the same goes for states, we see states as sovereign units which have the right to organize their own government and collectively determine their own future. In other words, they have the collective right to self-determination. To truly be self-determining and autonomous, a state has to have the freedom to associate with who they wish. For example, freedom of association allows a state's inhabitants to collectively decide on who will become member of the state and will therefore join the group of people determining the state's future (Wellman, 2008, pp. 114-115).

In his article "Immigration and freedom of association" Wellman starts of his reasoning by noting that freedom of association is widely thought to be important and that this freedom also includes the right not to associate, and in many cases even the right to disassociate (2008, p. 109). Further in his article he elaborates on these two points, but in order to understand his theory one has to accept at least that freedom of association is an important right. Wellman starts of his introduction to freedom of association by giving examples of individual cases of this right. Examples included are on our modern day values about marriage and religion, and these create an important basis for Wellman's theory. We mostly believe nowadays that choosing a marital partner is a task that is up to the person that is looking to marry, he or she is thought to have the right to choose a marital partner without interference from other parties such as family or the state. When we think about cases of arranged or forced marriages, we would often say that this is an unjust occurrence as a person should be free to associate with whom he or she wishes to. The same goes for religion, we "take it for granted" that a person has the right to freely choose with whom he or she practices a religion (2008, p. 110). To deny someone this right, would be to deny

someone freedom of association, resulting in the fact that a person is no longer able to enjoy a morally privileged position of dominion over their self-regarding affairs. In the example of marriage, freedom of association does not only give individuals the right to choose a partner to marry without interference from others, but at least just as obvious is the right of individuals to reject any marriage proposal; “I may have the right to choose the woman of my choice who also chooses me, but not the woman of my choice who rejects me” (Gauthier, 1994, pp. 360-361). To deny that this right exists, is to accept immoral practices such as the discussed forced marriage or other types of forced association.

These examples of the right to freedom of association for individuals help present an explanation of why this right is so important. But in order for Wellman to defend his claim about unilateral border control, it is important to make an inference from the individual right to freedom of association to the collective right. An individual right to freedom of association could not justify a state’s unilateral imposition of border control, only a collective right could. Wellman admits that there are morally relevant differences between a state and an individual, and that interests of a group in determining associations might be nowhere near as important to those of an individual. But this difference in importance does not matter for his point; freedom of association in marriage might be more important than in religion, but we still find freedom in both important, the relative difference in importance should not matter. He is convinced that the inference from individual to group right to freedom of association can be made. I will explain Wellman’s reasoning in making the inference from an individual right to freedom of association to a group right, although I will not question the inference as it is beside the point of this thesis<sup>1</sup>. He makes the inference by highlighting the implications that follow from denying a state the right to freedom of association. He gives the example of regional associations such as the North American Free Trade Agreement (NAFTA) and the European Union (EU). If legitimate states did not possess the right to freedom of association, then we would not be able to explain the wrongness of forcing a state to join the NAFTA or EU; “Think of Canada’s choice to join NAFTA, or Slovenia’s decision to enter the EU, for instance. No one believes that it would be permissible to force Canada into NAFTA or to coerce Slovenia to join the EU” (Wellman, 2008, p. 112). When these countries are forced into associations, they cannot be said to be self-determining, they are no longer able to collectively determine their future without foreign interference. Wellman’s examples should show that freedom of association is an essential right in protecting a country’s right to self-determination. Wellman argues that freedom of association is simply one component of self-determination, which is owed to all autonomous individuals and legitimate states. This also helps explain the relation between freedom of association, self-determination and autonomy. Freedom of association helps us explain why annexing a country’s territory, or why forcing them into a political body, is wrong. One cannot explain this wrongness unless they accept that countries enjoy a group right to autonomy which supports collective self-determination. So according to Wellman, a legitimate state enjoys a right to autonomy, which cannot be realized without a right to self-determination, and these rights entail the freedom to associate with others as the state sees fit (2008, pp. 112-113). Or as Stuart White says: “What makes it their association, serving their purposes, is that they can exercise this ‘right to exclude’” (1997, p. 373).

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<sup>1</sup> See Sarah Fine for an article that questions the inference from the individual right to freedom of association to the collective right (Fine, 2010).

## 2. The limitations of Wellman's theory

Wellman's theory has been subject to criticism. In the case of states, Wellman argues that the "self", possessing the right to determine its own affairs, consists out of members of that state. But in the incomplete theory that Wellman has presented, however convincing one might find it, it is unclear how the "self" is demarcated. It is important to note that the collective freedom of association argument in itself says nothing about how the "self" is demarcated. In this chapter I will introduce Abizadeh, who criticizes Wellman's article and has written several articles on the subject in which he uses the coercion principle to demarcate the "self" and fill in the gap in Wellman's theory (Abizadeh, 2008, 2010, 2012). Wellman assumes the "self" to be members of the state, which would mean that citizens of a state have the collective right to freedom of association, justified by all members as they partake, or at least have the chance to participate, in the democratic process forming the border control institutions. But if the "self" would consist out of more than only members of the state, it could mean that unilateral exclusion can no longer be justified based on democratic participation of the "self" like Wellman does, as foreigners have no chance of participating like citizens can. Demarcating this "self" is therefore of serious importance.

Abizadeh covers the subject of self-determination in several works about the right to control borders. He argues that the thought that different democratic polities each have the "moral-liberty right" to control their own borders unilaterally, is mistaken. Instead, "It begs the question of who the relevant "self" of self-determination is" (Abizadeh, 2012, pp. 3-4). This question cannot be answered by solely appealing to the idea of collective self-determination, which in itself says nothing about how to demarcate the "self". The question of who the "self" consists of is important, and regards the democratic boundary problem; "democratic theory is unable to specify, in terms consistent with its own theory of political legitimacy, the boundaries of the people that forms its constituency" (2008, pp. 45-46). An answer to the question of who this relevant "self" is could also give us an answer to the question of whether states can justify unilateral border control through an argument of freedom of association. This freedom gives the relevant "self" the right to associate with others as it sees fit, as long as its institutions are justified to the "self" in the form of democratic participation. If the "self" consists only out of members of the state, like Wellman believes, than exclusion might be justified on the grounds of collective freedom of association grounded in collective self-determination. If the "self" consists out of more than only members of the state, than exclusion by a state might be problematic as it lacks democratic justification to and by those not member of the state.

Abizadeh believes that unilateral control of borders is inconsistent with the democratic theory of popular sovereignty. Abizadeh does not defend this theory, but only shows what follows if one is already a committed democrat (Abizadeh, 2008, p. 38). Wellman, by appealing to rights grounded in collective self-determination, seems to be a committed democrat as collective self-determination is at the core of democracy. Democratic theory of popular sovereignty entails the following; "The exercise of political power [which is always coercive] 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" (Abizadeh, 2008, p. 41). It is important to understand that the "self" does not per definition exist out of those that the state happens to recognize as right-bearing citizens.

This would mean that it is entirely up to the state to decide how rights are distributed over certain groups. In the case of the Apartheid era in South Africa, the state denied non-whites the same rights as whites, and nonetheless still exercised power over the group granted less rights. To justify this exercise of power by saying that it is simply an instance of South African whites' self-determination, from a democratic point of view would be to fail in saying who is the rightful bearer of such a right to self-determination (Abizadeh, 2012, p. 7).

Whereas Wellman believes only members of the state form the "self" that gets to be self-determining, Abizadeh disagrees. Demarcating the "self" based on who the state sees as citizens can have bad implications, like in the Apartheid example from the previous paragraph. This is where Abizadeh introduces the boundary problem; "It arises as soon as one conceives democratic legitimation to require that the exercise of political power correspond to the will of "the people." The question then is who the people compromises" (2008, p. 45). This is what makes Abizadeh's criticism democratic, he argues that the coercive power of a government should be legitimized by those subject to this very power as people otherwise have their individual autonomy violated without democratic justification, resulting in an undemocratic exercise of government power. That is why Abizadeh seeks to demarcate the "self", he wants the people subject to the government's exercise of coercive power to justify this power through democratic participation in the institutions that exercise the power.

After the term coercion keeps coming up in Abizadeh's work, it becomes clear where Abizadeh is heading. To make sure that the people can exercise self-determination over their political affairs, the democratic principle of collective self-determination demands that "the people" enjoy rights of political participation consistent with their freedom and equality. "Which people? The very people subject to the coercive exercise of political power" (Abizadeh, 2012, p. 10). Instead of arguing that the "self" consists out of members of the state who legitimize the state's rule by their democratic participation, Abizadeh argues that the collective "self" who is the proper bearer of self-determination rights includes anyone subject to the coercive political power of the state (2012, p. 24). So according to Abizadeh those people subject to coercion should have a right to democratic participation in the institutions subjecting them to this coercion. This again shows the democratic basis of Abizadeh's theory, he wants people that have their autonomy violated to be able to democratically participate in the institutions that exercise this autonomy violating power. The next important step is defining coercion, in order to see who is subject to coercion when unilateral border control is imposed and is therefore owed democratic justification. Because "whether a closed border entry policy under the unilateral control of citizens is democratically legitimate cannot be known until we first know to whom the justification of a regime of control is owed" (Abizadeh, 2008, p. 44).

Abizadeh offers us a clear description of his idea of coercion, part of it written down in an appendix on coercion (2008). He distinguishes between being actually coerced and being subject to coercion. "The state actually coerces a person's action only when it successfully helps prevent her from doing something she otherwise likely would have" (Abizadeh, 2008, p. 57). An example of being actually coerced is the following: "The peaceful (in)action of a would-be murderer, for example, is actually coerced by the state only if the coercive acts or threats of state agents helped prevent her from committing murder" (2008, p. 57). The



government's threat of punishment prevents this person from committing a murder as he otherwise would have done. The government communicates to the would-be murderer to cause a bad outcome (punishment in this case) if the would-be murderer undertakes a certain action (the murder). The would-be murderer refrains from murdering, (part of) his reason being to avoid the bad outcome; being punished for murder. In this case, the would-be murderer is actually coerced. Someone who is actually coerced is always subjected to coercion, but someone who is subjected to coercion is not always actually coerced according to Abizadeh. For example, if the would-be murderer actually kills someone despite the credible threats made against him, he is not successfully coerced, although he still has been subject to coercion due to the threat made in order to try and make him change his course of action. An agent subjects another to coercion when "it undertakes an intentional act, or effectively authorizes a future act by its agents, whose normal effect is preemptively to deprive a person of the possibility of acting in some way she otherwise could have" (Abizadeh, 2008, p. 57). In the case of border control, the state authorizes the use of force against those who do not follow the rules put in place by the government. So according to Abizadeh, all outsiders are subjected to coercion as the use of force against them is authorized by the government in the case that they illegally cross the border, regardless of whether the state successfully prevents the outsiders from crossing the border, and regardless of the intentions or interests of the outsiders. Even if someone has no interest at all in crossing the border, this person is still subjected to coercion according to Abizadeh as his independence is violated by the authorization of force. There is a possibility that at some point he develops an interest in crossing the border, or that he does not develop this interest because of the imposed border control. It is important to note that Abizadeh believes that when looking at whether someone is subjected to coercion, it does not matter what the intentions of the coercee are, and it does not matter whether the coercer successfully prevents the coercee from performing the unwanted action. This is because Abizadeh believes that the use or authorization of force, as is the case for enforcement of border control, always violates the third condition of autonomy: independence, it subjects the will of one agent to another (Abizadeh, 2008, p. 40). So although Abizadeh says that the second condition of autonomy, having an adequate range of options available, is not always violated by subjection to coercion, one's independence and therefore someone's autonomy is always violated by subjection to coercion, and thus by unilateral border control as well. For example, a person is denied entrance to a state. This person has an adequate range of options left as he can apply for entrance elsewhere or return to his country of birth, but his choice has been affected by the state denying him entrance, thus violating his independence and therefore his autonomy. This is important to remember as this is exactly why people subjected to coercion are required a democratic justification according to Abizadeh. The autonomy principle requires all actions that violate people's autonomy be justified towards those very people, and according to Abizadeh autonomy is always harmed when one is subjected to coercion (2008, p. 60). According to Abizadeh, border control is coercive and therefore requires the justification of all those subject to it; everyone, all citizens and outsiders.

The implications of Abizadeh's theory are great. Because of his understanding of coercion, unilateral border control subjects everyone to coercion, all citizens and outsiders, even those with no plans of ever crossing the border, or those who are not successfully deterred from doing so and therefore invades those people's autonomy. Following the autonomy

principle, state actions and laws regulating borders must be justified not only to those that are actually coerced, but to everyone subject to coercion. Because Abizadeh believes that everyone is subjected to a state's coercive regime of border control, it implies that the "self" consists out of everyone and therefore everyone should be able to participate in the democratic process resulting in the border control for it to be democratically legitimate. This way the coercive regime of border control is democratically justified to and by all those subject to it. The only other democratically legitimate option, and probably the more feasible one, is open borders. This way the coercive regime of border control simply disappears. If Abizadeh is correct, then Wellman's demarcation of the "self" is mistaken and border control has not been democratically justified to everyone subject to it, making Wellman's collective freedom of association argument, grounded in democratic principles, inconsistent and therefore unable to justify unilateral border control.

### 3. Disagreement within the academic debate on coercion

In this chapter scholars and their ideas on coercion will be discussed (Abizadeh, 2008, 2010, 2012; Blake, 2001, 2006, 2008; Miller, 2010). The scholars chosen for discussion have written about coercion in relation to migration and demarcating the “self”. Because of this, it is easier to incorporate the articles into our discussion about migration, coercion and demarcating that which gets to determine its own affairs. The main goal in this chapter is to reconstruct the academic debate on the nature of coercion in relation to the question about the democratic legitimacy of states’ regimes of unilateral border control. Abizadeh’s understanding of coercion is not the only one within the debate on coercion and his theory has been subject to criticism, therefore we will explore alternative understandings in this chapter. Different ideas on coercion make for different demarcations of the “self”, and that is why it is important to explore these alternative ideas from other scholars to see whether they seem more accurate than Abizadeh’s understanding of coercion. If we find a clear and persuasive definition or description of coercion that is more accurate than Abizadeh’s, we can demarcate a different “self” through the coercion approach than the one Abizadeh has demarcated. We then find out whether the coercive power that people are subjected to through unilateral border control might still be justified.

Abizadeh offers an interesting way of demarcating the “self” through a coercion based approach, and according to his conclusion practically all forms of current day border control are unjust. He argues that regimes of restrictive border control are not democratically justified to all individuals who he believes it subjects to coercion. If we accept Abizadeh’s reasoning, it would mean that the democratic principles of collective self-determination and freedom of association could not justify unilateral border control, as the border control itself is not democratically justified to all those it subjects to coercion and thus cannot be defended with arguments grounded in democratic principles. Abizadeh’s idea of coercion has been extensively discussed in the previous chapter and will therefore not be further discussed in this chapter.

Abizadeh’s definition of coercion has been subject to severe criticism. I will first focus on the work of David Miller, who has argued that regimes of border control are non-coercive. If he is right, then there is a high chance that freedom of association can justify unilateral border control like Wellman argues, in this case Abizadeh’s theory would be mistaken. The main article that will be used to describe Miller’s ideas on the topic is a direct reply to Abizadeh’s 2008 article on border coercion discussed in the previous chapter. Miller does not attack Abizadeh’s idea that justification is owed to those that are subject to coercion and have their autonomy violated when unilateral border control is imposed, he instead disagrees on who is coerced. Whereas Abizadeh argues that all citizens and outsiders are subjected to a state’s coercive regime of border control, even those with no interest at all in ever crossing that state’s border, Miller believes that the mere imposition of border control does not subject outsiders to coercion. He believes that outsiders are merely prevented and not coerced when asked not to cross the border. Sometimes coercive means are used to enforce the prevention, but the act of exclusive unilateral border control itself is a case of prevention according to Miller (2010, p. 116). In order to understand this, it is important to know how Miller defines coercion. He first explains the Nozick-Raz definition, which states that coercion diminishes autonomy by violating either the second and/or third condition of

autonomy, having an adequate range of options available and independence respectively; “a person who is subject to coercion will either no longer have an adequate range of options to choose from or will be unable to make an independent choice between them, or perhaps both” (Miller, 2010, p. 112). This definition by Raz builds upon Nozick’s work (1972). Miller believes that someone who chooses another option than he otherwise would have chosen in order to avoid a bad action from occurring, is merely prevented from choosing a specific option and therefore does not necessarily have his autonomy violated. He gives an example to illustrate this idea. Suppose there are two people, Jane and Peter. Peter wants Jane to have dinner with him and invites her to a Thai restaurant, but Jane hates Thai food and clearly communicates to Peter that she will not be joining him if they go to a Thai restaurant. The threat is sufficiently grave that Peter will choose another restaurant to go to. But the fact that Peter can choose other restaurants already shows that there is an adequate range of alternative options available, and Miller therefore believes Peter’s independence is left unviolated. Miller seems to argue that the third condition of autonomy, independence, cannot be violated when an adequate range of options is still available as one is than not coerced to do a specific thing, but rather prevented from doing a specific thing (Miller, 2010, pp. 113-114). To put it in another example, a mugger coerces someone when threatening to stab him if he does not hand over his wallet, on this account of coercion both the second and third condition of autonomy are violated, with a knife to your throat there are no adequate options left, and your will has become subject to that of the mugger because of the lack of adequate options available. “With this narrower (and more intuitively plausible) definition in hand, we can draw a distinction between coercion and prevention, where coercion involves forcing a person to do some relatively specific thing, and prevention involves forcing a person not to do some relatively specific thing while leaving other options open” (Miller, 2010, p. 114). Miller defines coercion differently and argues that when a person is forced not to do a specific thing, he still might have a range of adequate options available and is therefore not subjected to the will of another. Miller believes that prospective immigrants are merely prevented by border control, but not coerced, as they are not forced to undertake a specific action, leaving them independent in choosing between the adequate options still available. Most of the time they have plenty of alternative options available, like migrating to another country or even undertaking certain actions in their country of origin. While Miller believes prospective immigrants have their freedom restricted and are required a justification when denied entrance, he believes they are not coerced and therefore are not required a democratic justification. Miller argues that intention is an important requirement for a threat to be coercive: “Since coercion requires intention, and the preventing state intends only that he should not enter its own territory unauthorised, not that he should remain in his country of origin, its border closing is not coercive” (2010, p. 117).

Another scholar who has written on coercion and migration is Michael Blake. In one of his articles he mentions the difficulty of the topic of migration as opposed to other topics in political science: “Questions of immigration ask us not what duties exist between parties to a community, but who shall be allowed to form a part of that community in the first place” (Blake, 2006, p. 1). He agrees with the other scholars in saying that state coercion must be justified to those individuals coerced, he even states that rights of democratic citizenship and material equality are preconditions of legitimizing ongoing state coercion (Blake, 2008, p. 967). Where Blake differs from the rest in his understanding of coercion, is that he sees

state coercion towards own citizens as being very distinct from other forms of coercion, although he does believe that all forms of coercion stand in need of justification (Blake, 2001). He argues that being a prospective immigrant alone may already justify the coercive power that the state in question subjects him to through border control: "Prospective immigrants are not subject to the coercive control of the government in civil law, criminal law, and the like; instead, they are seeking to become subject to these legal forces and so have subjected themselves to the coercive authority of the state in that state's process of adjudication" (Blake, 2008, p. 965). Because the would-be immigrant seeks to voluntarily subject himself to the coercive power of the state, Blake believes this coercive power to be justified: "To the extent that prospective immigrants have voluntarily accepted the coercive regime to which they are subject, that regime might be viewed as justified through their giving of consent" (2008, p. 969). In contrast to Abizadeh, Blake believes that the mere imposition of border control does not subject would-be immigrants to coercion, instead they are only subjected to coercion once they decide to request entrance to the state's territory, this being one of the reasons for Blake to argue that unilateral border control regimes are justified (Blake, 2008, pp. 965, 969). Blake clearly believes that would-be immigrants are not subject to the coercive power that requires the coerced to have a say in the formulation of the coercive laws, but that only citizens are subject to this distinct coercive power that requires democratic justification: "... I have, for instance, no moral right to vote in French elections, no matter how strongly I feel about what shape their laws ought to take. Similar things may be said about immigration. Those individuals born in France (say) have a right to continue to live in the political community of their birth; those who simply want to enter into it have no such equivalent right" (2006, p. 4). Although Blake does not clearly define coercion like Miller and Abizadeh do, he does give us a clear idea on who he thinks are subject to coercion when unilateral border control is imposed. Blake argues that people are only subject to coercion through unilateral border control once they come to the border, be it literally or through a legal act of application, this coercion being different from the kind that citizens are subjected to by their government. He clearly states that no democratic justification is required for this subjection to coercion, as it is already justified by the voluntary decision of the would-be immigrants to subject themselves to the legal machinery of the state in question. He disagrees with Miller as he argues that once would-be immigrants apply for authorization to cross the border, they are subject to coercion. Although Blake believes that this subjection to coercion does not require further justification, Miller would argue that this is not a case of coercion at all, but rather a case of prevention. Blake however also disagrees with Abizadeh, as Abizadeh argues that the kind of coercion that would-be immigrants are subjected to because of restrictive border control is unjustified, whereas Blake argues that this subjection is justified by the would-be immigrants voluntarily subjecting themselves to coercion.

#### **4. Why the freedom of association argument cannot justify unilateral border control**

In this chapter I will develop my own position on the relevant ideas discussed in this thesis. The goal is to find out which coercion based approach of demarcating the “self” seems to be the most accurate and consistent, and to then to eventually see who belongs to the “self” who possess the right to determine their own affairs. When we are able to say who is coerced by the unilateral imposition of a border control regime by a state, we can find out whether the freedom of association argument can justify this regime. Collective freedom of association is grounded in collective self-determination, both are democratic ideas grounded in collective autonomy. According to the democratic theory of popular sovereignty the exercise of coercive power is only legitimate as long as it is justified by and to those subject to the coercive power. If the people who we believe to be subjected to coercion by unilateral border control do not have a chance of democratic participation in the institutions managing the border control regime, than it seems impossible to justify this exercise of power through the democratic freedom of association argument. Justifying undemocratic exercise of power through an argument grounded in democratic principles is inconsistent with democratic values.

So who is subjected to coercion when unilateral border control is imposed? The first thing that I agree on together with Miller and Abizadeh is that coercion invades at least one of three conditions of autonomy. Miller believes that independence cannot be violated when there is still a range of adequate options available to choose from, as one is not coerced into doing one specific thing but is rather prevented from doing one specific thing, leaving other options open. I disagree. Imagine the following, X makes a credible threat to Y that he will hurt him if he chooses options B, C or E. Because of this threat, Y refrains from choosing these options even though he prefers option B. Options A, D and F are still available and make for an adequate range of options for Y. However, his independence is undermined as his choice is influenced by the credible threat of X. X wanted to limit Y’s options through his threat and successfully did so, Y might not have been coerced into choosing one specific option, but Y has been coerced by X into not choosing an option that X dislikes. Through a credible threat, Y has been subjected to the will of X as Y will avoid an option that X dislikes, thus choosing an option that X finds acceptable. I argue that Y, while being left with an adequate range of options, has been coerced by X into not choosing certain specific options thus at the same time being forced to choose from the range of options that X finds acceptable. It does not matter whether these options form an adequate range of options for Y, Y has still been coerced by X.

For the case of border control, imagine the following. Eric very much wants to migrate to Germany, it has always been his dream to live there, but he is denied entrance at the border. The border guards tell Eric that if he tries to cross the border anyway, they are authorized to use force against him. He still has the option of returning to his home country and pursue his many options available there, or he can try and migrate to the many other countries that have not yet denied him. Plenty of options available, an adequate range I would say, but is Eric truly self-determining here? I believe not. The third condition of autonomy, independence, is violated; Eric has become subject to the will of another agent because of a credible threat of violence. The state might not subject Eric to their will in a

way that they coerce him in choosing one specific option, but the state did manage to have Eric not perform a specific action because of their threat, only because they want Eric to avoid this option, which to me sounds like Eric has become subject to the will of the state. If Eric has not become subject to the will of the state, how can it be explained that Eric does not cross the border? It has always been his dream to do so and he has enough resources to migrate, the only thing refraining him of doing so is the state with its credible threat of using force. I believe Eric has been coerced. Even though the state is merely trying to prevent Eric from crossing the border, his autonomy has still been violated as his will has become subject to that of the state; Eric is coerced by the state, who used a credible and successful threat of violence to subject Eric to its will.

So do I believe, like Abizadeh, that all outsiders and citizens are subject to coercion when unilateral border control is imposed? No, because I agree with Miller that for the many people who have no interest in crossing the border in question, and/or will never develop an interest in doing so, autonomy has not been violated. Coercion requires violation of at least one of three conditions of autonomy, and coercion requires a successful threat that makes the coerced refrain from choosing a preferred option. Imagine Eric again, this time San Marino unilaterally imposes a restrictive border control regime. Eric has never even heard of San Marino, let alone has an interest in ever crossing the micronation's border. Is his autonomy violated because of the border control regime? I believe not, let us look at the autonomy condition again. Number one has not been violated, Eric still has appropriate mental capacities. He also definitely has an adequate range of options available, no valuable options have been lost to Eric because of San Marino's border control regime, Miller argues the same in his example of a Scottish landowner (2010, p. 116). Eric's independence too, I argue, has not been violated because of this border control regime. If Eric's reason for not wanting to visit would have been San Marino's threat to use force, then he would have been coerced by the state. But this is not the reason, the reason that Eric does not cross San Marino's border is his lack of interest in doing so. He has no knowledge of San Marino's border control, or even of the state's existence. San Marino's threat to use force against anyone trying to cross the border unauthorized by the state has no effect on Eric's ability to make an independent choice between his available options. Therefore his autonomy is unaffected by San Marino's threat against unwelcome would-be immigrants. Violation of autonomy is a requirement of being subjected to coercion, and since his autonomy is left unviolated, Eric has neither been coerced nor has he been subjected to coercion. I believe that a unilateral border control imposition only subjects those to coercion that have an interest in crossing the border in question.

Blake also presents an interesting idea. He believes, contrary to Abizadeh, that prospective immigrants who are seeking to become subject to state they want to migrate to, have subjected themselves to the coercive authority of that state, with the voluntary subjection possibly legitimizing the subjection to coercion (2008, p. 965). This is an important remark, as Blake says that prospective immigrants are subject to state coercion when requesting entrance into a state, but are not subject to the state's coercive network when they have not yet requested entrance, or decided that they want to cross the border. In saying this, he obviously disagrees with Abizadeh on who is subjected to coercion by imposition of unilateral border control, but he also disagrees with Miller who believes border control to be a case of prevention, and that those "prevented" are not subjected to coercion, only

when the border control needs to be enforced by guards for example. In another article Blake states the following: “those individuals who are subject to the coercive legal control of a given society have a moral right to have some say in the formulation of those laws” (2006, p. 4). Here he seems to agree with Abizadeh in saying that being subject to state coercion requires democratic justification, although he believes non-citizens are not subjected to this same legal coercive control. The difference is that Abizadeh believes that all outsiders are subject to state coercion when unilateral border control is imposed, and Blake saying that only prospective immigrants voluntarily subjecting themselves to state coercion are subject, this coercion being different from the kind that citizens are subject to. Here I tend to agree with Blake. As argued in the previous paragraph, I find it very hard to imagine that individuals with no interests at all in crossing a certain border are still subjected to coercion by that state’s unilateral border control, my example of Eric and San Marino shows this.

I believe only those with an interest in crossing a state’s border are subjected to coercion by that state’s restrictive unilateral border control. I believe they are subjected to coercion because the third condition of autonomy has been violated as they become subject to the will of the state; they want to cross the border but the state is preventing them from doing so through credible threats of violence or other forms of force. An individual can no longer be said to be independent when the state interferes in personal interests by threatening punishment, the individual alters her course of action because she believes the state is willing to carry out the threat. The individual wants to avoid punishment and alters her course of action, thus making the individual subject to the will of the state. What does this mean for the answer to our main question; can the freedom of association argument justify unilateral border control? The freedom of association argument for the state context finds its roots in collective self-determination, a democratic principle. The democratic theory of popular sovereignty requires exercise of power to be justified by and to the very people over whom this power is exercised. Even when we do not completely agree with Abizadeh’s reasoning that all outsiders are subject to a state’s border control regime, I do still argue that there are people with an interest in crossing borders of state’s that do not allow them to freely travel across the border. These people have their autonomy violated and are subjected to coercion, yet have not democratically justified the institutions subjecting them to this coercion. Restrictive, unilateral border control subjects people to coercion yet does not democratically justify this exercise of power. To defend this type of border control with an argument grounded in democratic theory seems unfeasible to me.



## Conclusion

To conclude, I believe the freedom of association argument cannot justify unilateral border control. Collective freedom of association, the argument used by Wellman to justify unilateral border control, is grounded in collective self-determination, which is grounded in collective autonomy. This argument grounded in democratic principles cannot justify coercive exercise of power that is not democratically justified to all those subject to this power. However, this is not to say that unilateral border control cannot be justified at all. I am especially interested in Blake's ideas on unilateral border control, who argues that prospective immigrants voluntarily subject themselves to the coercive power of a state when applying a request for entrance, and thereby justify the exercise of this coercive power of the state. Freedom of association might not be able to justify unilateral border control in a way consistent with other democratic values, but I believe Blake's discussed articles make for a convincing alternative theory for justifying unilateral border control. For further research on justification of unilateral border control I recommend further exploring Blake's argument.

This research does have its limitations. One being that the democratic theory of popular sovereignty has been explained but has not been questioned, for further research on this topic I do recommend researching whether this theory can be refuted, this could lead to a different answer to the research question presented in this thesis. Another limitation I want to present is that Wellman's inference from individual rights of autonomy, self-determination and freedom of association to the collective forms of these rights has not been questioned. Although I found his examples supporting this inference convincing, further research might refute or defend his inference and add to the knowledge on this topic. For further research on justification of unilateral border control I also recommend diving deeper into defining coercion, as this is where scholars mainly seem to still disagree on. A different definition of coercion makes for a different demarcation of the "self" when using the coercion approach and could thus lead to a different answer to our research question. Since our conclusion is that the freedom of association argument cannot justify unilateral border control, I recommend researching other arguments that can possibly justify unilateral border control. The implications of the conclusion of this thesis are not discussed here as it is simply not the goal of this thesis, although research on this might be interesting for work on this topic in the future. Therefore I also recommend looking at how democratic institutions can be formed so that border control regimes can be democratically justified to all, as Abizadeh has proposed in his work.

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