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The Migrant Crisis and Philosophy of Migration
Reality, Realism, Ethics

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Ipse ignotus, egens, Libyae deserta peragro,
Europa atque Asia pulsus.

Virgil¹

you have to understand,
that no one puts their children in a boat
unless the water is safer than the land

Warsan Shire

Il me semble que les pays qui se réclament de la civilisation occidentale et démocratique,
au sens classique du mot, n'ont rien à se reprocher.
C'est nous qui voulons la libre circulation des hommes.
C'est nous qui voulons surtout la libre circulation des idées.

Paul-Henry Spaak²

[L]e migrazioni rappresentano da sempre la reazione fisiologica degli uomini agli
squilibri demo-economici del pianeta. Un fenomeno che appare talvolta inevitabile e che
andrebbe affrontato e governato agendo in primo luogo sulle cause che lo determinano.

Gian Carlo Blangiardo³

¹ *Aeneid*, I,384-5. According to John Dryden's translation: "Debarr'd from Europe, and from Asia thrown, In Libyan deserts wander thus alone.", *The Internet Classic Archive*, MIT, <http://classics.mit.edu/Virgil/aeneid.1.i.html> last accessed 20/10/2017.

² "It seems to me that the countries calling upon the Western and democratic civilization do not have anything to reproach themselves for. We are the ones who want free circulation of men. We are the ones who want above all free circulation of ideas." All translations in the text are mine, unless otherwise stated.

³ "Migrations have always represented the physiological reaction of men to the demographic-economic unbalances of the planet. It is a phenomenon that sometimes appears inevitable and that should be tackled and governed, first, by intervening on the causes that determine it".

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Introduction

World Citizens or Exiled? The Paradox of Refugees as the Touchstone of Contemporary Globalization⁴

Since political philosophy does not necessarily have to be an aesthetically unpleasant experience, I would like to introduce this research with a poetic citation.

Those of the readers who have been educated in classics might remember the simple and yet pathetic story of Meliboeus and Tityrus, narrated by Virgil in the First Eclogue of the *Bucolics*. These two characters meet in the countryside of Mantua. They are friends and they share personal experiences, moral values, artistic tastes: as many shepherds in Western classic poetry, they are as concerned with making music and praising their beloved miss as with caring for their sheep. Their fate, however, is dramatically different: Meliboeus is fleeing, Tityrus is staying.

Tityrus has been enabled to escape the doom of exile by Prince Augustus: he praises this latter's divine "bidding", since the Prince enabled him to pursue the quiet, humble, and artistic life they love. Meliboeus, to the contrary, is leaving after having lost everything as an outcome of the civil wars. Tityrus is well ready to call Augustus a "god" for he has granted peace to him and to state alike, but his luck does not make him sensitive towards the merits of the powerful only: he is still ready to host Meliboeus when night falls, in the moving close of the poem. Nothing is told about the reasons for the one to move and for the other to rest: exile and refuge seem inescapable accidents of human life, falling on the characters as deep shadows fall from the hills at sunset.

Meliboeus is not the only nor the most famous refugee of Virgil's poetry. Even those who have never heard of his name might more likely have come across the story of Aeneas, a refugee whose fatherland, the Asian city of Troy, has been tore down, whose family has been slaughtered, and who ends up becoming the founder and the first king of the Roman civilization.

⁴ This introductory material into the question of refuge was delivered as a presentation for the Conference "Political Theory on Refugees" held in Augsburg, 17/18-11-2016. I want to thank the German Fritz Thyssen Foundation for sponsoring, and above all I want to thank the organizers, the Netzwerk Flüchtlingforschung, The transcultural and comparative political theory group, Sybille De La Rosa, Melanie Frank, Viktoria Hügel, and my colleague Felix Bender from CEU. The materials presented in that conference by other participants, the kind appreciation of my contribution, and the very constructive remarks I have received contributed enormously to my overall project.

If Tytirus offers a moral legitimation to the state-order, Aeneas is the one who founds it materially: a story very much similar to the other foreigners/founders collected in Bonnie Honig's *Democracy and the Foreigner*⁵, and in the works by Julia Kristeva Honig makes reference to⁶. With the "Glorious Descent of the Heracleidae" to Greece – most likely the mythological record of the Dorian invasion –, the Chinese-inspired Seventeenth Article Constitution of Japanese Prince Shotoku, the Viking Varangian Guard in Mediaeval Byzantium, from whose merging with that Eastern Roman Empire originated the first Russian Kingdom, the Magyar settlement in Hungary led by prince Árpád, and the flight of the Founding Fathers to the then non-yet-existing United States, the foundational role of foreigners is easily documented, and so is the even more striking contribution of refugees (strictly speaking, another anachronism).

Here I claim that refugees are still performing that globally relevant role *nowadays*, however under very specific circumstances, and a change of the terms of the question which is unique to present time. To defend this point theoretically, I will present a preliminary general reflection on refugees' rights. This analysis is critical in the sense that it is aimed at showing how some problems we are actually facing in dealing with the refugee crisis have a theoretical correspondence in the way rights have been presented and phrased, and in the correlative vagueness and ambiguity on the states' duties and on the way of implementing them. But I will try to advance this specific point firstly in a universalistic and analytic, then in a historical and situated perspective. I hope this will show that we can find some convergence between very distant philosophical methodologies, especially when it comes to crucial matters.

I begin with elementary claims regarding the analysis of rights and their correlative duties: we often discuss rights and mobilize ourselves for them without questioning their foundation, which, for what regard the right to migrate, would be the concern of this all work, but also their structure, which is instead the object I set out to clarifying now. This latter is indeed rather easily explained if we assume the framework offered by Wesley Newcomb Hohfeld, a framework so sound that it has gone generally unchallenged in its general traits for about a century.

When we say "right" we point to four different fundamental normative relations: the first level rights are privileges or liberties ("I have the right to go to Milan") and claims ("I have the right that the bartender prepares me coffee", conditional on my having paid for it, of course). This

⁵ Princeton University Press, Princeton 2003.

⁶ *Nations Without Nationalism*, Leon Roudiez (trans.), Columbia University Press, New York 1993.

general structure, which has been developed for legal rights, can be applied to moral rights, human rights and so on. It is only a matter of clarification of internal structures and relations. If I have a liberty, everybody else lacks a claim that I renounce my liberty (for instance, if I have the liberty to come to Milan, the local police lack a claim right that I do not enter the city, and other people lack the claim that I go to Bergamo on the same day). If I have a claim against one, then one lacks a liberty (for instance if I have a claim that the bartender serves me a coffee (s)he lacks the liberty to refrain from doing it, e.g. by going home in the meanwhile). A claim implies a correlative duty, and a liberty a correlative negative duty or no-duty (a “duty-not-to”), while liberty and duty, claim and no-duty are opposite.

The situation becomes more complex when we move on to analysing second-level rights: immunities and powers. Immunities correspond to liberties in the sense that having an immunity implies someone else’s lacking the power to alter my normative situation, to wit the set and substance of my rights and duties. For instance, if I have a constitutional immunity from being deprived of the right to free-speech, that means that my Parliament is not entitled to issue laws preventing me from intervening on a given topic - qualifications can be assumed and spelled out in a more detailed analysis of the specific implications, or lack thereof. A power, to the opposite, enable to alter the first-level (liberties and claims) or second-level (immunities and powers themselves) normative situation of a person. For instance, the local administration has a power to alter my liberty to drive, e.g. by ordering cars with even number plates off to reduce pollution. More importantly, the Parliament can (has the power to) alter my power with regard to a certain category of people by restricting the possibility to hire them. The opposite of a power is a no-power or a disability: thus, my Parliament is unable to alter my normative status in some specific areas -say, fundamental human rights. The opposite of immunity is a liability: if I am not immune from the Parliament changing the traffic laws, this means I am liable to its power to change it – more simply, I am liable to my boss altering the list of the things I have to do. Power and liability, disability and immunity are correlative between one another.

There is no need to go into further detail now: what is required here is only an outline of the normative structure of rights, and of the web of obligations generated by an apparently simple normative status. In other words, what is important here is to note the complexity and the plurality of normative relations, as in the following example.

A simple right like possessing a computer⁷ entails in fact complex and numerous normative relations. I have the liberty to use the computer whenever I wish to – compatibly with all other rights and duties, mine and of other people -, but I can give up this liberty by offering the computer I just bought as a present to someone. I thus have a power to alter both the other’s normative situation and mine – conditionally on one’s accepting my gift -, but after that, since presents cannot be claimed back, one is immune from any other change of the rights over the computer I might desire to impose. It is easy to imagine how complex these dynamics are made if we expand the focus on society: a possible instance related to the preceding example would be the recent dispute between Apple and the FBI on the right to access data terrorists stored on their computers. Even the simple event of owning a computer is implicated in a huge web of rights at different levels.

Now, it stuns the mind to try to imagine the abysmal complexity and the galaxy of implications we encounter when we debate the rights of refugees, which by their very definition are international and therefore have implications at no less than three normative level: the individual, the state, and the international society. A further complication could be added by reflecting on the double status refugee rights possess as moral and legal rights.

My point, though, is not that of being discouraging: what matters to me in order to prove the relevance of the subject in this Introduction is that this complex interconnectedness also implies that by addressing the issue of refugee we alter the overall normative scheme of the international society also: indeed, the issue of statelessness and asylum that has served as a foundational leverage-point to the envisioning of the current world-order, with one of the United Nations institutions, the UNHCR, entirely and exclusively devoted to them.

I do not want to exaggerate and to be misunderstood as claiming that it is our theoretical contribution that perfects what millions of refugees achieve through their own vicissitudes. The work of Engin F. Isin is to this respect a very good corrective to show how (in)actions on the part of every and any world citizen has an iterative and performative effect that exceeds and defies theorizing. And yet I would not exaggerate the agency of sometimes terribly constrained “world citizens” either, nor do I believe that the urgent and immense responsibilities of Western citizens and scientists allow us to “abandon” refugees and migrants to their struggles⁸.

⁷ The example and terminology is taken from Wenar, Leif, "Rights", *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2015/entries/rights/>>.

⁸ For instance, *Citizens Without Frontiers*, Bloomsbury, London 2012. I wish to thank again Sybille De La Rosa for suggesting consulting Isin’s work.

This brings me to the second set of these introductory considerations. It was in fact the catastrophe of de-nationalization of Jews and other minorities, and the post-war condition of enormously widespread statelessness, that encouraged a philosophical and institutional answer to the limits of state-centred legal positivism and to extreme realist⁹ and nationalist political theories and practices. It is a famous theoretical achievement by Hannah Arendt to have conceptualized the “right to have rights”¹⁰ while reflecting upon the condition of rightlessness to which individuals were exposed in the late modern and ultimately totalitarian condition, when the nation-state was the only purveyor of rights and sovereignty, and the “sovereign” power to abandon people through denaturalization was absolute. By defending the political legitimacy of “humanity as such” as a judge upon Adolf Eichmann’s crimes¹¹, Arendt claims that we entered the era of “cosmopolitan norms of justice”, where the relationship between persons and humanity is not necessarily mediated by states anymore, if not for a matter of practical enforcement. What is of momentous relevance in this picture is the transformation of the Westphalian conception of sovereignty and of its corresponding legal and moral philosophy, almost exclusively centred on the nation-state. The institutional answer to the terrible events from which Arendt’s reflection originated, beyond the Universal Declaration which Arendt sees as the hallmark of the cosmopolitan era, included the Geneva Convention Relating to the Status of Refugees and the following Protocol. These documents are the cornerstone of international refugee law up to nowadays.

According to Seyla Benhabib¹², the Convention and the Protocol, two important pieces of “cosmopolitan” legislation, are the institutionalization of the “right to hospitality” theorized by Immanuel Kant in his famous 1795 philosophical sketch *On Perpetual Peace*. Once again, it is interesting to note how in the Kantian essay hospitality to the derelict and the highest global institutions were seen as strictly intertwined: the right to hospitality was the status of world-citizenship, and a federation of global republics its corresponding institutional background. Refugees were already seen as the forerunners and the incarnation of cosmopolitan law.

Despite the recognition of the grandiose philosophical foundations of the contemporary world order, Benhabib is also aware of the many ways open to states to escape these obligations:

⁹ I do not want to suggest any generally negative connotation to the word “realism” here: on the various meanings of the term, see section II and in particular the beginning of chapter II.II.

¹⁰ *The Origins of Totalitarianism*, Harcourt, Brace and Jovanovich, New York 1968.

¹¹ For a critical view see Danilo Zolo, *Invoking Humanity*, Continuum, London 2002.

¹² *The Rights of Others: Aliens, Residents and Citizens*, Cambridge University Press, Cambridge 2004.

ways with which we are all the more familiar in our times. Many authors I rely on are also keenly mindful of the historical and ideological constraints of refuge: to the “organized hypocrisy”¹³ of absolute sovereignty it might correspond the subtler but no less dangerous hypocrisy of an intermittent and rhetorical appeal to international human rights, including asylum.

In fact, in these very years a new refugee crisis has exploded, and has brought to the breaking point states and international institutions alike, together with the legal order under which they lived.

The refugee crisis is both the revealing outcome of, and a trigger for, a substantial change in the international society, as it has become apparent with the New York Declaration issued on the 19th September 2016 summit at the UN. To a disillusioned reader, the NY Declaration appears nothing but a rhetorical restatement of common-sense principles. What is perhaps most important in that document is at least the recognition that a new step must be taken, and the statement of the purpose of opening up a new process. The document calls for the creation of a global migration compact, which could not be formulated without mentioning and taking into account the root causes – conflict of unequal interests, wars, wealth and power disparities – by which migration and refuge are caused. Indeed, the very process of designing such a compact should work as a forum for addressing these issues on a global standpoint rather than a Western-centred perspective. It *should*, but it is not clear whether it *could* and *would*: years of negotiations and implementations divide us from the possibility of formulating a realistic evaluation of this process, be it an unprecedented turning point or another missed opportunity. Nonetheless, the clarification and the distribution of the burden correlative to the granting of refugee rights *should* and *could* contribute to the moral progress of the whole cosmopolitan society.

To conclude, as in the poem of Tityrus and Meliboeus and in the story of Aeneas, we are once again witnessing how refugees and their suffering are possibly setting the standard for understanding and laying down the foundations of a peaceable, hospitable and ordered global society. They are undergoing the trials of the discoverers and of the watchers. To us, thinkers and actors, belong the responsibility of not leaving their struggle misunderstood or unaided.

¹³ Stephen D. Krasner, Princeton University Press, Princeton 1999.

Open Borders: History, Theory, Utopia

It is an established method of philosophical inquiry, at least since the times of Aristotle, to begin a research with a summary exposition and review of the theses of the predecessors. In order to advance my considerations regarding the crucial issue of refugee and migrant rights, whose relevance has been shown in the previous section, I would like to proceed accordingly, but this has proved particularly difficult with this topic. From references scattered all throughout the work, for instance in the opening of chapter I.I and II.II, but also in the unfolding of chapter IV.II, the reader would be offered an explanation of the peculiar complexity that a history of philosophy of migration presupposes. Perhaps even more than other problems in applied ethics, the very nature of the question has shifted along the ages, as witnessed by the difficulty of making pre-modern forms of political organization fit under the same category of the contemporary state. It would thus seem to me that a satisfactorily complete history of the ethics and perhaps, more broadly, of the philosophy of migration, in the sense of an organic work capable of accounting for the subject's complexity and with a view to contemporary problems, is still to be written, and this cannot be done here. Nonetheless I would make reference to two remarkable and complementary accounts of such a history provided within larger projects. The first is Veit Bader's chapter on "First Admission and Traditions of Practical Philosophy" in his admirable "The Ethics of Immigration"¹⁴: as the title makes clear, out of the multiple meanings of the term "immigration", the author chooses to focus on "first admission", that is, physical entrance to a territory. The second work is "The Cartography of Citizenship" by Dora Kostakopoulou¹⁵, a chapter primarily devoted to discussing the same timeline resumed by Bader, but more extensively, and with a view to naturalization practices. If one wants, another story, this time focusing multiculturalism, and on contemporary debates only, can be drawn from the beginning of an essay by Will Kymlicka¹⁶. The account I offer here is based on these three sources, and touches upon the crucial authors, problems, and moments, on which I expound again in the rest of the work.

It is barely necessary to begin by mentioning that migration, before being a moral issue, is a human *behaviour*, and that there it seems to be no history or place in the age of mankind which

¹⁴ *Constellations* Volume 12, No 3, 2005, pp. 331-361.

¹⁵ *The Future Governance of Citizenship*, Cambridge University Press, Cambridge 2008.

¹⁶ "The New Debate on Minority Rights (with Postscript)", in Laden, A. S., and Owen, D. (eds.), *Multiculturalism and Political Theory*, Cambridge University Press, Cambridge 2007, pp. 25-59.

is not affected by it, at the very least in the sense of displaying measures to contain it. To this general anthropological characterization, I would think safe to couple the strong and general recommendation of hospitality which belongs to ancient ethics. As it will be mentioned in chapter IV.II, Homeric ethical code is one of the first witness to the injunction not to oppress but rather to protect and help the stranger, especially if in need. To betray friendly foreigners, as done by Polyphemus, is an ominous transgression against humans and gods, which unsurprisingly is often retributed by the kind of retaliation Polyphemus himself receives. A perhaps even older source is that of the Bible, flecked with similar imperatives, often coupled with the promise of divine reward or punishment, both in the Old and in the New Testament. Again, as a remark of human anthropology, the strength of these moral norms, to the point of sacredness, do not seem at all unreasonable upon considering conditions of human life at the time. Refusing to host a stranger could have resulted most easily in death: since the world was much less populated, reaching any alternative city or village would have implied exposing oneself to the abounding threats posed by animals and natural agents, which were made more acute by the scarcity of technological or material resources to compensate. And because of the gravity of such an offense, it would not have been unlikely for the wanderer to retaliate, in the absence of state authority and effective policing and deterring systems. In conclusion, the right to hospitality was not only a safeguard against the destruction of the supposedly “weaker”, that is, the migrant, but an indispensable protection for propriety and security of the stably settled: a lesson that we have forgotten, thanks to living in a society where everyone can supposedly afford, or is even entitled to, alternatives to someone’s solidarity, thus pitting migrants’ and natives’ interests the ones against the other.

After Biblical and Homeric ethics we enter in the age of philosophical reflection, for instance through the master gate of Classic Athens: the common assumption is that Aristotle (and Plato) initiated an age of “republican exclusionism”, as Bader calls it¹⁷, but besides noticing that here he is inadvertently slipping from the consideration of first admission to naturalization – he is indeed speaking about “membership” - I would refer the reader to chapter IV.II for my rather skeptical treatment of this assumption. Be it as it may, it is a fact that both Aristotle and Plato travelled unrestrictedly to different Greek city states, and that the Metics population of the Athens of the time was comparable to some multicultural present-days liberal democracies – not to mention the slaves, who were foreigners by definition. As the slavery example clearly shows, I am

¹⁷ “The Ethics of Immigration”, p. 333.

not presenting Classic Athens as a model for free movement or other rights, but I would only require the common assumption of homogeneity and restrictive migration laws to be complicated.

More harmonically with Bader, I would instead note that the philosophies of later antiquity, from Hellenism to Roman, from Cynicism to Epicureanism and Stoicism, were all cosmopolitan in character, even if the “inner freedom” of Epictetus was the only kind of free movement available for immense masses of slaves, undoubtedly one of the most numerous categories of inhabitants of foreign origins. Immigration restrictions were weak in a society divided between Greek *κοινῆ* (“community”) and then Roman *imperium* (“empire”) or, as they ideologically claimed, *pax* (“peace”) and a permanent threat by Scythians and other “barbarians”.

Bader then jumps directly to the age of modern-state formation, while Kostakoupolou introduces a paragraph on the “Medieval city” and the complex interaction between feudal fragmentations of statuses and newly-born and more egalitarian and open city-states in the form of republics or *comuni* (“municipalities”). Once again, the political and social life was very diverse and insecure, with the continuous changing, fighting, and mixing of populations: but many empires, kingdoms and other entities were international and interethnic in character. In chapter IV.II I mention Thomas Aquinas’ views on migration, which are, once again, not as restrictive as it is usually assumed: to the contrary, a right to freedom of movement was awarded to all peaceable foreigners – but unfortunately peaceable relations were not too common in Medieval Europe. Aquinas also displays a preference for the religiously and ethnically kindred, even if presented on grounds of political stability. Moreover, he witnesses the first embryos of what were to become modern, centralized states, such as Louis IX’s France or Frederick II’s Holy Roman Empire: these entities and rulers are the first to advance claims akin to present-day sovereignty, not only with respect to religious authorities, but also with a regard to other possible competitors to what was slowly turning into the modern “principle of nationality”.

Aquinas’ philosophy and its theological presuppositions more generally are both unescapable references *and* a point of departure for many of the following thinkers intervening on migration, due to the transformation of modernity which were to bring about new theoretical categories in this field too. Francisco de Vitoria applied Thomistic principles to the morality of the colonization of the New World, and his defence of the right to migrate – to the point of claiming that a government refusing passage to peaceable foreigners was offering a cause for a just war – seems ideologically entangled with both colonialism and crusade-like competitions with foreign

and in particular Muslim rulers for the control of accesses to the Holy Land and other places. However, the general tilt toward the right to migrate, supported by the classic doctrine of the common propriety of the earth, is rather evident in such writers.

With the disputes of Bartolomé de Las Casas are first treated themes whose effects make them relevant even now, like slavery, and the continuing colonization of the non-European world.

In the meanwhile, the Reformation, the formation of growingly autonomous nation-states, and the birth of a modern philosophy brought about new transformations. The principle of state sovereignty is better defined and preferred to supranational sources of moral and political authority: Hobbes, a Thomas theoretically very distant from Aquinas, proposes a political philosophy in which subjection to the national Leviathan is as natural as the original state that provokes it, and sees in the discarded Aristotelian model, mixed with religion, one of the reasons of decadence of the medieval society and world-order. As it is shown in section II, the long-lasting influence of Hobbes is still discussed, even if sometimes in a simplified or only loosely similar version, in ethics of migration as well as ethics of international relations. After Hobbes, John Locke writes from the standpoint of modern contractualism, and mentions the issue of naturalization as part of a policy to ensure the power of the state (see chapter IV.II). According to Bader, Locke belongs to the category of *liberal consent theory*¹⁸, for which ascribed characteristics such as the country of birth and ethnicity are gradually losing relevance. At the international level, “Grotius, Pufendorf, Wolff, and particularly Burlamaqui and Vattel”¹⁹ were among the first to spell out the international obligations of an increasingly interconnected society of states, with Emer de Vattel declaring an obligation to accept strangers in a situation of emergency which closely resembles the right to asylum, even if this obligation was variously restricted and qualified. Partly contributing to the same tradition, Kant developed, as it has been recalled in the previous paragraph, a theory of global citizenship reducible to a right of “universal hospitality”, a recommendation which accompanies the basic regulation for a global federation of states. The French Revolution, and the following conservative reactions, further developed these processes, by strengthening the sovereign state, the process of globalization, and the statutes of supranational treaties and alliances at the same time. In the meanwhile, outside Europe, the same powers who were confronting themselves there were also annexing the world almost completely.

¹⁸ Ibid.

¹⁹ Ibid.

It is in this context of expansion and interaction with foreigners that in one of the biggest jurisdictions of world history, the British Empire, John Stuart Mill and Henry Sidgwick published some of the most influential discussions of the contemporary age on nationality and migration rights. If Mill insisted on the relevance of the principle of nationality to sustain democratic government, Sidgwick also defended the right of sovereign discretion over entrances, but claimed that freedom of movement was ordinarily in the state's interest and that the cosmopolitan view was likely to become "the ideal of the future"²⁰. The latter philosopher, who claimed that "Principles will soon be everything", in politics, "and tradition nothing"²¹, had a revolutionary influence on ethics of migration as well, and is one of the firmest and most recurrent starting point of many of the contemporary discussions.

The thinker whom Kymlicka considers the "initiator" of contemporary debate on minority rights, multiculturalism, and related issues, John Petrov Plamenatz, himself a Montenegrin refugee who entered England a few years after Sidgwick's death, was also the doctoral supervisor of David Miller, the contemporary leading advocate of liberal nationalism/communitarianism, and of a version of border control purified from ethnic and racial discrimination.

Since the 60s, indeed, the theme of ethics of migration has exploded and assumed its actual features, with many scholars arguing in favour of free movement and open borders and other more prudentially advocating for a degree of closure capable of ensuring stability and social trust, so to protect democracy and the welfare state. Refugee theory has also assumed a distinct identity, despite keeping strong connections with the general debate on citizenship, migration, and global justice. In the meanwhile, the world has changed. The international relations of modernity, and the first quasi-global ideals and institutions emerged from and against the Napoleonic Wars and the Congress of Vienna, have given birth to the first forms of refugee entitlements and relief during the crises which followed the Russian Revolution and to a greater extent World War II. Arendt, herself a refugee, and the institutions and processes characteristic of contemporary migration and asylum, are born in those years. However, the terms of the dialectic between harsh political conditions and free movement utopias are still under transformation, most notably due to the migrant crisis after which this thesis is named (see part I).

²⁰ Henry Sidgwick, *The Elements of Politics*, Second Edition, Macmillan & Co., New York 1897 (chapter 18 section 3), p. 308.

²¹ Sidgwick, *Memoir*, Macmillan & Co., New York 1906, p 132.

Structure of the Thesis

The history-utopia dialectic is also the core of the present work, and it explains its structure which is meant to unfold, as the title reads, from reality, through realism, towards ethics.

The thesis is divided into four parts: the first consists in a critical description of the migrant crisis, the second is a methodological discussion meant to structure a form of realism applicable to migration ethics, and the third is a normative debate between closed and open borders, to the favour of the latter.

The fourth part is a “supplement” or appendix to that argument, with chapter IV.I being a sort of alternative view on the refugee crisis from an individual standpoint, with a focus on solidarity rather than, as in chapter I.I, on institutional, demographic, and political transformations. Chapter IV.II is meant to strengthen the open borders claim which is presented, like the version proposed by Joseph Carens, as an overlapping consensus: to Carens’ sources I add the support given by natural law theory.

I have left the abstracts at the opening of each chapter to serve as “signposting”, but the structure of the chapter is also resumed at their beginning and in the conclusions. Each step shall then be sufficiently explained: I also consciously inserted repetitions for purpose of clarity.

The “introductions” which open each chapter are instead *not* a presentation of the argument, but a short example to show the relevance of the subject matter, usually taken from history or the news. I hope this helps to “capture” the reader and motivate her or him to go through the heavier matter that ensues.

The overall methodology of the work is indeed theoretical, even if the exciting research journey that led to the writing of this thesis, and which I will, one day, recount in extended acknowledgements, permitted a significant degree of multidisciplinary research. Thus, the first chapter is strongly influenced by political science and journalism, as is its corresponding chapter IV.I. Terminological discussions are usually an occasion to introduce distinctions, and they are not to be interpreted rigidly. Wittgensteinian “family resemblances” are everywhere around here.

Since I believe that normative conclusions, even if must be themselves and here are themselves scientifically grounded, are to be clearly distinguished from the presentation of facts, I allowed my own voice to emerge more strongly in the more normative sections and above all in the conclusions. My hope is that the reader, and the critic, will enjoy them equally.

Part I
Reality

I.I What Is the Migrant Crisis?

Criticizing a Descriptive Notion and Its Normative Implications²²

Abstract

In December 2016, the *Journal of Global Ethics*²³ published a special issue devoted to the “refugee crisis”, a phrase philosophers and plain persons have become all too familiar with. Apparently, it has a neutral and self-evident reference, but a deeper analysis reveals it to be ambiguous and charged with controversial implications. What are the reasons and purposes of framing the phenomenon of mass migration and refuge as a “crisis”? Answering to this question is the object of this chapter.

The chapter begins with an introduction on the perennial and yet dramatic conflicts between migration and sovereignty.

In the first part, I will show the exceptionality of the current scenario through numbers and maps, and I will expound on its characteristic. After introducing a general and common-sense description of the migrant crisis, I will start questioning the choice of words and their significance, in particular with respect to the alternative “refugee crisis”.

The second part of the chapter will consist in a list of characterizing problems and dynamics: I will discuss briefly the cultural, political, demographic, economic, security, and military aspects of the migrant crisis.

The final part is a synthesis of the theses of the chapter in the form of the concept of “migratory shock”: I will then propose some conclusions.

Key Words: Migrant and Refugee Crisis, Ethics of Immigration, Securitization, Emergency and State of Exception

²² The author wishes to thank the organizers and participants to the CEU Annual Doctoral Conference 2017, “Politics in Illiberal Times”, held at the CEU’s Doctoral School of Political Science, Public Policy and International Relations. A special gratitude is also due to Felix Bender (CEU) for inviting to submit this paper and to Matteo Gianni and Esma Baycan (InCite –University of Geneva) for substantial directions and suggestions.

²³ Melina Duarte, Kasper Lippert-Rasmussen, Serena Parekh, Annamari Vitikainen (eds.), *Journal of Global Ethics*, Volume 12, 2016 - Issue 3: “Refugee Crisis: The Borders of Human Mobility”.

The demographic crisis

A(lmost a)ll Western states displaying sub-replacement fertility rates...

Civil wars and international tensions

From Kosovo to Syria...

The Economic Crisis

~2008-? (from the US to Iceland to Greece...)

Populism and the crisis of liberal democracy

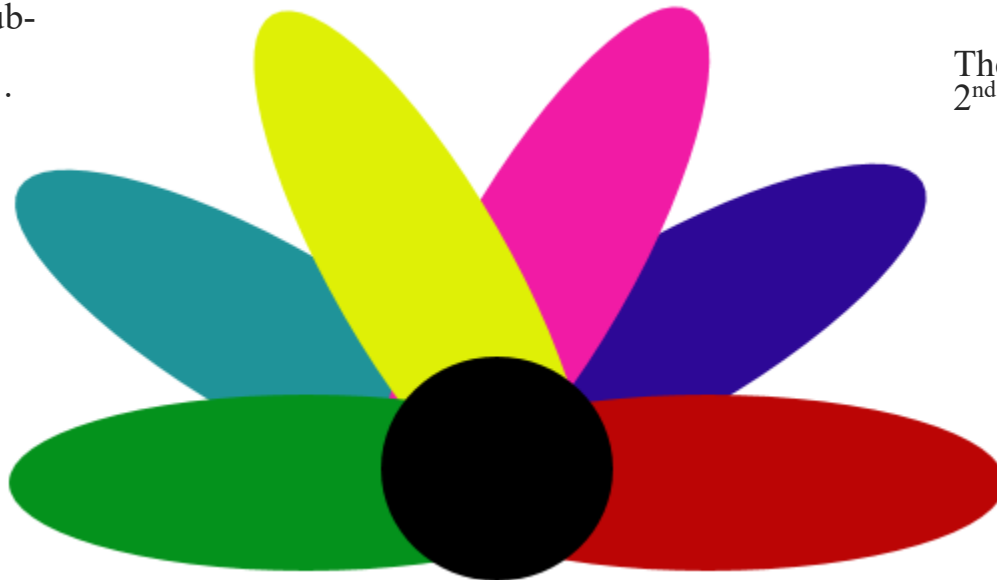
Orban, Putin, Le Pen, Brexit ...

The "End of History"

The collapse of the 2nd and 3rd worlds

The fall of the West and the rise of the rest

BRICS, growth of Africa and Asia...



Europe's Border, Migrant and Refugee Crisis

(Figure 1)

Chapter Structure

I.I.1 Introduction: On Fixing Boundaries and Trespassing Walls: *Homo Migrans* and *Status Stabilis*

I.I.2 Nested Crises: Definitions and Descriptions

I.I.3.1 Three Circles and Three gaps: A Geometry of Chaos

I.I.3.2 Demographic Winters and Arab Springs

I.I.3.3 Invasions and Evasions

I.I.3.4 Frontex and Export

I.I.3.5 The Functional Equivalent of War

I.I.3.6 State (Dis)Solutions: On Emergency and Exception

I.I.3.7 The Migratory Shock

I.I.4 Conclusions

I.I.1 Introduction: On Fixing Boundaries and Trespassing Walls: *Homo Migrans* and *Status Stabilis*

Migration is among the most primitive and common behaviors described by anthropologists, paleontologists, and historians. The very origin of bipedalism and thus of humanity might be related with the capability to travel long distances to find new and more hospitable habitats²⁴. Bipedal locomotion, the possibility of using hands and intellect more freely, and the proclivity to migrate, seem all essentially interconnected. In other words the human being, as such, is migrant. Although, according to official statistics, (international) migrants make up for around 3% of the world population only²⁵. But one is to remember that these figures do not include *internal* migration and short-term mobility like seasonal mobility. Also, throughout history, it can happen that people moving from a community to another are more numerous, especially at times of small tribes and city states. The modern and contemporary territorial nation-state, in its Westphalian form, despite being by far the most effective and dominant form of human political organization, is nonetheless relatively recent²⁶. This, on the one hand, seems to render the very existence of a “migrant crisis” puzzling, since movement within and without state borders is a rather ordinary phenomenon historically and politically. But on the other hand, there is an evident tension between the *stability* of the state and the mobility of the human species: the state is conceived to *stay*: as for *institutions*, the very word is derived from a root having to do with the idea of “standing”, of holding fast. It is therefore a dramatic and eloquent incident that a paradigmatic foundation of a state began with king Romulus laying the foundations of the *pomerium*, the “sacred wall” which surrounded the core of the *urbs*, the Roman city. Romulus acquired full-sovereignty despite his brother’s trespassing that very wall to show its and Romulus’ powerlessness and lack of control: and the acquisition of sovereignty was reasserted when Romulus *killed* Remus, his defying brother. On the background of this perennial anthropological tension, the contemporary migrant crisis still displays a specificity and complexity which is necessary to grasp before trying to address it with normative recommendations of any kind.

²⁴ A. R. E. Sinclair, Mary D. Leakey, & M. Norton-Griffiths, “Migration and hominid bipedalism”; *Nature* 324, 307 - 308 (27 November 1986).

²⁵ Nick Vaughan-Williams, *Europe’s Border Crisis: Biopolitical Security and Beyond*, Oxford University Press, Oxford 2015, p. 16.

²⁶ See, for instance, Jared Diamonds, *Guns, Germs, and Steel: The Fates of Human Societies*, W. W. Norton & Company Inc., New York 1999.

I.I.2 Nested Crises: Definitions and Descriptions

According to Michael Blake, the questions related to the refugee crisis on which philosophical intervention is most urgently needed are definition, distribution, deterrence, integration and solidarity²⁷. While almost all of them are touched upon in this chapter, deterrence and definition appear especially problematic, and this latter is here the crucial problem with which to begin. What follows is meant in part as a report in political science, almost a journalistic review, which is useful to present the subject-matter on which the ethical discussion will then be based. However, philosophical distinctions and discourse analysis is introduced together with the presentation of data: the evidence of the interdependence between data, definitions, perspectives, and other forms of framing, among which political attitude is crucial, is another relevant result of this enquiry.

To begin with, the wording of the title already calls for reflections and explanations. The aim is to give a critical definition of the “migrant crisis” (from now on MC): words analysis, but also “family resemblances”, and associations with other parallel political discourses, are key to this clarification. At the same time, attention is paid to the political implications, the power-relations explicitly and more often implicitly involved in the formulation, use, and reference of the term MC²⁸. Since many thinkers, especially among those concerned with the normative aspects of migration²⁹, have disputed the phrase MC itself on solid grounds, it will be necessary to explain the difference from the alternative “refugee crisis” while, most obviously, acknowledging that a genuine *refugee* crisis is also occurring. This brief definitory inquiry is concerned with both the *meaning* and the *reference* of the phrase: its significance, and the situation in the world it points to and intend to describe.

²⁷ Michael Blake, “Philosophy & the Refugee Crisis: What Are the Hard Questions?”, published on *The Critique* as part of the “Who Is my Neighbor?” exclusive, 6 January 2016 (<http://www.thecritique.com/articles/philosophy-the-refugee-crisis-what-are-the-hard-questions/>), last accessed 20 March 2017).

²⁸ Excellent sources for this second aim come from the Critical Border Studies and the Critical Migration Studies scholarship: see *Europe’s Border Crisis* quoted above. Here the methodological questions raised by drawing from such a diverse literature, however very relevant, is left aside in order not to overshadow the MC subject itself.

²⁹ See the *Journal of Global Ethics* special issue cited above. Alexander Betts, while commenting on the decision by *Al-Jazeera* to substitute “migrant” with “refugee” in referring to the current crisis, says that “Migrant used to have quite a neutral connotation”, but that nowadays is employed to mean “not a refugee”. On the contrary, “Refugee implies that we have an obligation to people”. See Camilla Ruz, “The battle over the words used to describe migrants”, *BBC News Magazine*, 28/08/2015, <http://www.bbc.com/news/magazine-34061097> (last accessed 21/11/2017).

Nick Vaughan-Williams begins his discussion of “Europe’s border crisis” with a presentation of global and historical data retrieved from the UN: “[I]n 1960 there were 75 million international migrants; by 2005 this figure had doubled to 191 million; and in 2013 it is estimated that 232 million—or 3.2 per cent of the globe’s population—are international migrants living abroad with the largest concentration in the EU (72 million)”³⁰. But the measure of the phenomenon is also grasped by focusing on a single-country example: in 1961, resumes Gian Carlo Blangiardo, foreigners living in Italy were about 60 000, barely enough to fill up a football stadium. On 1st January 2016, they had reached a population of 6 million, as big as that of the administrative region of Campania. About 95% of these foreign-born come from outside the European Union³¹.

These are only some impressions from a comparison between the present and the past: experts give even greater figures as previsions for the future. And if Blangiardo in the same piece, foresees an increase of 203 million African between 20-39 years of age within two decades, during the UN 6th Thematic Session on the Global Compact for Migration, Michael Clemens suggested the figure of 800 million more Sub-Saharan African looking for jobs. His interpretation is “that’s wonderful news. It’s some of the best news of our time, and it’s because child mortality rates have been plummeting across sub-Saharan Africa for the last 30 years.”³² But it becomes then evident that this implies a serious if not dramatic alternative. *Either* there will be a substantial development in Sub-Saharan Africa, with millions of new job opportunities for the youth especially, as everyone hopes and, perhaps, with the help of European and Western states through what has been repeatedly invoked as “a Marshall Plan for Africa”, *or* the numbers of the prospective migrants might grow exponentially, even beyond present and past records. This is, supposedly, an aspect that goes beyond the theme of increased numbers of refugees, since it would be, perhaps, even easier to solve the geopolitical crisis in the Middle East. In 2017, a decrease in arrivals has already occurred, partly because ISIS is almost completely eradicated from Syria, and the efforts to reconcile Khalifa Haftar and Fayeze al-Sarraj in Libya have finally given promising results: but these developments are largely unpredictable.

³⁰ Vaughan-Williams, p. 16.

³¹ These remarks open the section tellingly entitled “One hundred times more numerous”, by Gian Carlo Blangiardo, in Gian Carlo Blangiardo, Gianandrea Gaiani, Giuseppe Valditara, *Immigrazione Tutto quello che dovremmo sapere* (“Immigration: All that We Should Know”), Aracne, Rome 2016, p. 19.

³² The transcript and video of Clemens’ presentation is published on the Center for Global Development website: <https://www.cgdev.org/blog/theres-crack-heart-global-negotiations-migration>, last accessed 22/10/2017. Other interventions from all the Thematic Sessions are available on the UN website <http://refugeesmigrants.un.org/thematic-sessions>, last accessed 22/10/2017.

Within this broader scenario, it is possible to give a common-sense outline of the MC. This might be based essentially on the increased number of immigrants' (asylum claimants', refugees', and other migrants') arrivals from countries not belonging to the EU, and focuses on the increased figures of those arriving in defiance of the state's laws especially. But massive immigration is "critical" also because of the danger of the routes: boatpeople landing on the Mediterranean, stowaways hiding themselves in lorries or aircraft wheel units, and the like. Then, there are the reactions to, and the real or supposed consequences of, both this increase in migration and its specific features: the most immediate are the securitization and even militarization of borders, with the use of force if not outright violence on both sides. Other related phenomena are the economic costs, not only of border-control enforcement but also of migrants' management and integration and, supposedly, of their competition with native workers. These problems are exacerbated by the domestic (if such an adjective has any plain sense in an era of international interconnectedness) economic crisis from which some Western economies have not fully recovered yet. Then there are the terroristic threats, which lay both at root of the migratory flows – many refugees are flying from ISIS or other terrorist organizations – and at their end, with receiving countries' nationals concerned with the growing frequency of attacks on European soil. The relation is made more complex since the mass emigration is not only the effect of the expansion of terrorist organizations, but this also corresponds to the "Global War on Terror" initiated after 9/11.

The roots of massive emigration to the West, although, reach even deeper. They meet with the principal geopolitical lines of tensions, from the US-Russian rivalry (preceded by that with the USSR) to other ex-"rogue states" (from Talibans' Afghanistan to Saddam's Iraq and Gaddafi's Libya), and even, most obviously and generally, but no less relevantly, on to the world colonial history and the post-colonial structure with all its imbalances and divides. Among these, the demographic explosion of Africa and Sub-Saharan Africa plays a crucial role, in complementarity with the demographic decline of the West. Finally, all these issues have an impact on the cohesion within the Western world: this can be illustrated through diverse examples, from the somewhat tense relations of "closed countries" such as the members of the Visegrád Four with the core of the EU, to the Brexit campaign³³, and the division on immigration restrictions in virtually all public opinions.

³³ For one among many possible instances, Nigel Farage, during his 02/12/2015 speech on the EU-Turkey relations at the European Parliament, associated mass migration and support to ISIS with economic factors to conclude that

A reader and, most likely, a philosophically attentive one, could at this point already be dissatisfied with the setting out of this research. This could be deemed but a shallow and very general characterization of the MC: also, a very unspecific one. A truly philosophical questioning cannot begin with these wide ranges of problems, but should rather address a specific issue, although more universal and abstract, regarding the right to migrate or, even better, one of its more detailed aspects. These and similar objections will be responded to both directly and indirectly in the second part of this work.

For the moment, however, the picture sketched above, which is also a longer explanation of the petal chart reproduced in figure 1, should be sufficient to anyone to recognize the kind of problems which are dealt with. Abstracting from all the surrounding factors, and insisting on the isolated problem of migration, or even on migrants and refugees landing on European shores, would make the present scenario undistinguishable from, say, the 1956 Hungarian Revolution, or “the Hungarian refugee crisis”. The reasons why the two crises elicited very different responses, and that make the current pose such urgent problems of distribution and absorption, would be rendered largely unintelligible. Surely, the fact that 200 000 people fled virtually overnight was then a dramatic aspect of that event. But the normative problems which were faced differed from the present ones as the description of the social, institutional, and geopolitical landscape – including the function of the refugee definition and regime, which was apparently more effective in dealing with a situation it was tailored to. As the Hungarian Revolution would turn into a different problem without the Soviet intervention and the political solidarity of the Western countries, but also the economic conditions of the time and relative cultural affinity between refugees and receiving populations, thus many people would not recognize the MC as the specific phenomenon which it is if aspects such as security, terrorism, or the extra-European origin of the migratory flows were abstracted away. Philosophers seem to recognize this when they introduce a growing density of details and descriptions in their interventions on the problem.

Evidently, it is impossible to explore all background elements in detail, but to characterize the MC it is necessary at least to recall them. The selection cannot but be somewhat arbitrary – why leaving aside, for instance, the technological aspects of the increased global mobility? – but it is necessary to identify the central sources of political and philosophical debate.

“[W]ithout any of the other debates, if there were one single reason why Britain should, in this referendum, vote to leave the European Union, it is the folly of political integration with Turkey”.

Fig. 2 Map Source: Frontex (<http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>, accessed 21/10/2017)

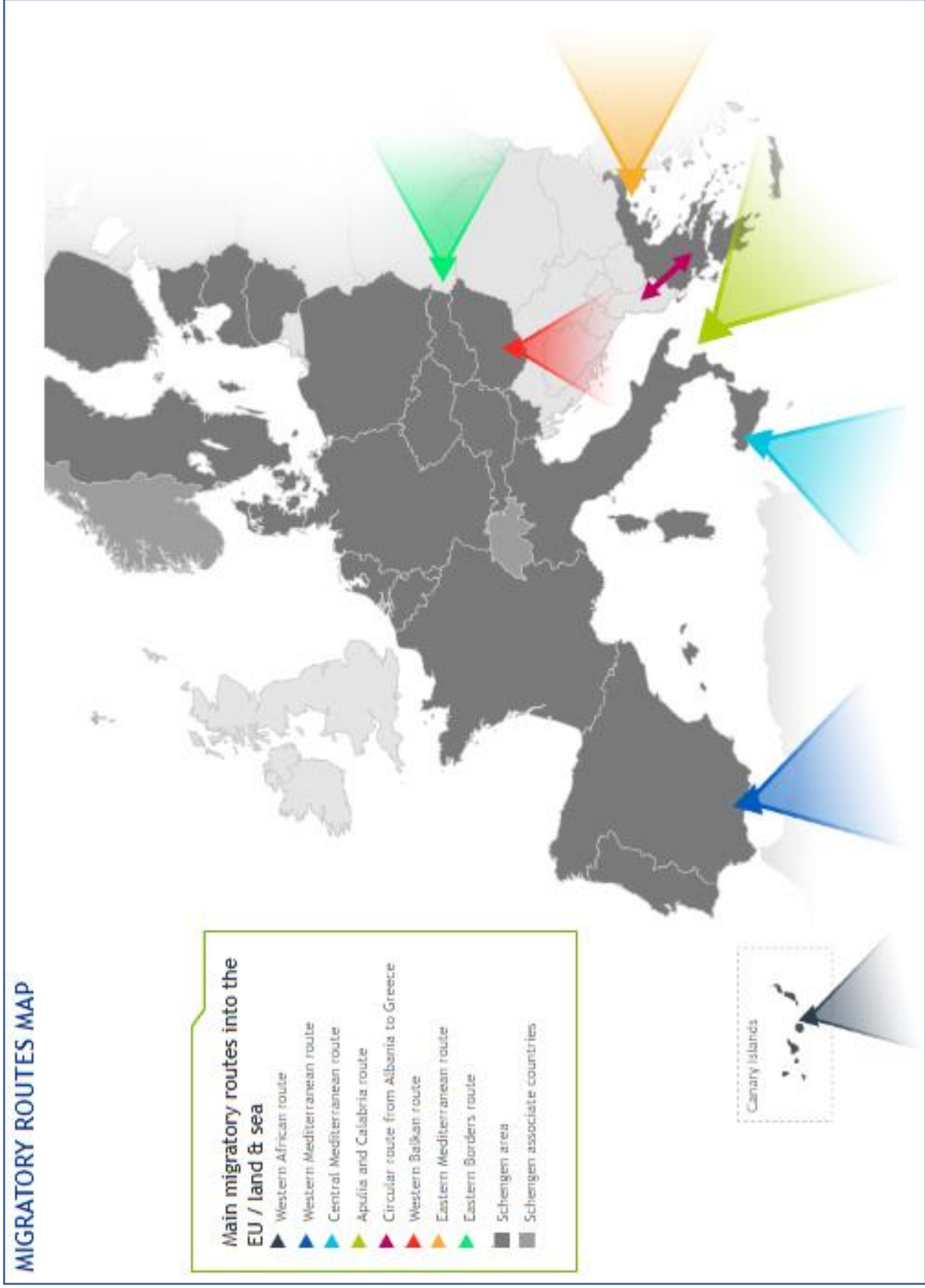


Fig. 3: Illegal entries detected (not all persons have entered only once). Source: Frontex

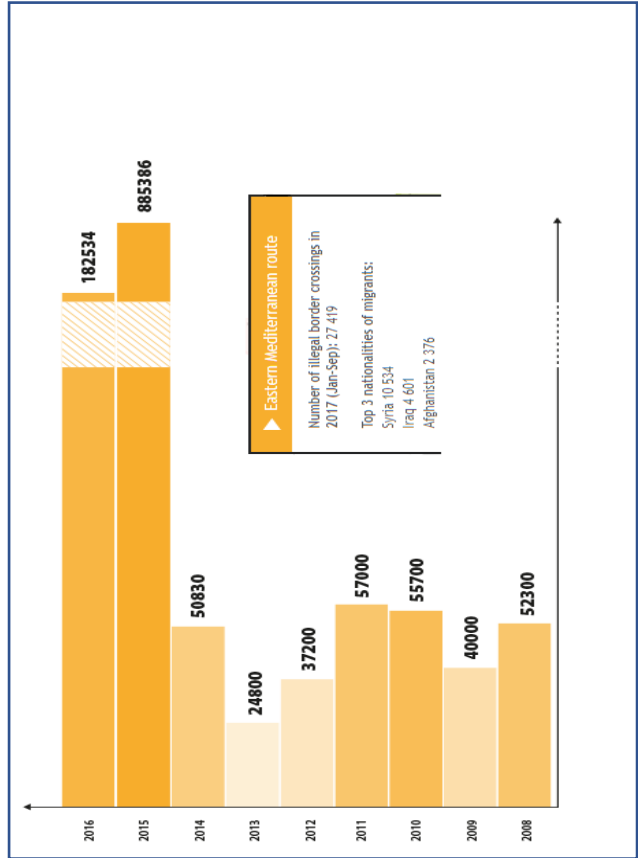
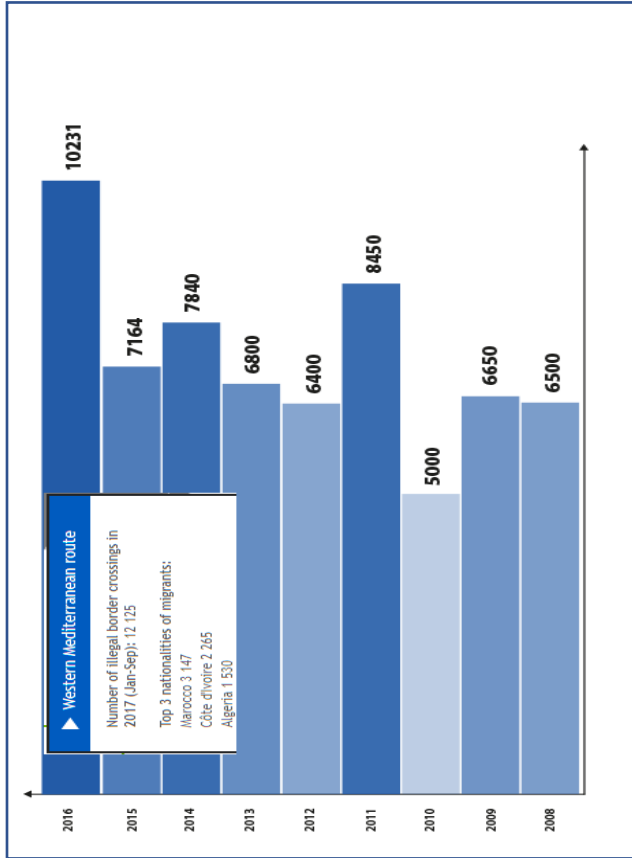
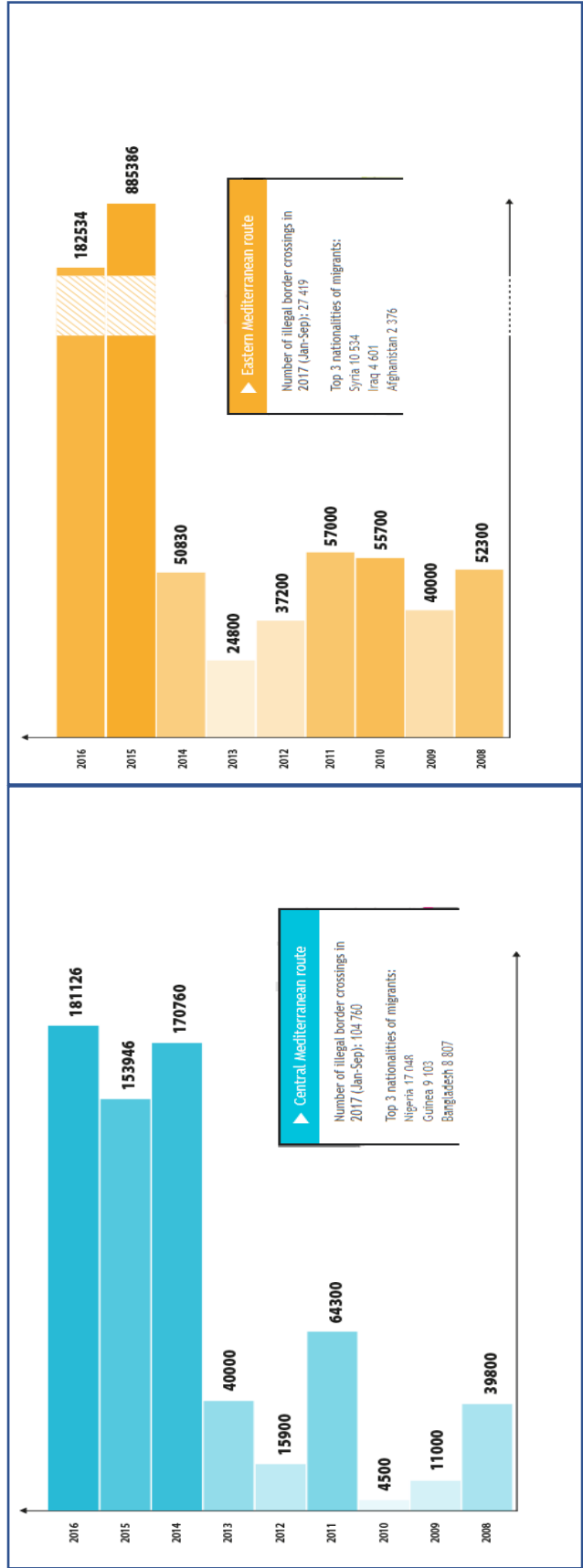
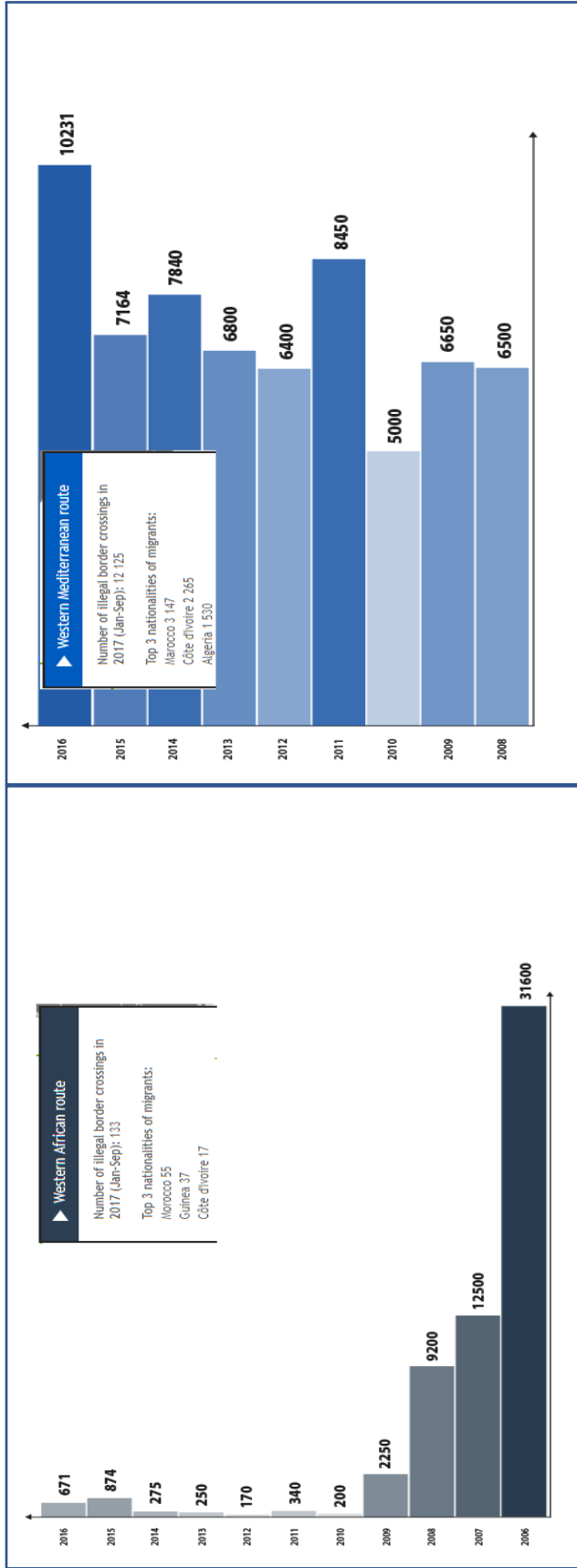
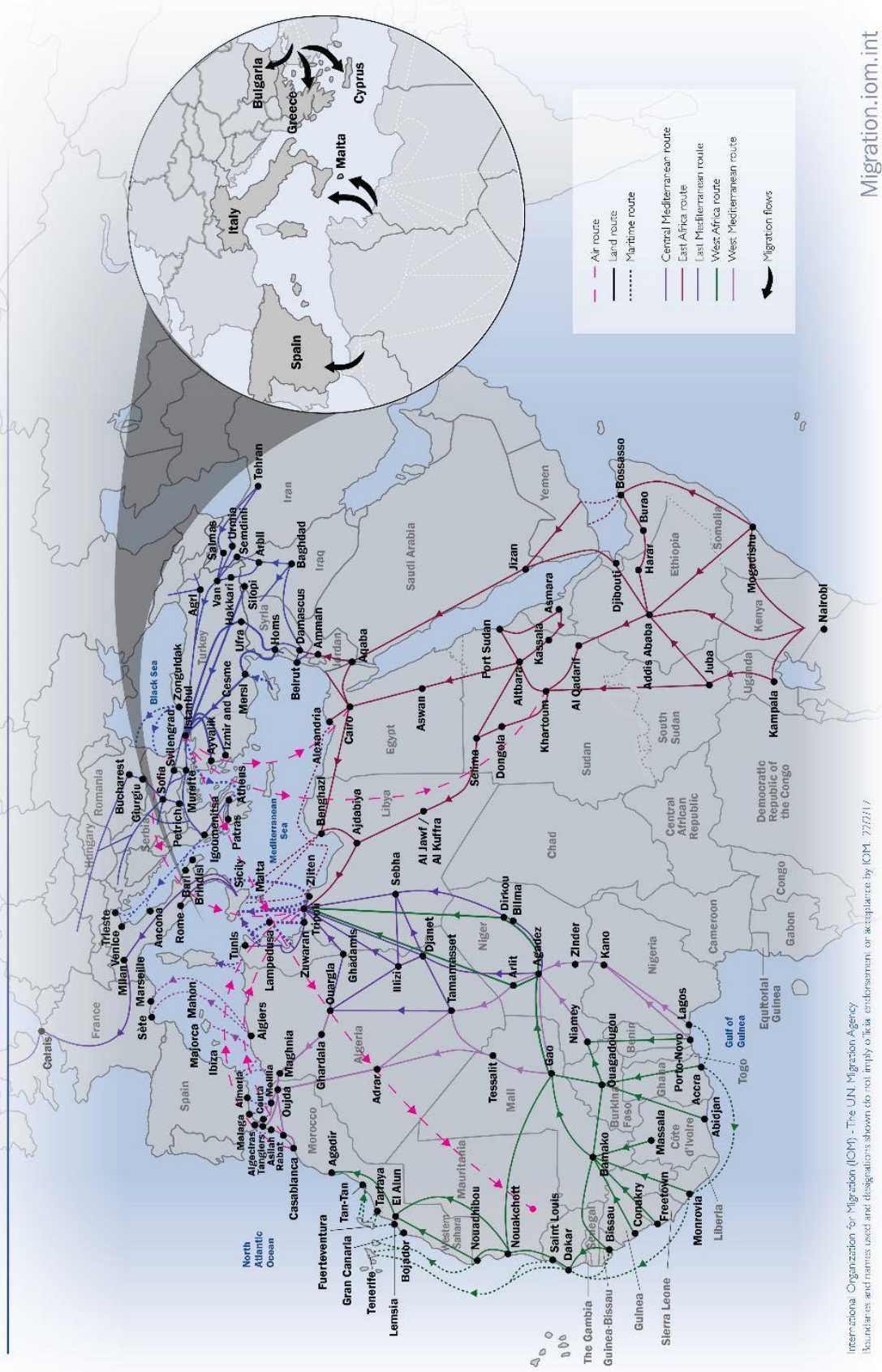


Fig. 4 : Expanded Map: IOM (<http://migration.iom.int/europe/> , accessed 21/11/2017)

Mixed migration routes to Europe



International Organization for Migration (IOM) - The UN Migration Agency
 Boundaries and names used and designations shown do not imply official endorsement or acceptance by IOM. 2017/1

As figure 3 shows, the total number of illegal entries into the European Union has skyrocketed in the latter years, even if in the most recent period several reasons – including the aforementioned substantial territorial loss inflicted to ISIS in Syria and the Euro-Turkey deal – have led to a decrease and a change of the relative weight of the routes.

Here, for concision's sake, and to be consistent with the terminology used by many of the sources, the term “illegal” is employed: however, it should be noticed that since the flows include a significant number of refugees, their access to the territory of a state cannot be impeded thanks to the principle of “non-refoulement”, unless the refugees come from a “safe third country”. Which countries are to count as “safe” is evidently a matter of dispute, and considering that immigration laws, asylum, and other forms of humanitarian protections, vary greatly even among EU countries, the labels of “legality” and “illegality” are not easily attributed. On an ethical perspective, rather than a legal one, the very category of illegality is problematic when attributed to people. This example already shows that in the context of the MC there is hardly a thing such as “uncontroversial data”: all data are constructed according to varying and sometimes contested legal and social categories. Furthermore, there is the indication provided by Frontex itself that the number of accesses does not coincide with the number of immigrants, since some of them can make several attempts to entry, or be registered at several borders: as with all “illegal” or “informal” practices, the accuracy of official statistics varies greatly. But in this case, there is also the political interest of some states *not* to detect, or at least to register or diffuse, these illegal practices, since international and European legislation might then compel the country to manage the recorded refugees' asylum applications.

Figure 4, elaborated by IOM, displays the main routes followed by migrants and refugees: it is apparent that the dense network bridging Europe to the countries of origin includes the settings of some of the most pressing humanitarian and political crises (Yemen, Syria, Libya, the Horn of Africa³⁴) and many of the poorest countries in the world (Niger, Guinea).

If one considers the “heated” 2015-2016 years, when, at the peak of the MC, entries have risen almost everywhere, there still is the notable exception of the Western African Route, where enhanced surveillance and effective treaties between Spain, Morocco, and Mauritania, have stemmed or diverted the inflow. Even observers sympathetic with measures to control migration,

³⁴ Afghanistan is left out of the figure but the flow coming from Teheran has a strong Afghani component: see the chapter on *Solidarity and Story-Telling*, IV.I).

however, acknowledge that the success of the closure of the Spanish border has come to the cost of frequent hospitalizations of migrants, who are beaten up by the police, severely cut while passing the razor-wire, or injured after falling from meters-tall fences³⁵.

Two interrelated elements are to be emphasized at this preliminary stage of analysis. Firstly, as shown by the Frontex statistics, which traces the numbers back to 2008, massive migration has not exploded suddenly or at a precise point in time. There had been steady flows even in the preceding years: a literature research with the keyword “refugee” or “migrant crisis” would offer results of decades ago³⁶. In his reconstruction of the history and the earliest difficulties of the global refugee system, Matthew Gibney identifies collapses and changes due to increased numbers already around the seventies and eighties³⁷. Experts in the fields and first-hand reporters like Jeremy Harding³⁸ agree that if there is one “breakthrough” to serve as the main cause for the upgrowth of global migration rates, this would be the end of the Cold War. And yet in turn, this event cannot be presented as a quick phenomenon, such as, for instance, an earthquake or a flood, but is better understood, as many causes of migration, as a long-term dynamic and a process. Indeed, in her careful and detailed analysis of the migratory flows in the Mediterranean, Ummuhan Bardak stresses that political unrest and exceptional, explosive events, are to be considered alongside diverse structural causes, ranging from demographic and economic factors, with a special emphasis on the role of youth unemployment and the impact of inequality, and on education systems and political-economic patterns of integration between the countries of the region. Many of these features can be changed only in the long-run³⁹. To resume, if by “crisis” one means an

³⁵ *Immigrazione*, p. 60.

³⁶ It should suffice to cite Myron Weiner, *The Global Migration Crisis: Challenge to States and to Human Rights*. Harper Collins, New York 1995.

³⁷ “Whereas total asylum claims across Western Europe averaged no more than 13,000 annually in the 1970s, the annual totals had grown to 170,000 by 1985, and to 690,000 by 1992. Between 1985 and 1995, more than five million claims for asylum were lodged in Western states. The numbers were, however, also buoyed by the end of the Cold War which, as well as lifting emigration restrictions on the citizens from Eastern and Central Europe and leading to the brutal war in the former Yugoslavia, deprived Western governments of their traditional rationale—the need to support those fleeing communist regimes—for offering asylum.”, Matthew Gibney, ““A Thousand Little Guantanamo: Western States and Measures to Prevent the Arrival of Refugees””, in Kate E Turnstall, ed., *Displacement, Asylum, Migration. The Oxford Amnesty Lectures 2004*, Oxford University Press, Oxford 2006.

³⁸ *Border Vigils: Keeping Migrants Out of the Rich World*, Verso Press, London 2012.

³⁹ Ummuhan Bardak, “Root causes and changing patterns of migration in the Mediterranean”, in Annette Jünemann, Nicolas Fromm, Nikolas Scherer (eds.): *Fortress Europe? Challenges and Failures of Migration and Asylum Policies*, Springer VS, Wiesbaden 2017, pp. 35-50. At pp. 48-9 Bardak writes: “In conclusion, socioeconomic factors seem to be largely affected and/or indirectly shaped by state policies (mostly in non-migration areas). At the same time, they are deeply embedded in a broader political context, which has a history of sudden shocks or disruptions in the migratory flows. Therefore, the analysis of socioeconomic factors needs to be supported by other layers of analysis on the complex macro context as well as the micro-level strategies. Given the complex situation, it is quite difficult to

unprecedented and discontinuous event which abruptly affects a society, the MC is a paradoxical and to some extent self-contradictory example of a “perennial crisis”, if it is a crisis at all. But, as it will be discussed shortly, the term “crisis” brings with itself other connotations as well.

The second and related aspect is, as it has been shown, the complexity and number of factors involved. The MC spans over almost all the Western world, and is connoted by background conditions as diverse as NAFTA and the Mexican-US economic integration and the Ukrainian unrests and wars. To reduce all this universe to one single and strictly delimited problem risks being clumsy if not ideological: thus, if the term “crisis” was criticized so far, it is also the adjective “migrant” that should lend the occasion for reflection. Is the migratory aspect to be isolated, as fundamental and independent, or some other issues, such as the imposing inequality both within and between the different societies of the world, should always be associated with any satisfactory discussion of the problem? An unpretentious example could illustrate the issue at stake here: when a person is aggressed in the street, surely the doctors who intervene to save must be concerned with the “hemorrhagic” crisis, but would that be a sufficiently complete way to characterize the problem in a report? In dealing with it in a political perspective, rather than a technical one, is it safe to cut out the underlying causes and responsibilities, and is it then possible to bring about justice? Also, when it comes to prevention and systemic intervention, rather than ad hoc treatment, would it be appropriate to abstract from the general context? If migration is a phenomenon that might well occur spontaneously, even if not in all and perhaps not even in the majority of cases, refuge is by definition “well-founded” into political and social conditions.

This brings back to the question of definition, not only as applied to the broader context – the MC or the “refugee crisis”, but also to the individual case, that is, the distinction between migrant and refugee. Some observers and activists have taken issue with the usage of the phrase MC. They believe that such a terminology would obscure the genuine refugee status of a huge number of people involved. On the one hand, the concern of these critics is surely to be shared: to insist on people being mere “migrants” would suggest that they are not genuine refugees, thus echoing populist claims and reasons for rejection. These critics also point to the fact that the events usually associated with the phrase (border-crossing in the Aegean and Central Mediterranean, in

disconnect socioeconomic factors from political factors in this region. The final migration outcome will depend on the interaction between socioeconomic factors, the macro-political context, individual motives and capabilities, and the opportunities available in migration destinations.”

the Balkans and so on) involve actual refugees, to the contrary of what the common opinion and the right-wing populist media often claims. By looking at the figures, the soundness of these critiques is quickly vindicated: more than 40% of so called “illegal immigrants” to Italy and more than 80% of those crossing to Greece are recognized as refugees afterwards. And one should keep in mind that adjudications could well be over-strict at present: even people coming from Afghanistan, Syria, Iraq, and the Horn of Africa are very often denied asylum on the ground of a narrow interpretation of the Geneva Convention definition⁴⁰. However, the “conditions of living”⁴¹ in these countries are well-known.

Why insisting in referring to the MC, then? The first point is conceptual. Not all migrants are refugees, but refugees are migrants by definition. The choice of focusing on the MC is then coherent with the choice of dealing, without any pretense of completeness, with the broader picture of the current movement of people. The second is an empirical remark: most of *entries* to, e.g., the EU, are those of migrants⁴²: the numbers given above, it must be noticed, were relative to people landing to the Italian and Greek shores. Once again, a pure “refugee crisis”, without the undergoing and somewhat related process of mass migration, would constitute a completely different phenomenon. However, the popularity of the two phrases is very similar, at least from what appears from internet searches⁴³.

Three other conceptual points should explain the complex relation between the two phrases, and the choice made here. They all revolve around the fact that using the phrase “refugee crisis” would turn substantial weight to the question on “Who is a refugee”. On this latter issue,

⁴⁰ T.N., “How many migrants to Europe are refugees?”, *The Economist*, 8/09/2015. <http://www.economist.com/blogs/economist-explains/2015/09/economist-explains-4>, last accessed 20/03/2017. The article criticizes Viktor Orban’s and Robert Fico’s take that the clear majority of migrants to the EU would be economic migrants, but from the article itself it is not evident whether the two were referring to the percentage of *illegal* migrants or to the overall migrant population. This is an example of how the clumsiness of the definitions and of their references sometimes serve rhetorical and political objectives. Surely most migrants are not refugees, if one considers, say, Erasmus students and business-travelers. But are these categories not excluded *a priori* while discussing the kind of immigration that makes up the MC?

⁴¹ *The Lancet* estimated the casualties directly caused by the 2003 US invasion of Iraq at more than 600 000. The figure does not include the death toll of the previous conflicts and the subsequent humanitarian disaster caused by the establishment of the ISIS totalitarian terrorism. This would mean that a very rough and optimistic estimate would rate the death toll of the Iraqi catastrophe at 1 out of 60. Gilbert Burnham, Riyadh Lafta, Shannon Doocy, Les Roberts, “Mortality after the 2003 invasion of Iraq: a cross-sectional cluster sample survey”, *The Lancet*, 2006; 368: 1421–28.

⁴² See the statistics published on *Eurostat*: http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics last accessed 20/03/2017.

⁴³ As of 20/03/2017, a Google research gives about 14 million results for the phrase “refugee crisis” and 28 million for “migrant crisis”. Similar researches in Italian and French give slightly different results. Numbers of results are more or less reversed when the phrases are bracketed.

there is an already classic and yet ongoing debate, ranging at least from the writing of the Geneva Convention in 1951 to Andrew E. Shacknove's seminal essay⁴⁴ published in 1985: a rich debate and a corresponding stream of research are still unfolding at present⁴⁵.

The first conceptual point is then that even the Geneva Convention definition lends itself to controversial interpretations and applications: for instance, many Western states are acting upon the morally dubious persuasion that if people do not make it to their territories, they are not obliged to treat them as refugees⁴⁶.

A second conceptual problem is that the definition given by the Convention itself is, of course, stipulated politically, probably outdated, and surely open to criticism: one struggles to see why a person would be entitled to protection as a refugee if the person is persecuted by the state of origin, but not if that person is starving for a famine s/he had no responsibility in provoking. Gibney proposes to define refugees “those people who require a new state of residence, either temporarily or permanently, because if forced to return or stay at home they would, as a result of either the inadequacy or brutality of their state, be persecuted or seriously jeopardize their physical security or vital subsistence needs.”⁴⁷ This definition might sound less arbitrary, but it is also much more inclusive: it would render many migrants who are protagonists of the present crisis “refugees”, especially those who do not come from Libya, Syria or Afghanistan, but from the relatively more peaceful and yet economically fragile Sub-Saharan African countries.

Thirdly, it might well be that under many circumstances the distinction between refugees and migrants is not easy to be drawn at all, to the point that Chandran Kukathas suggests discarding it⁴⁸. Obviously, there are cases in which distinguishing a refugee from a migrant is easy and, apparently, morally useful: e.g. when comparing a wealthy tourist and an unaccompanied child fleeing a war zone where her or his family has been persecuted on grounds of ethnicity. Even when granting Kukathas’ claim for open borders, still there would be problems of urgency and resources

⁴⁴Andrew E. Shacknove “Who Is a Refugee?”, *Ethics*, Vol. 95, No. 2 (Jan. 1985), pp. 274-284.

⁴⁵Sune Lægaard (2016) “Misplaced idealism and incoherent realism in the philosophy of the refugee crisis”, *Journal of Global Ethics* (2016), 12:3, pp. 269-278, Felix Bender, *forthcoming*.

⁴⁶ See Gibney 2006, quoted above.

⁴⁷ Matthew Gibney, “Liberal Democratic States and Responsibilities for Refugees,” *American Political Science Review* 93:1 (1999), 169–81, at pp. 170–1.

⁴⁸ Chandran Kukathas, “Are Refugees Special?”, in Sarah Fine and Lea Ypi (eds.) *Migration in Political Theory: The Ethics of Movement and Membership*, Oxford University Press, Oxford 2016. Confront with Kieran Oberman, “Refugees & Economic Migrants: A Morally Spurious Distinction”, *The Critique*, <http://www.thecritique.com/articles/refugees-economic-migrants-a-morally-spurious-distinction-2/> last accessed 21/10/2017.

allocation to suggest a hierarchy of claims and categories. But this is no point to be fully addressed here: what is important to resume is that 1) The definition of refugee is itself dependent on interpretations of the Geneva Conventions and associated international law 2) The definition itself can be questioned and 3) There are grey areas in which it is difficult to distinguish who belongs to which category, even when granting that the distinction itself is morally and politically viable.

To conclude, employing the phrase “refugee crisis” stresses the harsh conditions of immigrants and the moral imperative to welcome them and grant them rights: all aims that are obviously and wholeheartedly to be shared. But speaking of the MC allows to deal with broader and less debatable categories, whose boundaries belong more to ordinary language conventions than to legal decisions: the IOM “defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is”⁴⁹. To resume and conclude, if the term MC is here prevalent it is not because it is morally acceptable to deny that the vast majority of people coming to Europe especially from Syria, Afghanistan, Iraq, Somalia, Eritrea, and the often forgotten Central Africa, Nigeria, Democratic Republic of Congo, Yemen, and other such countries are imperatively to be welcomed and assisted – it is not -but rather because their movement is encapsulated in the movement of millions of other people, and in the ensuing transformation of the destination countries. Researches with a different focus or a more specific aim – for instance the defense of the rights of entry or the relative urgency of a specific subset of people – would better employ the term “refugee crisis”. Here these definitions and distinctions are above all a good way to articulate the conceptualization of the phenomenon which is discussed. Finally, the two phrases are not necessarily mutually exclusive but, as it has been said, MC is just the most general and encompassing one. The figures of refugees fleeing from wars and crises are surely unprecedented: according to the UNHCR (figures 6-7), they are incomparably higher than years ago, and a similar situation is encountered only if one looks back to the immediate post-World War II scenario. The MC is to a substantial extent a refugee crisis: omitting this feature would be an inadmissible misrepresentation. For simplicity and for the reasons given above, here the phrase MC has prevailed, but a discussion of the purely *refugee* aspect would be no less urgent.

⁴⁹ <https://www.iom.int/who-is-a-migrant>, last accessed on 21/10/2017.

Figures 6-7: Map (6) and figures (7) of UNHCR people of concern in the world (source UNHCR, 2017)

<http://www.unhcr.org/globaltrends2016/>



It should have already become apparent, by now, that descriptions have normative implications. It is not neutral to describe present events as a “crisis” or as a “long-run process”, nor is it irrelevant to insist on the “refugee” rather than the “migrant” component, to specify that the counted accesses do not correspond perfectly with the number of persons and to qualify them as “illegal”. It is also not unproblematic to include in the description of the crisis political, demographic, and economic aspects or, on the contrary, to focus on the number of boat-people and landings only.

The term “crisis” itself is less disputed, but has a complex *meaning*: it denotes (A) “A time of intense difficulty or danger”; (B) “A time when a difficult or important decision must be made”, and (C) “The turning point of a disease when an important change takes place, indicating either recovery or death”⁵⁰. It should be noticed that, in the case of the MC, all these three meanings are implied. The word “crisis” comes from the same root of “critique”, “criterion”, “cerebral”: it refers to analytic distinctions, decisions, and judgments. Thus, it would be possible to start “criticizing the crisis” by discerning the attribution of duress (A) and the idea of living at a turning point (C) from which exceptional decisional power (relating to B) is derived. As it will be discussed towards the end of this chapter, the exceptional decisional powers that are invoked to face this crisis are commensurate with the way the crisis is characterized, and the very way the “dreadful” nature of the event is constructed is influential on those implications in terms of governance.

II.3.1 Three Circles and Three Gaps: A Geometry of Chaos

After the recollection of data and themes which has been accumulated thus far, the following sections give a more conceptual characterization of the nature of the MC and insist on some specific aspects. Chaos is not easily mapped or explained: the images of three “vicious circles” and three “gaps”, “jumps”, “mismatches” or “tensions” are used, hopefully not as vague metaphors, but as dense images capable of conveying a complex meaning through simple and immediate signifiers. The dynamics discussed are taken and elaborated from the literature, and in some cases, as for instance with the “opinion-policy gap”, they are rather classic explanatory rationales for the politics of migration. Evidently, they all involve some sort of contradictions or tensions or unintended (vicious) causal spirals. The three vicious circles are: *illegalization*,

⁵⁰ Definitions are taken from the *Oxford Dictionary Online*.

escalation, and *extremization*. The three gaps are *opinion-policy*, *rhetoric-practice*, *humanitarianism-security* (*perception-reality*, given its encompassing nature, is added and discussed lengthily at a later stage).

Illegalization is the process through which illegal immigration and related practices are produced as persons and acts. As Nando Sigona observed, Brexit could turn millions of EU immigrants to the UK into illegal immigrants virtually overnight⁵¹. Similar measures have been adopted along decades: if a century ago there was, at least in principle, freedom of international movement within, e.g., the British Commonwealth, Michael Dummett and Gibney have shown the story of progressive increase in VISA and other requirements by the UK and all Western Countries⁵². Why is this to be seen as a circle and not as a linear process? Because after that one pocket of illegality is created within a society, in order to “counter” these very illegalities new laws and practices can be created. But the proliferation of regulations makes it harder to comply with, thus expanding the problem and the sections of the population, migrant but sometimes even native, who infringe the laws. For instance, the illegalization of undocumented in Italy was followed by measure to criminalize hiring undocumented as “exploitation of illegal immigration”. Thus, the category of the “illegal” embraced not only the detected immigrants, but also their employers. One can imagine a way to go even further, for instance by criminalizing people and public officials who fail to report on cases of “exploitation”. Furthermore, to control the hiring process in order to discourage the “exploitation”, more severe rules might be introduced, e.g. prescribing to declare the hiring of the immigrant by a certain date. An example of the ever-stretching nature of these measures and of their consequences is provided by a speech delivered by David Cameron: in reaction to the Calais crisis, Cameron prides himself in the fact that ““Since I have become Prime Minister we have made it harder to get a driving license, to get a bank account, to get a council house”⁵³. Evidently, more many rules not only mean new way to detect and restrict the “illegal” immigrants, as Cameron suggests, but also new way for people, such as a

⁵¹ Nando Sigona, “Undocumented Germans? Diary of an EU Citizen in the UK” The claim originally referred to in the text was made during the October 2017 UN Thematic Session and is not recorded: in this Blog entry, Sigona advances the same thesis through a similar example. March 29, 2017. <https://nandosigona.info/2017/03/29/undocumented-germans-diary-of-an-eu-citizen-in-the-uk-22/>

⁵² Gibney 2006, Dummett *On Immigration and Refugees*, Routledge, London 2001.

⁵³ Danny Boyle & Leon Watson, “Calais migrant crisis: Jeremy Corbyn accuses Cameron of using 'incendiary language' - as it happened”, *The Telegraph*, 30/07/2015, last accessed 22/11/2017. <http://www.telegraph.co.uk/news/uknews/immigration/11772262/Calais-illegal-immigrants-crisis-live.html> . I discovered Cameron’s speech thanks to a reference made by Kukathas in a public talk.

landlord failing to check the tenant's immigration status, to violate the law. The cycle could potentially go on indefinitely. A "linear" expansion of "illegalization" is also analyzed by Vaughan-Williams with respect to the border security measures: "'Irregularity' [...] is performatively produced by apparatuses of border security"⁵⁴. The multiplication of these apparatuses leads to an increase in irregularity as well.

Derivative from this is the cycle of *escalation* of the political, legal, and security measures. Strict policies produce illegality, and stricter policies are created to deal with the illegality that has been produced in the first place, in an endless circle. For, if laws generate, as it appears, illegality, and illegality reproduces itself "by contagion", to react to this illegality laws must produce new laws and practices. The act establishing visa-requirements is meaningless without the act establishing border-patrols, but border-patrols are ineffective and uselessly dangerous if they are not accompanied by the militarization of the border, by new treaties with neighbors, and new institutions within the countries – such as detention camps and controls on the work-places – to individuate and neutralize the "illegals".

These two circles might very likely and often do develop into *extremization*, or radicalization of the political discourse and the public opinion. For, if new measures are increasing the number of "illegal" persons and activities, while new laws and practices are established for enforcement, it is also very probable that any governments or security forces whatsoever find it difficult to live by the demanding standards they have themselves contributed to establish. An example would be the difficulties by European states to enforce repatriations, or, to the opposite, the massive deportation program in the US, which still seems unable to exhaust the reserve of 11 million "illegal" immigrants⁵⁵. Almost any political forces but the most radical enthusiasts of migration control would not look unwaveringly convinced in enforcing the law to the public eye, as it is vividly shown by Angela Merkel's hesitation in the face of the sobs of Reem Sahwil, a 14-

⁵⁴ Vaughan Williams, p. 14.

⁵⁵As in many similar cases of immigration restrictions, difficulties in enforcing the law are easily explained: despite the 2012 record-high of 435 000 deportations, more than half of which non-criminal, undocumented still make up 5% of the US workforce, and about 66% of the adults have been living in the country for at least ten years: Jens Manuel Krogstad, Jeffrey S. Passel, and D'Vera Cohn, "5 facts about illegal immigration in the US", Pew Research Center, April 27 2017, <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>, Ana Gonzalez-Barrera and Mark Hugo Lopez, "U.S. immigrant deportations fall to lowest level since 2007", December 16, 2016, Pew Research Center <http://www.pewresearch.org/fact-tank/2016/12/16/u-s-immigrant-deportations-fall-to-lowest-level-since-2007/> (last accessed 22/10/2017).

year old Palestinian girl in danger of being deported (and later granted permanent residence together with her family). Now three related “gaps” can be taken into consideration.

According to Gary Freeman, one persistent tendency to be observed in liberal democracies regarding migration is what he named the *opinion-policy gap*, a sort of mismatch between more tolerant policies and rhetoric by establishments and more restrictive demands and discourses by public opinions⁵⁶. Given that the allegiance to democratic values of non-discrimination and anti-racism is often constitutionally entrenched, and not necessarily supported by a majority of the population, the potential existence of such a gap seems plausible, at least at certain times. Yet some scholars, such as Hannes Schammann, question the unqualified acceptance of an “opinion-policy gap”⁵⁷: in his research on the case of Germany, Schammann claims that even an apparently anti-establishment extremist movement such as PEGIDA is under many respects convergent with governmental policies. The discrepancy is often a matter of intensity rather than a qualitative difference, it is sometimes of a rhetorical nature, and it might be perceived rather than established.

A similarly classic gap is that between *reality and rhetoric*, especially for what concerns the institutional agencies of the European Union. Gibney has spoken of “schizophrenia” and “organized hypocrisy” with reference to the lip-service paid to the right to asylum while in fact states are rendering access to their territory harder if not impossible to refugees⁵⁸. Such a “dichotomy between speech acts and practices”⁵⁹ is also criticized by Jan Claudius Völkel, while Vaughan-Williams reports that institutional actors like François Crepeau, United Nations Special Rapporteur on the human rights of migrants, recognize a distance between migration policy and measures adopted on the grounds, a contradiction also targeted by academics and NGOs⁶⁰.

Vaughan-Williams is instead critical of the rhetoric-reality gap and identifies in its place a deeper contradiction-implication between *humanitarianism* and *securitization* that would be related to the “thanatopolitical” nature of power in the modern state. Völkel seems to share a similar criticism while speaking of “Fatal ambiguities in Europe’s securitized migration policy”.

⁵⁶ Gary P. Freeman, “Modes of Immigration Politics in Liberal Democratic States.” *International Migration Review* 1995, 29 (4), 881 – 902.

⁵⁷ “Reassessing the Opinion–Policy Gap. How PEGIDA and the AfD relate to German immigration policies” Hannes Schammann, in *Fortress Europe*, pp. 139-158.

⁵⁸ Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* Cambridge University Press, Cambridge 2004, p. 229.

⁵⁹ “When Interior Ministers play diplomats. Fatal ambiguities in Europe’s securitised migration policy”, in *Fortress Europe*, pp. 83-104, p. 87.

⁶⁰ Vaughan-Williams, p. 3.

Without pretending to reconstruct Vaughan-Williams' refined and complex argument, it must be noticed that even a supporter of firmer border-control measures such as Gianandrea Gaiani⁶¹ has recognized the paradoxical aims of the military missions in the Mediterranean, committed both in rhetoric and in their legal mandates to patrolling the borders while rescuing the migrants, two tasks that no one can guarantee will not conflict on many occasions. To use another simple example, it is as if the soldier and the Red Cross volunteer would coincide in the same body, without any hierarchical ordering of their duties and commitments.

II.3.2 Demographic Winters and Arab Springs

In the MC, security and demography are also intertwined. In the aftermath of the terrorist attack of 13 November 2015 in Paris, experts and officials discussed the numbers of an imaginary “Muslim army” that could be drafted to fight against Europe. Although, the terrorist attacks have only brought to the surface a deep-seated and much older fear. Already in 2009, *The Telegraph* warned against “Muslim Europe: the demographic time bomb transforming our continent”⁶². This concern emerges in fictional and non-fictional books Europe-wide: in Germany, it was one of the many controversial claims voiced by ex-Bundesbank Board-Executive Thilo Sarrazin in a book eloquently titled *Germany Does Away with Itself*⁶³; in France, Éric Zemmour's similarly titled *The French Suicide*⁶⁴, but above all *Submission*⁶⁵, by Michel Houellebecq, insisted on kindred warnings; in Italy, newspapers and web magazines republished long extracts from the works of the anti-Islamic reporter Oriana Fallaci, now acclaimed as a “prophetic”⁶⁶ Cassandra. Additionally, popularized and oversimplified versions of Gunnar Heinsohn's⁶⁷ theses on the violent effects of

⁶¹ *Immigrazione*, p. 51.

⁶² Adrian Michaels, 8/8/2009, <http://www.telegraph.co.uk/news/worldnews/europe/5994047/Muslim-Europe-the-demographic-time-bomb-transforming-our-continent.html>, last accessed 23/10/2017.

⁶³ *Deutschland schafft sich ab*, Deutsche Verlags-Anstalt, Munich 2012: see *Fortress Europe?* pp. 127-8.

⁶⁴ *Le Suicide français*, Albin Michel, Paris 2014.

⁶⁵ *Soumission*, Flammarion, Paris 2015.

⁶⁶ Pierluigi Battista, “Gli attentati di Parigi e la Fallaci “Scusaci Oriana, avevi ragione” Il risarcimento postumo è online” (“Paris attacks and Fallaci: “Sorry, Oriana, you were right”. The posthumous compensation is online”), *Corriere della Sera*, 15/11/2015 http://www.corriere.it/esteri/15_novembre_15/gli-attentati-parigi-fallaci-scusaci-oriana-avevi-ragione-risarcimento-postumo-online-e39a056c-8b6b-11e5-85af-d0c6808d051e.shtml

⁶⁷For an introduction to the theory of “youth bulge” and to the works by Heinsohn, see Patrick Kingsley, “Does a growing global youth population fuel political unrest?”, *The Guardian*, 04/19/2014 <https://www.theguardian.com/world/2014/mar/19/growing-youth-population-fuel-political-unrest-middle-east-south-america>

the “youth bulge” were circulated and applied to the Maghreb region. Paradoxically, it is not only from the anti-Islamic and anti-immigration field that came quotes to support the “demographic threat” thesis. In a famous address to the Turkey diaspora in view of the constitutional referendum to reinforce his presidential power, Recep Tayyip Erdoğan invited his fellow countrymen to have five rather than three children⁶⁸. However, the most telling example with respect to this topic is not a true speech, but a made-up. Giuseppe Valditara⁶⁹ cites the speech delivered at the UN in 1974 by Houari Boumédiène, the then chairman of the Algerian Revolutionary Council, Valditara attributes to Boumédiène the statement “the womb of our women will give us victory”. This and even more aggressive contents are variously quoted from the same speech on the internet: Fallaci refers to it as to an example of the “politics of the womb”⁷⁰, that is, an instrumental and reckless exploitation of the demographic factor to take over, coupled with repelling disregard for women seen as “wombs”. However, the original transcript by the UN⁷¹ contains no hint to this threat and the word womb is not even mentioned: the speech is rather a manifesto for non-alignment and decolonization. It thus seems reasonable, until a clearer reference to that alleged sentence is provided, to classify it as “fake news”. The only occurrence of the word “emigrant” offers a much more interesting and complex insight than the menacing aggressiveness attributed to this speech: “...[O]ur nations would be condemned to seeing their human resources continually bled and exploited, not only in their own countries, but even in the developed countries themselves, where their emigrant workers today make up the bulk of the subproletariat and where their technical and scientific personnel are attracted and enticed by the opportunities for promotion and progress of which they are deprived by the chronic immobility in their own countries.”⁷²

The anecdote is in any case illustrative of what kind of terror of submersion and suspects of a conspiracy is elicited by an Islamic population that is predicted to reach 10% of the total in Europe by 2050⁷³. The “migration bomb” is explicitly considered as the equivalent of the

⁶⁸ Russell Goldman, “ ‘You Are the Future of Europe,’ Erdogan Tells Turks”, *The New York Times*, 17/03/2017, <https://www.nytimes.com/2017/03/17/world/europe/erdogan-turkey-future-of-europe.html> accessed 23/10/2017.

⁶⁹ *Immigrazione*, p. 15.

⁷⁰ Fallaci, *The Force of Reason*, Rizzoli, Milano 2006 chapter 1.

⁷¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/404/44/PDF/NL740444.pdf?OpenElement> , from the Dag Hammarskjöld UN Library, accessed the 23/10/2017.

⁷² P. 7, paragraph 104.

⁷³ Alan Yuhas, “Muslim population in Europe to reach 10% by 2050, new forecast shows”, *The Guardian*, 2/04/2015, <https://www.theguardian.com/world/2015/apr/02/muslim-population-growth-christians-religion-pew> last accessed 23/10/2017.

“demographic bomb” which was agitated some decades ago⁷⁴. This argument is discussed transversally by politicians and public opinion on the right and the left, by demographers, and even by political philosophers. It is one of the “progressive arguments” for migration control, as its leading advocates Philip Cafaro, named it, and David Miller himself made an extended use of it in his *Strangers in Our Midst*⁷⁵ which will be discussed in chapter III.II.

Consistently with this demographic preoccupation, the pervasive system of migration control and the fear of a MC predate the Arab Springs of 2010-11⁷⁶. What renders the growth and the energy of the non-Western youth more evident and perhaps scarier to observers preoccupied of a fading hegemony is the parallel aging of the Western population. If analysts of the defense sector read these trends as a matter of how many soldiers can be enlisted, economists and businessmen tend to emphasize more the need for a young, healthy, and possibly cheap workforce, ready to take up DDD - Dirty, Dangerous and Demeaning - jobs. Some demographers refute the idea that a substantial immigration rate would be necessary or beneficial in the future, given technological and social transformation. There is nevertheless evidence that the economic crisis would be even worse *now*, at least in some contexts, if supporting flows of fresh and promptly available workforce had not come from out of Europe. Indeed, if the president of the Italian National Social Insurance Agency Tito Boeri has invoked an increase in regular migration to safeguard the social protection system⁷⁷, Morgan Stanley Chief-Executive James P. Gorman has criticized as unsustainable the general current demographic trend of Europe, due to low birth-rates⁷⁸.

⁷⁴ *Immigrazione*, pp. 30-31.

⁷⁵ See Miller, 2016, p. 187. Philip Cafaro, *How Many Is Too Many? The Progressive Argument for Reducing Immigration into the United States*, , University of Chicago Press, Chicago and London 2015.

⁷⁶ *Europe's Border Crisis*, p. 18.

⁷⁷ ANSA Editorial Board, “Boeri, c'è sempre più bisogno di migranti lavoratori regolari” (“Boeri: we need ever more regular working migrants”, 20/07/2017, http://www.ansa.it/sito/notizie/economia/2017/07/20/boeri-gli-immigrati-regalano-un-punto-pil-in-contributi_3af98eb6-3ee5-48e8-95e0-9bd9c6952742.html accessed 23/10/2017.

⁷⁸ Federico Fubini, James Gorman: “Atene non farà saltare l'euro, l'Italia può tornare a crescere ma deve incentivare le nascite” (“Athens will not blow up euro, Italy can go back to growth but must improve births”), *Repubblica*, 16/02/2015. See also Andrea Carli “Gli immigrati in Italia producono il 9% del PIL, più di Croazia e Ungheria” (“Immigrants in Italy produce 9% GDP, more than Croatia or Hungary”), *IL Sole 24 Ore*, 18/10/2017. In the same estimates it is calculated that remittances more or less double the amount of foreign aid. http://www.ilsole24ore.com/art/notizie/2017-10-18/gli-immigrati-italia-producono-piu-ungheria-slovacchia-e-croazia--121657.shtml?uuid=AEAYrxqC&refresh_ce=1

I.I.3.3 Invasions and Evasions

In newspapers and public debates, the fear of an invasion is expressed openly, and independently from long-run forecasts and demographic factors. It is an issue once again related to the very nature of the MC and of definitory terms themselves. In a piece written for conservative Italian newspaper *Il Foglio*, and provocatively entitled “The Non-Indifference that Kills”⁷⁹, Camillo Langone argued that the 2013 Lampedusa carnage was the fault of NGOs and of those who welcomed immigrants. “If these immigrants call home and tell about a generous Italian, they are not speaking of me”, wrote Langone, because, he continued, he did not esteem them “worth a look”. The argument here is a rudimental and popularized version of the problem of deterrence. It basically holds that if all acted as the journalist exhorts to, that is, if everybody “welcomed” refugees with “Dobermans and razor wires” (these examples are by Langone), desperate people would stop coming – and dying in the attempt. But what makes the piece exemplary is not only the main exhortation, but its definitory presupposition. Langone goes on to advance another opinion. These people should not be called migrants, he believes, by newspapers and media. The wording that lures them to risk their lives on deadly routes would be “poetic”, but inappropriate, because they are more correctly described as “invaders”, according to what the *Oxford Dictionary* registers as the second meaning of “invasion”: (E) “An incursion by a large number of people or things into a place or sphere of activity”⁸⁰.

For what regards the argument of deterrence, those familiar with the Fortress Europe defense systems – and with its American and Australian counterparts – are well aware that, together with “Dobermans and razor wires”, there are deserts, abysses, drones and “guards with guns” waiting for incomers, and all these still do not suffice to repel migrants completely. To the contrary, the militarization of the borders has grown apace with the increase in migrants’ attempts to cross. Deterrence would presumably be effective only when measures to discourage incomers would make the attempt or the success more dangerous than the situation from which they come from originally. But if one considers what it is like to live in the main refugees and even migrants

⁷⁹ “La non indifferenza che uccide”, 3/11/2013. <http://www.ilfoglio.it/articoli/2013/10/03/news/la-non-indifferenza-che-uccide-51946/> Last accessed on 20/03/2017.

⁸⁰ Langone gives a similar definition of the corresponding word, “invasione”, from an Italian dictionary.

sending countries, this seems too high a price to pay and a political vision completely incompatible with so-called Western values.

This problem points to a second aspect, relating to Langone's etymological argument – that migrants are better described as invaders. First, as with “crisis”, the many meanings of “invasion” should not be confused and quickly exchanged: “An instance of invading a country or region with an armed force” (D) or “An unwelcome intrusion into another's domain” (F) do not coincide with “migration”, because the migrants are usually unarmed and a state is not a private property. Thus, even if the second and more general meaning (E, reported above), would be more fitting, it is at least important not to generate a “halo effect” with other connotations even displaying resemblances with military crises. In fact, in-vasion, like e-vasion, derive from Latin *vado* (to walk) to (*in*) or from (*ex*): that is, simply, “to cross”. Thus, if one wants to take the words etymologically and in a very loose sense, migrants – and even more refugees – would be *invaders* and *evaders* at the same time. Evaders, that is, from the dangers of their countries, and, sadly, also from the “thousand little Guantanimos”⁸¹ prepared for them.

At first sight, it seems not difficult to find what distinguishes migratory flows from the barbaric or military invasions to which they are sometimes associated. They obviously lack a general aim and coordination: even if there might be, in very rare cases, infiltrations by militants or terrorist organizations, these are surely not directing the overall mass movement, because there is simply no such overarching coordination. It is bitterly ironic that people fleeing wars and persecutions are identified as perpetrators, rather than as victims. The classic example presented in the literature is the Israeli immigration in Palestine that permitted the ousting of the previous inhabitants of the land. But this example is useful to show why the migrant crisis is *not* a case of invasion. In that circumstance, settlers and colonizers had (1) a unifying character (Jewish ethnicity or religion, more often Zionist ideology), (2) the explicit goal of establishing a new state (defended publicly from Theodor Herzl on) and (3) the political support by already existing state entities. They also (4) lacked a fatherland of their own with which they could identify and by which they would have been protected politically even as migrants, (5) had historical and ideological bounds with the territory they were to occupy, and, especially relevant, (6) had the practical means to establish a new nation, in the form of economic and military capabilities, but above all of sheer number: these of course partly depend on the social and other conditions of the migrant networks

⁸¹ This is again variously illustrated in Gibney, 2006.

listed before. The natives were not only overcome, but overwhelmed. It would be hardly argued that any of these features apply to the MC in any one of the receiving countries.

It is nonetheless unsurprising that higher rates of violence are observable among migrants, since uprooting, violence, isolation, and severe poverty are associated with higher social and psychological instability in all human groups. As the common phrase “flight or fight” suggests, moving away is, in ethology before than sociology, the main if not the unique alternative to combat. Thus, the idea that to repel migrants would prevent terrorism needs some deeper reflections. If it is undoubtedly true that societies have a right and a duty to bar access to all who represent vital threats to citizens’ life and security, a more far-sighted approach should reflect that the very fact migrants are considered more dangerous than native means that in their own countries they have *more*, not *less* chances to become terrorists. It follows that attacks of the kind of 9/11, which were in fact not perpetrated by immigrants, require a broader and more comprehensive approach aimed at world peace rather than merely more border control, even if it seems worth repeating that for this purpose more accurate border control and monitoring of fluxes is legitimate and indispensable. Indeed, migrants themselves benefit if attacks are prevented, because then the public opinion becomes less resented towards them. But a policy of mere closure could even nourish terrorism in the long run, by eliciting animosity against the rejecting countries and by making it impossible to victims of terrorism to escape their networks.

Finally, the most blatantly paradoxical consequence of this overturn between invaders and evaders, aggressors and victims, is that these very people are detained for prolonged periods in camps and prisons, to the point that many NGOs and other human rights agencies have questioned the compatibility of the migrants’ detention regime with the principles of *habeas corpus*.

I.I.3.4 Frontex and Export

People of the same mind as Langone would likely point to the fact that welcoming refugees, far from being a purely humanitarian process, for someone is also a job: Langone does in fact criticize the dividends of NGOs and governmental institutions. It is undeniably true that a similar large-scale societal effort requires immense quantities of money, and attracts people with many interests and few moral scruples, independently from their competences, duties, responsibilities or

ideals. It is instead less uncontroversial to accept that business is implied not only in refugees' and migrants' acceptance, but even in their rejection and generation.

This claim can be substantiated in several different ways. The first would be that refugees and migrants are originated by the present power and economic relations of the global community. Refugees are those who are more directly affected by inequalities to the neoliberal economic order, as shown by the book and documentary *The Harvest of the Empire*, by Juan Gonzalez⁸². Thus, NAFTA, and the economic regime it generated, is also partly responsible for the very tide of immigrants which is expensively kept out from the US southern border thanks to huge construction and security contracts between private sector and government agencies⁸³. Similar examples could be drawn from situations geographically very distant from that of the US.

A second way in which economic aspects interplay with the MC is represented by the treaties which are stipulated between countries to keep migration at bay. Libya, Turkey, and many other countries, often without satisfying guarantees on the respect of migrants' rights, have been involved in such treaties. "While negotiation costs are high, however, successful implementation is questionable, as even if an agreement is signed, there is no saying whether it will be sufficiently ratified and consistently observed"⁸⁴.

A third and perhaps the most notorious form of business is the particularly obnoxious network of smuggling and trafficking. By June 2016, migrants have paid about 16 billion euro to arrive to Europe, considering illegal means only. A single place in a raft would sometimes cost between 3 and 6 thousand dollars: the life jacket is extra and costs around 500⁸⁵. In recent days, a light has been cast also on the implications of these networks of uncontrolled money flows between Southern Europe, Malta, and Libya, with emerging evidence of connections between terrorists and traffickers, and even the case of an Italian society, MaxCom, involved in the smuggling of oil from terrorist-controlled Libya for a 30 million euro gain over the last years.

A fourth and very substantial economic aspect of the MC is the cost of maintaining an efficient apparatus of surveillance all around a continent. The high-tech technology and even

⁸² Penguin Books, London 2011.

⁸³ Joseph Nevins, *Operation Gatekeeper and Beyond: The War On "Illegals" and the Remaking of the U.S. – Mexico Boundary*, Routledge, New York 2010.

⁸⁴ Völkel, in *Fortress Europe?* p.91.

⁸⁵ ANSA Editorial Board: "Immigrazione: un posto in barcone costa da 3 a 6 mila dollari" ("Immigration: A place in a raft costs from 3 to 6 thousand dollars"), 05/10/2014, http://www.ansa.it/sito/notizie/cronaca/2014/10/05/immigrazione-un-posto-in-barcone-costa-da-3-a-6-mila-dollari_f3bb209a-70d8-4da8-ad63-82c52e983771.html

higher-costing contracts have been by now expounded to details in the vast literature devoted to the purpose⁸⁶. Even if the lucrateness of the business is unquestionable, its morality and effectiveness are doubtful: Amnesty International has reproached Spain for spending 30 times more in border defense systems than in assistance to migrants⁸⁷, while The Migrants' Files archive estimates an immense amount for all the security initiatives: 11.300 million would have been spent, for instance, only in deportations, while 226 million is the cost of gears for the European Border Squad⁸⁸. With such estimates of the earnings, and the involvement of many of the core societies in the European industrial and technological structure, one would wonder whether it is not the case to reiterate the famous caveat issued by US President Dwight D. Eisenhower in his farewell address. Then, Eisenhower invited to be wary of the unprecedented consolidation of a “military-industrial complex”: his speech, suitable to a post-war situation, does not sound foreign in the context of the MC, where analogies with and direct connections to wars are not unusual. The conclusion still sounds especially relevant nowadays: “Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.”

I.I.3.5 The Functional Equivalent of War

As the name Frontex, which resonates with “fortress” as well as with “frontier”, and the very idea of a MC suggest, the Western World believe it is undergoing a sort of siege: it is struggling to repel the “invaders”. Here “crisis” is used in a sense very similar to, say, the Cuban Missile Crisis, to indicate a “time of difficulty and danger” (definition A), where the level of alarm, and, by logical consequence, of reaction is of a catastrophic intensity. The MC thus entertains with the crisis in the Middle East an ambiguous relationship: the same refugees fleeing, say, the threat of ISIS, would be agents of the terrorist organization, and the refugees from the Syrian war would bring riots and, possibly, a civil war, to Europe. The fear recalls the ancient and strong terror of contamination and contagion. Vaughan-Williams has made the language and the theme of immunization, partly derived from Roberto Esposito, the core of his book, and the lens through

⁸⁶ *Europe's Border Crisis*, p. 21.

⁸⁷ *Immigrazione*, p. 61.

⁸⁸ <http://www.themigrantsfiles.com/>, last accessed 20/03/2017.

which to inspect the MC. But besides the fear of alien “viruses” and diseases, the military terminology also is an over-recurrent category in the post-9/11 world, from “war on terror” to “war on drugs”. Both drug-smuggling and terrorism, it is worth noting, are two issues often factually or politically associated with migration.

Indeed, war entertains with refuge an essential, causal relation, and the MC is the symptom of the escalating conflicts in the world. In this sense, the phrase risks functioning as an effective, even if mainly unconscious, ideological camouflage. The broader public discusses all the time about refugees, integration, immigration, the prevention of the arrivals: the root-causes that have led to these situations, however, are hidden or more vaguely, carefully, indirectly and technically mentioned. This gives the impression that it would be possible to fix the refugee tide *as such*, as if migration were not the effect of inequality and instability. The violence and the security problems are transferred to the MC: it is with refugees that the European public feels at war, sometimes forgetting that their countries have often been attacked and invaded by the same powers that then try to keep migrants “out”. Even long before the current crisis, it was an established view that: “Immigration [...] at least under some circumstances, should be regarded as the functional equivalent of war, with incoming or intending migrants posing threats to the stability of the state—and hence to the existing government and power structure of the nation—which are similar to those posed by an invading army.”⁸⁹Critics of the recent geopolitical evolution, rather than stressing the analogy between migration and war, have radically called into question the legitimacy and reasonability of the main recent military campaigns, and have denounced the ideology of the Washington consensus⁹⁰ which, after the end of the Cold War, has accompanied the migratory explosion. These issues, however, will be considered more closely in chapter II.I.

⁸⁹ John A. Scanlan and O. T. Kent, “The Force of Moral Arguments for a Just Immigration Policy in a Hobbesian Universe: The Contemporary American Example,” in Mark Gibney (ed.), *Open Borders? Closed Societies? The Ethical and Political Issues*, Greenwood Press, Westport CT and London 1998, p. 69, quoted and discussed in Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh University Press, Edinburgh 2000.

⁹⁰ Danilo Zolo, *Cosmopolis: Prospects for World Government*, Polity Press, Cambridge 1997; *Globalisation: An Overview*, ECPR, Colchester 2007.

II.3.6 State (Dis)Solutions: On Emergency and Exception

The preceding sessions were devoted to the definition and description of the MC, with particular attention to the contradictions and oppositions that characterize it. In these two sections, one more normative implication of the MC is delineated, and a summary is presented under the conceptualization of the “migratory shock”.

In his discussion on the nature of *Europe’s Border Crisis*, Vaughan-Williams critically discusses the thesis, advanced by Giorgio Agamben in *Homo Sacer*⁹¹ and *State of Exception*⁹², of the “sovereign ban”. Vaughan-Williams himself notices, and it must be emphasized here, that Agamben did *not* develop these theoretical devices with direct reference to the MC or even to migration in general: thus, it is reasonable to expect that some adaptation is necessary and an only imperfect adherence with the original formulation is possible. However, the “external” status of the foreigner, even more, her or his condition of “illegality” and the deprivation of jurisdictional protection, coupled with the concentration system which is employed to contain irregular migration, are all common features that suggest Agamben analysis could at least partially apply. Even more direct is the relation with the security apparatus of Guantanamo that Agamben criticized in *State of Exception*, in the wake of the Patriot Act and of other measures instituting a persisting state of emergency.

It must be stressed that, depending on the contexts, and due to the reasons I have already advanced to distinguish immigration from invasion or war, it is unclear whether the MC *should* constitute a genuine state of emergency⁹³. And yet, the point of Agamben’s analysis is not that of evaluating the grounds for invoking this political category, but rather that of discussing its way of acting and inherent risks. Hence, one could well criticize the European and more specifically some governments’ “ontological securitization”⁹⁴, with their alarmistic discourses regarding the MC and subsequent integration, with all their repertoire of distortion and exaggeration. Agamben’s analysis’ specificity is to show the immense and perhaps unique normative potential of the *state*

⁹¹ *Homo Sacer. Sovereign Power and Bare Life*. Stanford: Stanford University Press, 1998.

⁹² *State of Exception*, Chicago: University of Chicago Press 2005.

⁹³ I am thankful to Kieran Oberman for inviting me to clarify this point.

⁹⁴ For the cause of Hungary see Julia Palik, “Because no one should forget: those who are overwhelmed cannot offer shelter to anyone.” Hungary’s ontological security seeking in light of the refugee crisis”, *forthcoming*, for the case of Switzerland see Matteo Gianni, “Muslims’ Integration in Switzerland: Securitizing citizenship, weakening democracy?”, in *Citizenship and Security: The constitution of Political Being*, Xavier Guillaume & Jef Huysmans (eds.), Routledge, New York 2013, pp. 212-226.

of exception, seemingly the only way Western democracies have to wave human and constitutional rights. The *state of exception* is indeed in a strict relation with the claim, generally attributed to realists, that consideration of a state's "vital interests" trump moral and legal restrictions. Once that a situation is categorized as exceptional and as a threat to the very subsistence of a state, corresponding exceptional means are authorized by leaders, officials, state agencies, and even the public opinion.

Also, as it emerged from the data presented thus far, the actual situation of at least *some* states might well be, or be about to become, critical. If for big and powerful nation-states with several tens million inhabitants, stable institutions, and efficient armies, it might seem an exaggerated claim to decry the inflow of migrants as a destabilizing threat to the rule of law, worries by smaller and more unstable states for which a sudden migratory inflow can well serve as a final stroke look much more genuine, especially since the vast majority of refugees are hosted in Third World countries. In these scenarios, the moral problem of "emergency" and of the suspension of rights and guarantees otherwise to be considered inalienable is much more dramatic, even if nothing of what has been said is meant to serve as an excuse for such a suspension.

Finally, an extraordinary instance of power exerted through its withdrawal, as in Agamben's theory, is the recurring creation, in the face of the MC, of zones of ambiguous jurisdictions, which Gibney has concisely called "little Guantanamos". The move through which airports, islands, and other state territories are excluded from full sovereignty – Gibney speaks of "excision"⁹⁵ - in order to render them impermeable to claims of refuge, is paradigmatic of a radical way of exerting power by transforming its very nature: not within the legal system, but without it, not by directly reinforcing state agency, but by apparently annulling it.

Another instance of this problem is the inherent de-territorialization⁹⁶ of migration dynamics. A Guantanamo-like situation would assume much wider scope if consideration of cases of no-mans' land *de facto* were added to those *de iure*, since many refugees- and even migrants-producing areas are region of contested sovereignty, from Kosovo to the conflict-torn regions in Ukraine and the Middle East. However, migration is pushed by sovereign states at the margins of state-borders into agreed-upon extra-territorial spaces, as exemplified by the frequent tug of war

⁹⁵ Gibney 2006 p. 147.

⁹⁶ Here the term is used to identify a place or space which is not a territory invested of state sovereignty and other socio-political references: no other technical meaning is implied.

between Malta and Italy on who is to assist refugees in international waters. Even so, it must be noticed that refugees and migrants do not float in de-territorialized spaces out of their own nature or choice: it is only for the surveillance on the ordinary accesses that they cannot cross, e.g., the 14 kilometers wide Strait of Gibraltar – again of territory with a peculiar sovereign status -, or other more accessible and less dangerous passages. Refugees and migrants are deliberately conducted towards zone wherefrom sovereignty is withdrawn, or where it is exerted in an ambiguous form.

II.3.4 The Migratory Shock

Before concluding this chapter, an additional synthesis and reformulation of the many data and concepts introduced thus far might help overviewing them. I will only focus on the most relevant aspects I want to summarize. The exceptional and specific circumstances and dynamics of the MC, and especially its psychological, sociological, and political import, seem appropriately defined as a “migratory shock”. By this phrase, it is *not* suggested that migration *in itself* provokes the problems that then elicit the heated debates and excruciating political and moral dilemmas which are to be faced at present. History and philosophy of migration abound of examples of substantial increases in migration inflows without even the evocation of the possibility of an institutional collapse or the necessity of extraordinary restrictions. For instance, one can consider the first Cuban refugees’ arrival to Miami, or the new Israeli citizens who left the ex-Communist countries after the end of the Cold War. Some states host a population of migrants which goes beyond a half of the total population, and the world-record most welcoming country, Lebanon, despite dramatic difficulties, has come to the point where about a quarter of the country is composed by refugees, mainly of Syrian origins. Furthermore, regional entities such as the EU, ECOWAS, and MERCOSUR, all implement forms of internal free movement for citizens spontaneously and rarely find it problematic to maintain them.

Two extreme, exaggerated and stereotypical opposite scenarios can be considered to understand the MC and the “migratory shock”.

The first is the situation where a person with limited needs and claims, say a student, is hosted for a time which is supposed to be short, according to inter-states agreements. S/he comes from a neighboring country, and is a native speaker of a language very similar to that of the country

where s/he now lives: in addition, s/he has studied the foreign language for a time sufficient to reach fluency and enjoy everyday interactions with natives. Her or his culture and religion, if anyhow specific, is close and connected to that of the majority of the host country, and at all events very open and accommodating: s/he comes from a context where religious and ethnic discrimination is prohibited and seriously suppressed, at least officially and formally. Also, a variety of alternative political and cultural identities are freely expressed in her or his nation of origin. A detail not to be overlooked: his or her economic standing is not very distant from the average of her or his hosting country, and by what has been mentioned as “limited needs and claims”, it is meant that for instance s/he does not want to own stable property such as a house or compete for permanent employment, s/he does not claim voting, citizenship or even extended residency rights. Partly because of her or his perspective short stay, s/he does not want the majoritarian culture and norms to change substantially to accommodate the differences from her or his, which have already been characterized as marginal. Connected to this point: the person has emigrated without difficulty and, a particularly relevant detail, not in the company of a substantial number of fellow countrywomen and men, neither with the perspective of being joined by them in a foreseeable future. There are no expected financial and welfare burdens, since the country of origin has engaged in schemes of mutual cooperation to ensure that either the expenses of, say, healthcare and other assistance are covered, or that similar services are delivered to migrants from the other country, thus making the net difference close or equal to zero. Final detail not to be neglected, and related to the scarce probability of an extension of residence, is the likelihood that the person will not have any child, even less children, in the host country. The situation, that might appear exaggerated in the sense of characterizing the immigrant as a “light” and passing presence in the welcoming country, is in fact very similar to, and has been modelled after a description of, an Erasmus or international exchange student.

Now, this description can be systematically reversed, point after point. The incomer arrives unexpectedly, out of no international exchange or accord, with substantial and potentially life-long claims and needs connected to the unforeseeable extension of the stay. The country of origin is remote, the language is foreign: not only there has been no or insufficient previous linguistic training and cultural preparation, but the general education provided by the country of origin is by far below the standards considered minimal and mandatory in the country of arrival. Corresponding to this geographic and linguistic distance, the culture appears extraneous to the

members of the receiving society: it is unsure whether the same basic values are endorsed in the country of origin and by the migrant itself, and there is even the suspect that discrimination, strife, and violence, have been part of its experience, if not the main factor to trigger emigration. At first sight, one could recognize the immigrant is of a very different standing, not only from the average of the country of arrival, but even from its most destitute members: it is obvious from lack of language fluency and of social capital and connections that the person is not stably employed nor might be easily recruited in the close future. As most poor people, the immigrant has no belongings and, given the length of the stay, it is very likely that it will claim access to housing and social services, with no possibility of having them refunded by himself or the country of origin. The neutral pronoun could possibly be substituted with a “he” here, since the majority of these immigrants are young male: basic rudiments in sociology are sufficient to recognize the statistical likelihood of higher crime and violence rate with comparison to an older and more gender-balanced receiving population, even without considering the anomic, isolated, if not alienated social situation, and the stress of cultural and even physical adaptation – to food, to climate, to habitudes of living which differ greatly from those of the forsaken homeland. But since the voyage to arrive has been long and difficult, and on that also looms the suspicion of violence and illegality, the probability of behaviors which are informal and unexpected, if not plainly antisocial or criminal, is even higher. Even before any evidence is provided, the presence of this young alien is already perceived as threatening. Despite these deprivations and, to the eye of the host country, defects, or precisely because of them, the strangers require changes in laws and costumes, to feel less of foreigners, to be less exposed to violence and exploitation, to feel a little more “at home”, to have efforts to adaption or even integration recognized. After all, the receiving culture is in this case more tolerated than elected by a migrant who could have ended up anywhere else. The claims are vocal because the strangers are many, and they are becoming more and more numerous with each passing day, also thanks to the rate and age at which they reproduce, respectively much higher and much lower than the average of the country population. Finally, the geopolitical status of the country of provenance of the foreigners makes the attempts to obtain some benefit out of the sending nation mainly unrealistic. And that is because the two societies are unequal, and have been or even still are involved in asymmetric international relations that render one population in principle wary of the other, if not simply too distant and unknown to relate.

The background circumstances of the receiving society are themselves not the happiest: an extended period of economic stagnation, and the decades-long erosion of social security and economic and social rights striking the natives, and thus especially the youngers, that is to say the direct competitors of the newcomers in job-seeking, family and house allowance and other kinds of assistance. The aging population is no better disposed to welcome the strangers, given a coincidence with the postponing of the age of retirement if not its elimination or endangering: all compete for the relatively scarce and unsecure welfare benefits. The presence of migrants of the former group, and the fast and to some extent precipitous transformation of the country culture due to the influence of global media and international economic exchanges, contribute to the perceived loss of control.

Perceived is a key word here, since to the contrasts outlined above, one could add the more general gap between reality and its reconstruction by media and social discourses, especially on the topic of (im)migration. In 2011, the IOM denounced in its “World Migration Report” the gross misperceptions in the overstating of the migrant populations: the Italian thought to be living with 25% immigrants among them, while actually they were around 7%; the American guessed 39% while the accurate figure was 14%. The IOM director general William Lacy Swing commented that correcting these misconceptions could well have been “the single most important policy tool in all societies faced with increasing diversity.”⁹⁷ A few years later, the goal is apparently much distant from achievement, since the yearly IPSOS “The Perils of Perception” Survey still shows in 2016 that a vast majority of the surveyed 40 countries’ populations greatly overestimates the number of immigrants and also of Muslim they live with, both at present and as a projection for the future. The influence of these representations on political choices can hardly be belittled, as the same institution noticed while surveying the British public a couple of weeks before the Brexit vote:

[W]e massively overestimate how many EU-born people now live in the UK. On average we think EU citizens make up 15% of the total UK population (which would be around 10.5m people), when in reality it’s 5% (around 3.5m

⁹⁷ Caroline Brothers, “Perceptions of Migration Clash with Reality, Report Finds”, *The New York Times*, December 5, 2011. <http://www.nytimes.com/2011/12/06/world/europe/perceptions-of-migration-clash-with-reality-report-finds.html> last accessed 31/10/2017.

people). Those who intend to vote to leave overestimate EU immigration more: they think 20% of the UK population are EU immigrants, compared with the average guess of 10% among those who intend to vote “remain”.⁹⁸

Conjectures to explain the perception-reality gap might possibly include political interests, some of which have been even exposed by the Cambridge Analytica scandal, and social tendencies, the effects of the media, and negative presuppositions. An important element of this picture, according to an essay by the late Zygmunt Bauman, would be the omnipresent sentiment of *fear*⁹⁹ in contemporary society. This psychological condition, partly derived from the erosion of cultural, existential, economic and other traditional forms of security, and from the instability of the contemporary fluid and ever-changing world, would partly explain why what is considered threatening is exaggerated in its impact or dimension by an over-alert collective psyche.

A last theme that has been touched upon in the previous exposition should be further emphasized to conclude the characterization of the migratory shock: the growing global inequality. Estimates suggest it has about tripled from the 60s to 2016¹⁰⁰, but whatever interpretation is provided to the trend, it is undoubtful that it remains huge (see figures 7-8). It is evident from both the examples and the previous presentation of the MC that this plays a major role not only in pressing people out from poor countries into the richest, due to “socio-economic communicating vessels” of some sorts (intensified by cultural attraction and hegemony exerted through global media), but also in increasing differences, difficulties in integration and solidarity and, ultimately, tensions between the incomers and the receiving societies. Indeed, when socio-economic, cultural, linguistic, religious, and political divides overlap, the pit dug between sections of the population becomes unbridgeable.

It would be a delusion to believe that a carefully devised “law” or policy could reverse this flow or its constitutive features overnight, and persuade people to move in a direction opposite to the geopolitical lines of affluence and entitlements as salmons jumping up waterfalls. Economic

⁹⁸ Ipsos MORI, “The Perils of Perception and the EU”, 09/06/2017, <https://www.ipsos.com/ipsos-mori/en-uk/perils-perception-and-eu> , and more generally Ipsos, “Perils of Perception 2016: A 40-country study”, <http://perils.ipsos.com/slides/>, last accessed on 31/10/2017.

⁹⁹ Zygmunt Bauman, *City of Fears, City of Hopes* Goldsmith College of the University of London, London 2003.

¹⁰⁰ Jason Hickel, “Global inequality may be much worse than we think”, *The Guardian*, 3/04/2016, see also Branko Milanovic, *Global Inequality: A New Approach for the Age of Globalization*, Harvard University Press, Harvard 2016, whose implications for global justice are discussed in detail by David Owen, *forthcoming*.

inequality is also strongly correlated with inequality in other aspects of life: it would be easy to support the economic data provided here with differences in the Human Development Index. And migrants coming from such a situation of impoverishment or, even worse, refugees coming from violent crises the Western powers have had a notorious responsibility in provoking or (mis)managing, are not eager to integrate quickly. Nor the problem could simply be “abolished” by decree, so to speak, by sealing borders together with eyes and minds and persuading the public that a cap can relieve from the pressure exerted by floods of millions. On the contrary, it seems more reasonable to infer that unless all the most relevant political, demographic, economic, security, military, cultural, and informational aspects constituting the migrant *and* refugee crisis are addressed, together with the most complex legal issues of the extension and withdrawal of sovereignty and responsibility, no satisfactory and stable solution will be secured.

The philosophical double of this delusion would be to quest after the “magic formula” to distribute migrants as well as refugees, be they between Syria and Turkey, Sweden and Norway, or Thailand and Myanmar, without considering the hard questions and data that reality presses onto any theoretical scheme. This very reality is not only the main reason to search for a solution, but possibly even the main source to be at least consulted for it.

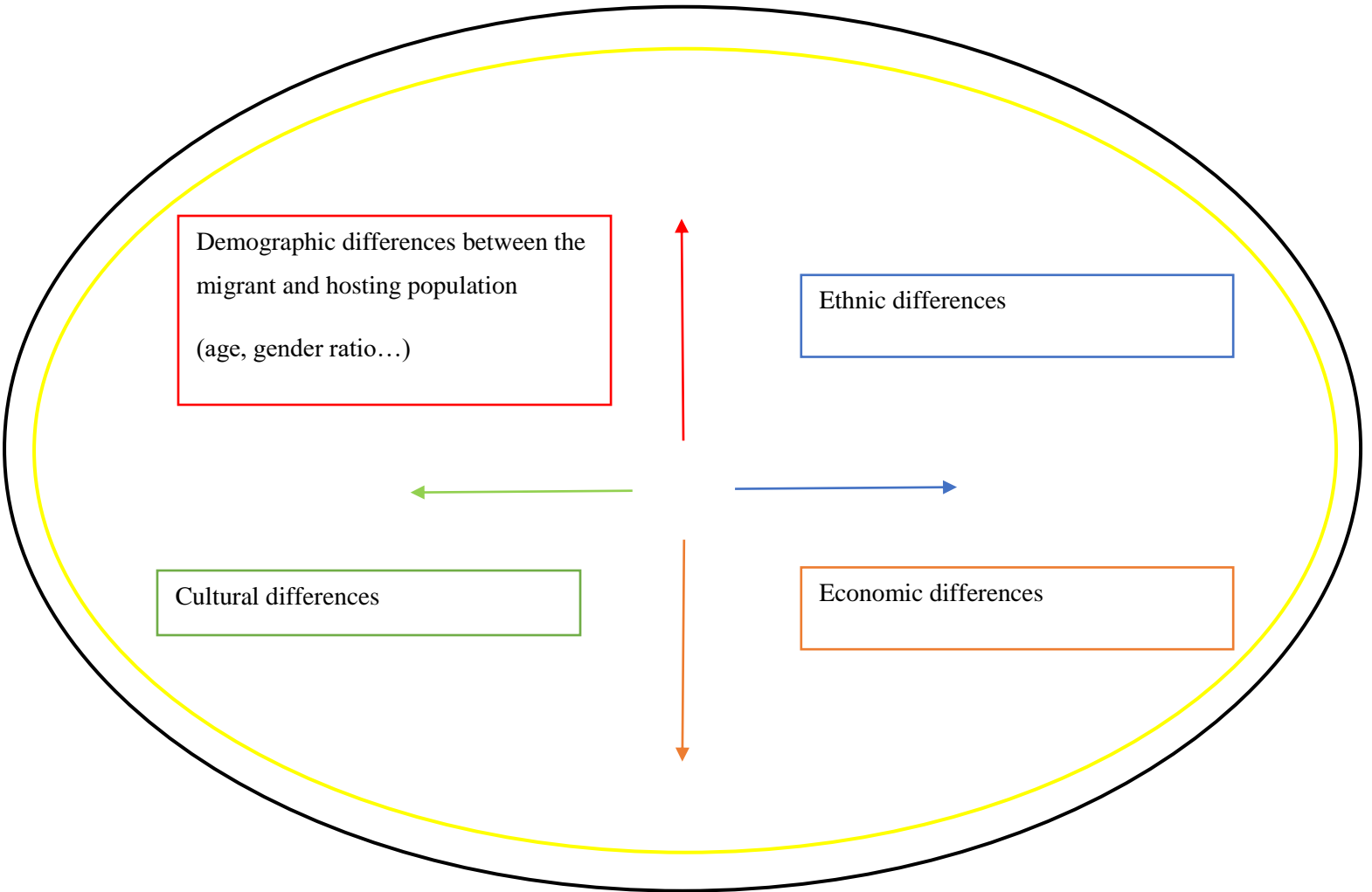
Figure 6: List of the poorest countries in the world, with yearly GDP per inhabitant (US dollars) and population (millions). Source: Mehdi Lahlou, “Pourquoi part-on de façon irrégulière d’Afrique? La pauvre Afrique vs l’opulente Europe” (“Why people migrate illegally from Africa? Poor Africa versus affluent Europe”), in *Fortress Europe?* pp. 23-34, at p. 27).

1/Burundi	315,2	9,4
2/République Centrafricaine	338,7	4,8
3/Malawi	352,7	18,1
4/Gambie	384,2	2
5/Madagascar	392,6	24,2
6/Niger	403,4	17,6
7/Liberia	469,1	4,3
8/République démocratique du Congo	478,2	81,7
9/Guinée-Conakry	545,6	12,3
10/Togo	578,1	7,2
11/Guinée-Bissau	582,2	1,8
<u>12/Afghanistan</u>	<u>614,9</u>	<u>32</u>
13/Ouganda	625,3	39,9
14/Mozambique	626,2	27,1
15/Erythrée	630,3	6,8
16/Burkina Faso	631,4	17,9
17/Mali	672,2	16,3
18/Sierra Leone	675,2	6,3
19/Ethiopie	702,1	89,8
20/Bénin	709	10,9
21/Comores	736,8	0,8
22/Rwanda	742,9	11,4
<u>23/Népal</u>	<u>751,1</u>	<u>28,4</u>
<u>24/Haiti</u>	<u>829,6</u>	<u>10,6</u>
25/Sénégal	934,6	15

Figure 7: Ratio of GDP per habitant between the main European countries receiving immigrant from Maghreb and the countries in central Maghreb themselves (source: Lahlou, p. 30).

Pays	Allemagne	Belgique	Espagne	France	Italie	Pays Bas
Maroc	14,97	14,83	9,31	13,4	10,04	16,34
Algérie	8,71	8,62	5,42	7,8	6,42	9,51
Tunisie	10,8	10,7	6,72	9,66	7,97	11,8

Figure 8: The “migratory shock”: a “perfect storm” of social centrifugal forces.



First encompassing circle: conditions of globalization: increased mobility; changes in countries’ culture, political-economic structure, and sovereignty; national and international neoliberalism, etc.

Second encompassing circle: the “perils of perception”: how the situation is (mis)represented according to factors such as political and economic interests: neocolonial and imperialist attitudes, racism, populism, crisis of trust in the elites, fake news, etc.

I.I.4 Conclusions

In this chapter, I have explained what is the migrant crisis (MC) and what are some of its main political and normative implications. To do so, I have relied on materials drawn from journalistic sources, from researches in political science, and from political philosophy and philosophy of migration in particular. Images and charts should have offered an intuitive grasp to the reader.

After a short introduction on the anthropological relevance and political problems of migration, I have questioned the definition of the MC and I have reported some crucial data. Explaining the choice between the phrases “refugee crisis”, and MC, which is obviously relative to the perspective assumed in this research, offered the occasion to reflect on some often-neglected core elements of the crises themselves. These involve, first of all, the reference and meaning of the phrase itself, and the corresponding choice often taken *not* to expound on the background conditions which contribute to the creating the crisis and shaping its distinguishing features.

I have proceeded, on this line, by illustrating three vicious circles and three gaps which lay at the core of the MC: *illegalization, escalation, and extremization* on the one hand, and the strain between *opinion-policy, rhetoric-practice, humanitarianism-security* on the other hand. To these it might be added the *reality-perception* gap: this latter I have presented at the end because, being a general epistemic problem, which seems particularly acute in this context, it is almost all-encompassing.

I then presented some demographic, security, economic, and strategic aspects of the MC, and I showed how they are connected to the emergency or exceptional state responses, to the point of an essential reshaping of national and international forms of sovereignty.

I concluded by restating the same subject-matter from a different, more subjective and aggregated angle, and thus I presented the “migratory shock”: through this resumé I stressed the elements, which were already sparsely discussed in my account, of epistemic uncertainty, social uncertainty (or *fear*), and the crucial issue of growing global inequality.

As it seems, completeness was ruled out by the very choice of such a complex and hardly-defined subject: so was any pretense of giving exhaustive discussion of all the phenomena implied. Nonetheless, I hope and believe this first chapter has laid the foundation to clarifying the MC in the way a philosopher can offer, that is, in the form of critical knowledge and thinking.

Part II
Realism

II.I Political Theory, Globalization, and Migration: Realist Perspectives

Abstract

When devising a proper ethical theory to cope with the migrant crisis, confronting the exigencies of realism is an almost inevitable task: this chapter will be devoted to the theoretical landscape developed by thinkers who adhere more or less explicitly to the realist school in ethics and international relations, or give space to critiques of a realist kind in their evaluation of liberal migration theory. It is to the next chapter to consider how the question of realism is framed within ethics of immigration by thinkers who do not strictly associate with this stance.

The present chapter proceeds from the more general to the more specific: its main parts are focused on realism and on its application to migration respectively. The first section sketches an overview of the history and meaning of realism. A second section consists in an inquiry into the main differences and controversies that seem most clearly to distinguish realism from alternative strands in international relations and political philosophy. The third section is devoted to realist critiques of leading theories of global justice and the associated skepticism over the “Washington Consensus”, a combination of a realist description and interpretation of the contemporary world order and of the connected dismissal of the normative ideals which dominate the philosophical debate. The fourth section recalls the main traits of the realist stance on the issue of migration. The article is then concluded by a critical summary of the main aspects and by a proposed outline of an application of the realist stance to the migrant crisis. The main achievement of this conclusion, which will be clarified and strengthened in the next chapter, is that realism and an ethically demanding position on immigration are not mutually exclusive.

Key words: Realism, Reason of State, Washington Consensus, Ethics of Migration

Chapter Structure

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II.I.3 Conclusions

II.I.1.1 Migration, Refuge, and the Breaking Point of Morality

Even if some people would associate the phrase “migrant crisis” with images of African or Syrian refugees trying to make their way through the sea to reach Europe, in recent years it is also at the heart of the Balkans that the exceptional migratory phenomenon appeared in a manifestation of paradigmatic relevance. The situation of Kosovo is generally not novel to scholars of international relations, political theory, and even migration ethics. From differing standpoints, the liberal Michael Ignatieff¹ and the realist Danilo Zolo² have extensively debated the legitimacy and implications of the NATO intervention in Kosovo at the end of the second millennium. Immediately after the conflict, a substantial number of refugees outpoured into neighboring and even remote countries, with the help of an unusually welcoming political climate. Thus, Kosovo entered the debate over ethics of forced migration, with Matthew Gibney explaining that the peculiarly generous response was due to the three factors of *regionality*, *implicatedness*, and *relatedness*³. Without considering Kosovo’s crucial geopolitical position, the nature of its refugee crisis being directly implicated into the choices taken by the countries composing NATO, or the perception of a closer relation between its European refugees and the citizens of the countries who welcomed them, the display of openness and solidarity with which the crisis was met would have proved impossible.

The situation of Kosovan emigration has been attentively monitored for years, but it is apparent to all observers that it became extremely severe again at the height of the MC, when hundreds of thousands flew: an amount roughly equivalent to 6-7% of the country’s 1,8 million population⁴. The example of Kosovo brings to the fore interrogatives on the role of geopolitical context, the balance of power, the harsh reality of war and other forms of conflicts, socio-economic factors, and even the world’s main religious and economical divides: the realist critique of contemporary ethics, including the ethics of immigration, can be detailed around a response to such questions.

¹ *Virtual War: Kosovo and Beyond*, Metropolitan Books, New York 2000.

² *Tramonto globale: la fame, il patibolo, la guerra* (“Global Dusk: The Hunger, the Gallows, the War”), Florence, Florence University Press, 2010.

³ “Kosovo and beyond: popular and unpopular refugees”, in *Forced Migration Review*, “Learning from Kosovo” feature, August 1999, p. 28-30. I would suspect that the geopolitical interest, in whose critique Zolo is particularly vocal, did also play a role in the exceptional treatment of the Kosovan refugee crisis.

⁴ Francesco De Palo “Kosovo: è esodo. 150mila emigrati in 6 mesi” (“Kosovo: It’s Exodus. 150 thousand emigrants in 6 Months”), *Il Fatto Quotidiano*, 28/02/2015.

II.I.1.2 The Realist Archipelago: History and Themes

“Reality”, as “being”, is a very wide category to discriminate among political theories. Almost all political philosophers would claim that their standpoint is somehow “realistic”, in the sense that it captures the “real” (just, correct) principles of moral and political reasoning, independently from the way the world is arranged, or, to the opposite, precisely in the sense of keeping an eye to the setting and the constraints originated by the actual situation one finds oneself philosophizing into. These two opposite options do not cover the whole range of possibilities in any way: the Rawlsian concept of a “realistic utopia” exemplifies one of the many conceivable approaches that would look for a “third way” between realism in a Kantian sense (the apprehension of the “real” moral and political order) and in what could be described as a Marxian or, as it will be shown later, a Leninist approach (realism as consisting in the scientific and precise description of the relationships of power constituting the political field).

In the next chapter, I will analyze what kind of realism has in fact been presented as a commended approach in the ethics of migration, and I will show that even the authors who appeal to “realism” do not disguise its ambiguity and generality. Even more here, while describing a general realist stance situated at the outside, so to speak, of the mainstream normative liberal political philosophy, it is safe to claim that what is meant by “realism” is a very loose association of themes, principles, and methodologies: surely each author advances a more specific form of realism, but a survey such as the present one cannot be contented with the individual variations. Thus, I think it appropriate to employ a parallel expression to Chandran Kukathas’ phrase on liberalism, and I would rather speak of the “realist archipelago”.

Nonetheless, the claim that a category has a very general reference does not mean that it is unclear or useless to apply it: the idea of a “realist school” or “stance”, especially with regard to the ethics of international relations, is well established and, with some exceptions which I will recall later on, it is almost uncontroversially defined. Hence, before advancing a blueprint of a realist stance over migration, it will not be idle to recall the general traits of the realist tradition

and approach by and large: this I will do historically and thematically, by relying on the overview advanced by Jonathan Haslam⁵.

Many educated persons could easily name a list of “realist thinkers”, beginning with the classic Thucydides and Tacitus and continuing with the most obvious Machiavelli and Hobbes. Those with an acquaintance with international relations theory would probably add the mention of Hans Morgenthau, Edward Hallett Carr, and other prominent thinkers of the 20th century. Haslam⁶ reminds us of the fact, no less evident to many readers, that famous philosophers of different stripes, such as Rousseau and Kant, switched from a realist to a more idealized mode of thinking depending on the specific occasion and intention. Thinkers usually mentioned for their theoretical systems, such as Francis Bacon, John Locke, and David Hume, were also used to providing “realist” counseling to their rulers and protectors. Haslam also adds other two salutary specifications which rather enlarge the realist camp. The first one is that, contrarily to normative and purposely abstract political theorizing, in the case of realist “theorists”, neither the distinction between the person of action and the thinker is clearly drawn, nor the difference between a specific and peculiar incidence and a more general precept is uncontroversially identified, so that maxims by Bismarck and Von Clausewitz are often cited as principles of realists approaches to politics. A classic example would be the latter’s unimpassioned description of war as continuation of politics with other means, while, together with Guicciardini, many realists would insist on the relevance of the “particular” in opposition to general axiomatic sciences which make up laws when they cannot observe them. To resume this first point, according to Haslam, and to many realists themselves, it is a distinctive feature of realism to hold a more nuanced and flexible definition of what is political science and who is a scientist, resulting in wider range of consultable sources and contents. The second point is that a “realist” approach of this kind is quickly found outside of Western political thought, as proved by the examples of Kautilya and Lord Shang⁷, but perhaps also by the works of Sun Tzu and Miyamoto Musashi, including their main interpretations and applications.

⁵ *No Virtue Like Necessity: Realist Thought in International Relations since Machiavelli*. Yale University Press, New Haven and London 2002. As evident from the title, Haslam is more attentive to the aspects relevant to the theory of international relations than to political theory proper. More on the distinction will be discussed below.

⁶ P. 249.

⁷ P. 14.

I believe that one of the merit of Haslam's reconstruction is to identify what is the substantial thread holding together the otherwise very diverse list of names and circumstances cited so far: the exposure to harshness and extreme conditions. In the cases of Hobbes and Machiavelli it is most evident that civil wars and unrests, coupled with a general eclipse of the system of values and of political and religious authorities guaranteeing social stability in the past, elicited similar responses in the form of a thought that was necessarily unprejudiced and as radical as the challenges it was responding to. Under this respect, the resurgence of the theme of realism in the context of the MC seems to confirm Haslam generalization: when reality is violently encroaching, political thought becomes vehemently realist in response.

There is also a variety of themes on which all or almost all the thinkers displaying the "family resemblances" characteristic of realism converge: it might also be that they share, at least sometimes, a set of principles or precepts, but the less demanding claim is less controversially proved. Haslam inquires into the four domains of *reasons of state*, *balance of power*, *balance of trade*, and *geopolitics*, but I would suggest keeping into consideration also the aspects of *ideology* and *biopolitics*, which here includes the political import of demography: the former because of the role it will play in the more philosophically-centered discussion below, the latter for its special relevance in the case of migration and nationality. These concepts are once again wide and sometimes vague and ambiguous: they obviously had very different connotations in the case of different writers and epoch, as Haslam acknowledges with respect to the *balance of power*.

Reason of state can be considered as one of the key concepts of realism, especially in its modern form, and is well expressed by Machiavelli's insistence on exploring the reasons of the welfare or the ruin of the states, an exploration that according to the Florentine thinker would lead one to recognize that there are *specific* dynamics, principles, interests, and even "laws" of some sort, if the term can be employed in a non-dogmatic sense, which belong to the republic as contrasted with a private individual, a class of citizens, or the morality and human nature. Thus, a satisfying *political* attitude would consist in tempering passions and moralistic demands, and in subordinating partisan interests to the public good of the survival and the thriving of the state. No reasoning of a spurious nature should be allowed to interfere with the political sphere whose dignity and autonomy is strongly vindicated by realists, even without denying a similar relevance to other spheres such as the demands of morality or those of human passions.

Balance of power is the concept of a distribution of political, military, and other forms of influence so to achieve equilibrium, that is, practically speaking, peace. In the lack of a balance any overwhelming power would naturally expand itself at the expense of others. The world of states is, in a realist perspective, agitated by forces similar to those of physics: each political actor's "natural" tendency to establish, restore, or increase influence and then power can be countered only by the corresponding and opposing drive by another state.

Balance of trade is a similar concept applied to economical and commercial dominance: for the realist, liberal free-trade ideal are usually ideological covers for state interests in a certain configuration of commerce. In this respect, Marx and Lenin are the most acute observers of the role production, economy, and trade play in establishing and sustaining webs of power between individuals, classes, and states.

Finally, *geopolitics* is the study of the effects of geographical factors in interplay with power, strategic and economic goals. In his writings to James I on the "true greatness of the Kingdom of Britaine"⁸, Bacon put the role of territory in perspective, but still neither he nor any other keen political observer would deny the reasons that has lead so many states to war over territorial disputes. As proved by the fact that there are no non-continuous states on earth, with the exception of some relatively small surviving colonies, geographical situation and the characteristics afforded by a land are a very relevant constraint to any policy.

In the same work, Bacon recognizes the importance of factors belonging to the domain of *biopolitics*: he argues that true greatness consists mainly in "population and breed of men" and that every subject must "be fit to make a soldier". Furthermore, Bacon suggests not to neglect "the valour and militarie disposition of the people" and the "temper of government", which Haslam translates into "identification with the state".

These aspects, which pertain directly to the political and constitutional arrangement of the nation, have also implication on *ideology*: the realist tradition has always recognized the importance of unifying tenets and behaviors, from religion to ethnic kin to political creed, in order to keep states unite and powerful.

This summary overview should be sufficient to provide a sketch of the deep and large reach of the realist tradition, especially with respect to its characterizing themes: it will not be difficult

⁸ P. 96, cited from Francis Bacon, *Letters, memoirs, parliamentary affairs, state paper, & c. : with some curious pieces in law and philosophy*, published by Robert Stephens, London 1736, p. 194.

to show their impact on realist thinking over migration. But before doing that, the philosophical aspects distinguishing realism from other forms of theorizing and from normative political theory deserve now a more attentive look.

II.I.2.1 The Realist Challenge to Contemporary Political Theory

Even if philosophers commonly identified with the realist perspective such as John Horton, John Gray, and Raymond Geuss⁹ differ between one another on the way to relate with realism in international relations, there is a general commonality that can be traced between realists in the two domains. As the realist school in international relations largely construed has opposed itself to moralist thinkers who derive political maxims from abstractly “rational” principles, so the contemporary spokespersons of realism are critical of liberal normative political theory. Horton, Gray, and Geuss are preceded or accompanied on this path by a list of thinkers including “Americans such as Judith Shklar and Bonnie Honig”, but also “theorists working in Britain [...] such as Bernard Williams, [...] Stuart Hampshire, [...] Chantal Mouffe. Glen Newey, Mark Philp, Matt Sleat and, one of the earliest ploughers of this furrow, John Dunn”¹⁰. These immensely differing thinkers are concordant in that “They are all strongly critical of a form of political theory in which ‘the political’ becomes denigrated, repressed or effaced.”¹¹To summarize with the words of Gray’s stinging critique regarding both political theory and practices, “We’re not facing our problems, we’ve got Prozac politics”¹².

Without pretending to reconstruct in detail the views of any of the thinkers I am drawing from, I will rather select and stress some of their claims which I think are most important with respect to the MC and to evaluating normative answers to it and developing a new one. Thus, John

⁹ Thus, for example, if Horton uses the word realism in its “naïve or ordinary meaning”, and discards both the metaphysical connotation of the term and its common meaning in international relations (“What Might It Mean for Political Theory to Be More ‘Realistic’?”, in *Philosophia*, 45, 17/01/2017, pp. 487-501 and in particular p. 489), Geuss makes use of Edward Hallett Carr’s theory “opportunistically”, for a “productive appropriation”, to develop a “close relative” of Carr’s realism (*Reality and Its Dreams*, Harvard University Press, Cambridge 2016, p. 25). Gray appears to me even closer to the realist tradition in its classic and political science sense (see his *Black Mass. Apocalyptic Religion and the Death of Utopia*, Farrar, Straus & Giroux, New York 2007, especially the third section of chapter 6: “Living in an Intractable World: The Lost Tradition of Realism”). Gray openly refers to Hedley Bull, for which see below the critique by Nicholas Rengger.

¹⁰ Horton 2017 p. 489.

¹¹ Ibid.

¹² Deborah Orr, interview with John Gray: “Philosopher John Gray: “We're not facing our problems. We've got Prozac politics” in *The Independent*, 10/04/2009.

Horton is the author whom it can be dealt with first, since he summarizes the realist critique but then sketches a version of “modest” interpretative realism which aims at understanding politics without putting forward any normative agenda. My quick treatment does not imply that Horton’s proposal is uninteresting: it simply gives up a substantial part of what other thinkers want to do while working out a realist political theory. And yet, Horton himself acknowledges that a realist is not committed to denying any overlapping between descriptive and normative arguments in principle¹³. He is also aware that political theorizing completely stripped of normative interests and commitments might turn out to be impossible – this again, a classically realist claim¹⁴. Still, he is correct in arguing that the distinction between aiming at a philosophical analysis and interpretation of political phenomena -including political theory itself, through a reflective exercise- and aiming at the formulation of some action-guiding argument are two distinct enterprises. If the name “realism” makes any sense, the realist would rather stay more closely associated with reality than the moralist or the utopist, and that is the reason why I am treating it at this point of the inquiry: accordingly, Horton would be defending a *radical* formulation of realism, defined by minimalizing if not eliminating normative claims completely. For other thinkers, as we will see shortly, normative claims simply are hierarchically and lexically to follow descriptive and epistemic theses.

The other two thinkers I am here considering, Geuss and Gray, will thus display significant convergences with this anti-normativist stance, despite being apparently much more imperative in tone. But before this aspect, it must be noted that their critiques to the mainstream liberal paradigm – whose quintessential example is the philosophy of John Rawls – is to a significant extent overlapping. The liberal normativist and above all the Rawlsian would fail to work out a satisfactory model of political theory for several reasons. The first is the complete disregard of history, context, and community: the Rawlsian would never really succeed in going beyond stalemate crystalized situations such as the “veil of ignorance” and the “original position”, but would rather be held captive in the midst of them since they are not capable of achieving what they promise. The principles of justice which are allegedly “inferred” are in fact simply asserted. As Geuss points out¹⁵ by quoting Aristotle and Roman Law, a Roman or a Greek if put under the veil

¹³ Horton 2017 pp. 489-90.

¹⁴ Pp. 499-500.

¹⁵ *Philosophy and Real Politics*, Pinceton University Press, Princeton and Oxford 2008 pp. 70-75.

would verisimilarly have assumed that slavery was to be counted among just institutions, unless we discard their convictions as an expression of bad faith. All the least can we be assured of the primacy of justice, which is hardly “intuitively” defined as a political principle and not so evidently dominant over other goods – say humanness, freedom, or dignity. But the most fundamental critique to this idealized model is that choice under the “veil of ignorance” is no choice at all, since in the actual, political world all the crucial choices are determined by one’s embeddedness in individual and collective identities and by the webs of alliances and conflicts ensuing from these very identities, interests and choices.

Geuss shares with most realist thinkers also the perplexity over the import and the force of the normative outcome derived from these idealized and abstracted methodology. An ideal theory presupposing perfect compliance and moderate scarcity such as the Rawlsian would be not only different from its “applied” version, as the canonical liberal philosophical order claim, but also unreachably distant from it. In the actual world, human beings are so distant from rational calculators of interests and from perfectly complying moral agents that even if the liberal method of deriving normative results from highly idealized and abstracted premises would be granted – something which, as it has just been shown, seems seriously problematic – the effect of the commands and principles derived from such premises on the real world would be disputable and negligible. As I will show in further detail in the next chapter, from “within” normative theorizing itself, so to speak, the jump from ideal to non-ideal theory is often so big to make them look relatively arbitrary or unrelated worlds.

These and connected critiques are presented in the second part of Geuss’s manifesto *Philosophy and Real Politics* as “failures of realism” on the part of those propounding justice, equality, rights, and other universal and abstracted principles as the bases of political theory. Geuss foresaw the way he was later to be criticized, for instance by Thomas Hurka, for focusing on the destructive and critical part and for not articulating his own standpoint properly¹⁶. Geuss anticipated that his political views are expressed in “The Politics of Managing Decline”¹⁷, a piece on which we are to return soon, but also that proposing a detailed political theory was not the purpose of *Philosophy and Real Politics*. The book does nonetheless identify some distinctively realist general features in the first part, where we can witness a partial overlapping with the list of

¹⁶ P. 95; the book is reviewed by Hurka in *The Notre Dame Philosophical Review*, 19/01/2009.

¹⁷ *Theoria*, 108 (December 2005).

themes I derived from Haslam, even if this time they are presented on a philosophical perspective. To use synthetic terms to help me with the exposition, I would call these points *contextualism*, *strategy*, *timing*, *legitimacy*, and finally the articulation of the nature and purposes of political theory, which revolves around the tasks of *understanding*, *evaluation*, *orientation*, *conceptual innovation* and, once again, *ideology*.

By *contextualism* I mean the concept Geuss introduces with the phrase “Who whom?” while borrowing in his turn from Lenin¹⁸. Whenever a political situation is under scrutiny one must question and understand the relationship of power, the hierarchies, the differences between the true decision-makers and the passive executors, roles which might at first sight appear reversed. The formula can also be spelled out as “Who does what to whom for whose benefit?”¹⁹, thus casting even more light on the social character of politics and on the relations of power. The answers to these questions, as it will be shown in “The Politics of Managing Decline”, are not in turn general ones, but the naming of the actual political actors, institutions, persons, and all sorts of agents included and the critical description of their actions. Abstracting away the identity of a political agent would be tantamount to abstracting away the political question itself as it is truly articulated.

With *strategy* I summarize two related terms which Geuss treats together with timing: priorities and preferences. I mean the practical-political implementation of any “normative” agenda, or more loosely any political ideal, which requires some goals to be subordinated or even sacrificed to some other, and a procedure of selecting and pursuing them which once again imply the political agents and its specific identity at a certain time.

Timing, more self/evidently, denotes the fact that no political act happens in a vacuum or in the suspended time of the Rawlsian regard “sub specie aeternitatis”. Everything is and must be timed to respond to circumstances, so that preferences and priorities do not come in a frozen lexical order but are continuously revised depending on the unceasingly changing political scenario. Furthermore, the importance of timing shows that any political event comes within a history: the event’s significance, like that of a word in the syntactic structure of a phrase, is shaped by what comes before, what comes next, and what happens concurrently.

¹⁸ Geuss 2008 p. 23. Note that Geuss defines his approach “Neo-Leninist”: in methodology, obviously not in content (p. 98).

¹⁹ P. 25.

The question of *legitimacy*, which is a recurrent problem in mainstream political theory as well, is then determined with reference to the emerging background of a realist and historically-grounded political thought. “When the pope crowned Charlemagne emperor in ad 800, this legitimising act had very significant political consequences; nothing comparable would have been possible in ad 80, or in 2008”²⁰, Geuss notices, just before adding that practices of legitimization “do not have a coherence and independence of the wider political and social world that would allow one to treat them completely in abstraction”²¹. This holds true for the modern Weberian analysis of the legitimate monopoly of violence by the state, as well as for other daily practices of routinary and non-violent social sanction.

Finally, there is the comprehensive proposal of an agenda for political theory. Besides the most basic and relatively uncontroversial purpose of *understanding* politics, which, as we have seen, is the philosopher’s main if not unique task according to Horton, *evaluation* and *orientation* belong, according to Geuss, to the inescapable implications of the work of the political theorist. Since no one can escape the political, independently from her or his discipline at being scientifically objective, the very selection of topics of research and the overall debates which the political theorist enters are shaped by political and normative evaluations no less than any other human activity. Drawing from Nietzsche, Geuss holds that the human being is inescapably an evaluating animal for whom everything tends to acquire value. The retreat and defense from this “over-normativity” is for Geuss, in this similarly to Gray, the laudable but only imperfectly achievable enterprise of some forms of religion and mystics, but evidently not the prevailing ones. A more unimpassioned and detached regard is also the objective of the theorist, but this objective is never disjointed from the awareness of its limited achievability. Thus, there is no escape from evaluation and Geuss himself proposes not a neutral “interpretive” realism, but is ready to suggest very practically that, e.g., Europe should align itself to the peaceful agenda of China rather than persevering in its outdated military interventionism²². In this readiness to acknowledge a political stance and identity Geuss vindicates no superiority over the liberal normativism he criticizes: the difference is that in his philosophy the omnipresence of the political is recognized and assumed, while the adversary form of theorizing would rather be *ideological*.

²⁰ P. 34.

²¹ P. 35.

²² This claim is part of the overall policy proposal in “The Politics of Managing Decline”.

Ideology is once again a process from which it is impossible to fully subtract oneself: but, according to Geuss, the grade of obscuration of the ideological function performed by mainstream Rawlsian theorizing has dangerously led astray both the theoretical and the political practices²³. It is only through a U-turn from that confusingly idealistic philosophical project toward reality, Geuss and Gray together argue, that the inadvertently conservative nature of the Rawlsian paradigm would emerge. Thus, without insisting on the other details of Geuss's account, its neo-Leninist critique of ideology helps transitioning toward Gray's critique of political utopias.

Even if his political philosophy is utterly original, Gray's methodology is a good exemplification of a realist position and as such his methodology is not distant from Geuss's and Horton's, as are his misgivings regarding the standing of mainstream liberal normativism. The key and most stable ideas of Gray's philosophy his conceptions of value pluralism and conflict: therefrom he derives a rebuttal of the anesthetic nature of liberal political theory which is, in his view, inattentive to the variety of possible realizations of human happiness and unrealistically confident in reason, progress, and social harmony. This overconfidence is often an ideological display concealing not-so-rational and not-so-universal objectives such as free trade and market capitalism, both ideals devoid of theoretical soundness but useful to support powerful and up to recently dominating economic and political arrangements²⁴. According to Gray, these ideologies are usually presented as informed by science but by inquiring their overdemanding assumptions and, above all, the burden of their considerable normative assertiveness, one recognizes rather the religious fervor which translated into secular ideals during the Enlightenment, and that would have been shared by Nazi and Communist militants as well. To this fervor Gray opposes the cold but much more moderate disillusionment of the skeptical: if one looks at how grandiose ideals such as democracy and freedom are played out in the global arena, and especially at the paradigmatic example of their subversion and contradiction, the American invasion of Iraq, it becomes evident, so Gray holds, that we are in need of a renewed political theory²⁵. By "renewed", however, Gray means a theory capable of incorporating the traditional wisdom of realism and its modesty, with

²³ "Rawls's work was an attempt to reconcile Americans to an idealised version of their own social order at the end of the twentieth century. The religious roots of this project are rather clear, but a full account of the ideological character of Rawls's philosophy would have to analyse in detail the political consequences of the particular way in which Rawls carried the project out." *Philosophy and Real Politics*, p. 89.

²⁴ *False Dawn. The Delusions of Global Capitalism*. Granta Books, London 1998.

²⁵ "The disaster that continues to unfold in Iraq is the result of an entire way of thinking, and it is this that must be abandoned.", *Black Mass*, p. 192.

its concern with avoiding the worst results rather than bringing about dreams often collapsing into nightmares. Gray's realist stance extends to vital issues such as the relationship between resources, environmental balance and demographic sustainability, but this without adhering to any structured ideological and irresponsibly optimistic ideology²⁶. To respond to the present predicament of the war between global terrorism and apocalyptic liberal utopias, we would rather need the sober Occam razor²⁷ provided by realism: a tool that is attractive only to those possessing an unusual degree of intellectual rigor, since it is a point common to Gray and realist thought in general that this disciplined and self-effacing political enquiry would rarely offer full moral satisfaction, and never reveal "the meaning of life".

II.I.2.2 Defying Consensus: The Global Order, Its Ethics, and Its Critics

In reviewing the theses of Gray, Nicholas Rengger judges his presentation of realism "very indistinct and, on occasion, simply wrong"²⁸. One of the two main critiques²⁹ that Rengger moves to Gray is that he creates an artificial and anachronistic category by associating with realism people like Machiavelli, while realism properly understood would be a distinctive product of nineteenth and twentieth century thinking. However, as I have recalled here, readers of the realist tradition in international relations such as Haslam would agree in tracing the roots back to classic times. A connected reply could be made in response to Rengger's accusation of having mentioned Martin Wight and Hedley Bull together with the realists while these two authors would certainly not have described themselves as such. Once again, the question is only how loose an association one needs to establish to call an author "realist". Also, Gray is not the only one who draws from Bull in developing a realist stance. In conclusion, I would also suggest that if one takes the historical, thematic and, as we are now able to do after having considered the complex Geuss's complex approach, methodological definition of realism, these questions of categorization lose their importance. And Gray is no less clear than other authors in suggesting that his realism should not be understood as a doctrine, but rather as an approach, and the tradition he draws from is more of

²⁶ John Horton and Glen Newey, *The Political Theory of John Gray*, Routledge, London 2007, e.g. p. 230.

²⁷ Gray, *Black Mass*, p. 194.

²⁸ "The Exorcist? John Gray, Apocalyptic Religion and the Return to Realism in World Politics", *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 83, No.5 (Sep., 2007), pp. 951-959, in particular p. 958.

²⁹ The second critique pertains to Gray's presentation of religion and is not relevant here.

a set of “family resemblances” and convergences in themes and tones, even if substantial common claims are not absent nor negligible. Realism is not presented as a school in the academic sense, perhaps the sense in which Rengger understandably and correctly says that such a school is identifiable in the latest two centuries only.

But even if their interpretation of the realist tradition might be contestable and general, the example of Gray’s evaluation of the disastrous Iraqi campaign makes evident that philosophers who vindicates their allegiance to political realism (which mainly implies minimizing normativism and including non-moral topics into consideration) are usually extremely close to realism in international relations. More than that, they usually criticize the association between the kind of political theory they reject and political doctrine such as Western interventionism and American exceptionalism. I have noticed that Horton distinguishes more sharply his approach from international relations theory than Gray or Geuss: this seems perhaps coherent with his interpretive version of realism. To the opposite, Geuss provides almost identical examples and judgements to Gray’s both in his *Philosophy and Real Politics* and in his more strictly “political” “The Politics of Managing Decline”. In these two works the Iraqi disaster and the normativist political thinking that sustained it, or failed in preventing it, are criticized together and seen one as the evidence of the other’s shortcomings³⁰. However, Geuss is ready to set forth a no less “utopian” and unrealistic agenda when he suggests to Europe and to Britain to reinforce European integration³¹. That is because according to Geuss, and in contrast to Carr (and Gray), the true opposite of realism is not utopianism but “moralism”³². This, however, does not compromise the general and deeper agreement with Gray (and Carr) because, besides all the other methodological issues and the rejection of Rawlsianism, Gray is also persuaded that the problem is not cultivating a demanding or “unrealistic” ideal or even a utopia as such, but rather the preaching of “political religions” which rests on unproven, unreal and irrational premises, and distort reality in a way that makes normative proposal more dangerous than the issues they set out to address. The catchphrase “Soyez réaliste; demandez l’impossible” would still be compatible with realist thinking in general, and

³⁰ “The Politics of Managing Decline” opens with a rebuttal of Blair’s plea to support Bush’s foreign politics, and the scrutiny of the “declining” Western domination over world affairs is at the core of the whole essay. In *Philosophy and Real Politics* Iraq is directly cited at pages 6, 31, 39, 91, but in note 52 (p. 107) Geuss concedes that “It is possible to argue that on balance the invasion of Iraq has been a success on its own terms if one takes its real goal to have been to ensure U.S. control of Iraqi oil.”

³¹ “The Politics of Managing Decline”, p. 11.

³² *Reality and Its Dreams*, pp. 42-48.

philosophers such as Gray and Geuss can still adhere to a realist standpoint and criticize, despite few chances to be heeded to, established political ideologies.

Another scholar explicitly identifying himself with the realist camp who is also a critic of the course of military operations in later years and has been vocal in signaling that the balance of power was dangerously destabilized already at the time of the fall of the Soviet Union, is Danilo Zolo. Zolo shares with Gray the admiration for, and the debt to, the model developed by Hedley Bull especially in his best known *The Anarchical Society*³³. The thesis of Bull, Zolo and, less explicitly, Gray, is that the “anarchical” regulation of state relations is much preferable, more stable and peaceful than the establishment of a utopian “world government”. Coherently with his realist perspective, Zolo does not only rely on a theoretical falsification of the theses of what he calls, once again with a quote from Bull, “Western globalists”. Zolo alternates the accounts of the recent geopolitical clashes with ethical arguments, to show that abstract humanitarian ideals can be put to bellicose and aggressive use as ideology for the “world government”.

Iraq is once again the main reference, but Zolo’s critique initiated with the first Iraqi war, as a response to the justification or even the praise of that enterprise by Jürgen Habermas and Norberto Bobbio. Once again concordant with Geuss and other realists, Zolo refutes the Kantian paradigm of global justice further elaborated by Hans Kelsen. If Hegel could comment ironically that the Holy Alliance was the realization of the cosmopolitan society argued for by Kant in his *On Perpetual Peace*, Zolo holds that the present-day international society, including the UN, would be in the same relationship with theories of global justice. This is catastrophic to his eye, because of “the confusion between the powers of the formalized organs of the United Nations, the powers of national governments taking part in military intervention, and, extending over all of these, the powers of the United States”³⁴. The risk is that of having an allegedly neutral and even humanitarian order to serve the partisan and, realistically speaking, egoistic interests of the few powerful countries which are represented in the UN Security Council, and above all of the only one remaining world hegemon. This would constitute a legal and institutional warrantee for the *de facto* already inevitable preponderance of the most powerful states on the global stage, a guarantee that can render apocalyptic operations such as the annihilation of Iraq³⁵ a frequent and inevitable

³³ *The Anarchical Society. A Study of Order in World Politics*. Columbia University Press, New York 1977.

³⁴ *Cosmopolis*, p. xii.

³⁵ See Chapter 2: “The Gulf War: The First Cosmopolitan War”, p. 19.

event. It is worth stressing again that Zolo formulated this critique more than a decade before that the second invasion of Iraq took place.

A similar stance is taken by Zolo with relationship to the International Courts of Justice and to the development, usually seen as progress, of global tribunals³⁶. This “victors’ justice”³⁷ would not prevent the atrocities of wars, which to the contrary proliferate when the states’ jurisdiction is annihilated by a cosmopolitan legal order, but rather it would sanction with moral approval only the expeditions by those who control the world’s governing institutions. “Global justice” of a Kelsenian kind would generate a world steeply uphill for poor and frail countries.

To this asymmetric global structure of power, Zolo gives the name of Washington Consensus, a term which had already been used in economy to indicate the agreement over the measures developing states should have taken to ensure economic growth, produced in Washington-based institutions. However, the meaning that Zolo attributes to the phrase reaches much further, since he is persuaded that economy is only one of the two forces – the other being military strength and the readiness to engage in war – disrupting national sovereignty and global diversity, and building a homogeneous world community with a single ruler. Thus, to free market capitalism must be added the new form of war, global war, as means to ensure the dominance of the superpower. The new war is global in a *geopolitical*, *systemic*, *normative*, and *ideological* sense³⁸. In its *geopolitical* sense, it is a war without spatial or temporal limitation, waged against any enemy of the established order wherever one can find it and through the most modern and far-reaching technologies. *Systemic*, because its purpose is to reshape the structure of the “anarchical society” of states into one single web of relations with a global hegemon at its center. *Normative*, because the preceding limitations of *jus ad bellum* or other ethical theories are superseded by unlimited legitimacy: to the many public documents issued by US security agencies and shown by Zolo as evidence for this, one could now add the recent Pentagon draft suggesting the use of nuclear weapons in response to cyber-attacks³⁹. Finally, global war is *ideological* in that it substitutes the Weberian “polytheism of values” with the two-dimensional elementary rhetoric of

³⁶ *I signori della pace: una critica del globalismo giuridico*, (“The Lords of Peace: A Critique of Global Legalism”) Carocci, Roma 1998.

³⁷ *La giustizia dei vincitori: Da Norimberga a Baghdad*, (“Victors’ Justice: From Nürnberg to Baghdad”, Laterza, Roma-Bari 2006).

³⁸ *Globalizzazione: Una mappa dei problemi*, Laterza, Roma-Bari 2004, pp. 122-130. Translated as *Globalisation: An Overview*, already cited.

³⁹ David E. Sanger and William J. Broadjan, “Pentagon Suggests Countering Devastating Cyberattacks with Nuclear Arms”, *The New York Times*, 1/16/2018.

“the axis of evile” against the “coalition of the willing”, the fight of goodness against evil into which all the complexities and nuances of the huge geopolitical, social and moral diversity of the world have subsided. Human rights, in and by themselves reasonable and precious normative precepts, would be a terrible weapon when turned into ideological tools for such project.

Zolo concludes that to have an equilibrate globalization “the world needs to be freed from the constraints of what Stigliz has called “The Washington Consensus”. Today, the Washington Consensus is the imperial seal on the negation of the world’s beauty and complexity”⁴⁰.

II.I.2.3 A Realist Ethics of Migration? Some Starting Points

Now that the main principles and topics of realism, both as a tradition in international relations and as a standpoint in political theory, have been expounded, it is time to see how they are applicable to migration, and why. Before proposing more subjectively the approach I would take with respect to them, it is useful to see how scholars in migration theory who are more or less closely identified with the realist standpoint have dealt with the problem. Since the principal examples are prevalently dated, but still relevant, I recall some of the pieces which have been already discussed in the literature and only later, in the conclusion, I will appropriate them and combine them with the more general and recent outline sketched so far. Thusly, I will use their points in addressing the MC and the normative debate as it has been shaped in recent years both by events and by theoretical claims. This reworking and integration will be done more thoroughly in the general conclusions of this thesis also.

As the next chapter will also show, the term “realism” has a peculiar popularity in the context of the ethics of migration. I begin this exposition of realist theories of migration with an analysis of the central claims from two essays who explicitly appeal to “realist”, “internationalist”, “constitutionalist”, and “Hobbesian” thinking and conditions. Before moving on to conclusions I also recall insights taken from other essays which are written within liberal egalitarianism but which have also been associated with realism for their tone and contents.

⁴⁰ *Globalisation*, p. 77.

A concise but complete presentation of a realist approach to migration has been advanced by David C. Hendrickson⁴¹. Hendrickson introduces several fundamental points that can be condensed into brief guidelines of a realist ethics of migration.

First of all, regarding the realist standpoint in general, Hendrickson makes it clear that its tradition “is a rich one”⁴² and that it would make scarce sense to pretend to be speaking on behalf or in agreement with all its main exponents. Also, “political realism is less a doctrine than a disposition”⁴³: Hendrickson fits perfectly the broad depiction of the realist standpoint as I have sketched it so far, and is also content with the renunciation to give rigid and formulaic precepts rather than discussing attitudes and tendencies which can be interpreted, translated into practice, and nuanced in several ways and degrees, especially depending on circumstances.

Another clarification that Hendrickson makes with respect to the tradition in general is that realism is not immoral: political realists, he notes with some irony, usually distinguish between good and evil, and most of the time they favor the former over the latter. However, realists tend to shun Stoic, Kantian, and Christian moral absolutes of the kind “let justice be done though the heavens fall” and they tend to adopt a sober, minimalistic, sceptic, and consequentialist view. With Montesquieu, Hendrickson argues that in politics people are rarely moved by what is “just” and “good” and are more often sensitive to what is “useful” or “profitable”.

The perspective of the state, as a third general feature regarding Hendrickson’s approach, is usually crucial to the realist. However, the fact that the realist accept that humans tend to divide themselves into interest groups and to favor members over nonmembers does not imply that the state interest is all-important or that foreigners count nothing, if only for the rational expectation that they would reciprocate being treated badly or nicely.

Hendrickson holds that in international relations expensive “moralizing” arguments are uselessly expensive, since it is normally enough difficult to achieve the minimum of decency that would be required by customary international law, and that mainly because of the famous Hobbesian problem of the lack of an international sovereign – not that this awareness implies the realist would invoke the appointment of one: rather the contrary, in the case of Hendrickson and

⁴¹“Migration in Law and Ethics: A Realist Perspective”, in Brian Barry and Robert E. Goodin (eds), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (Harvester Wheatsheaf, London and New York) pp. 213-231

⁴² P. 213.

⁴³ P. 214.

the other thinkers we are considering. A historical analysis of such law and customs shows that the right to entry, similarly to the right of exit, was traditionally made dependent on the discretion of the sovereign, with certain limits on how people could be treated in the process, and especially after having been accepted. However, these regulations have changed after 1945 with the restriction of statelessness and denaturalization: the right of exit has even been listed among human rights. Analogously, the right to enter has been expanded in most of circumstances, and it is a presupposition between friendly countries that it would be conceded unless it impaired vital or at least significant state interests. The conclusion from the review of these legal and historical facts and from their evaluation in the light of the precept, again taken from Montesquieu, that states should, after having regarded their own interests, strive to do the best to other states' citizens in times of peace and the least ill possible in times of war, is that "A state has a duty to admit aliens if, individually or collectively, they pose no serious danger to its public safety, security, general welfare, or essential institutions".⁴⁴ And, no matter how surprisingly generous this still prudent conclusion would appear, this seems to imply that from a realist standpoint there are grounds for a right to emigrate, since such right would be correlative to the conditional duty to admit aliens. As an important corrective, Hendrickson notes that being the acquisition of nationality "a more momentous step", discretion over it is "much wider"⁴⁵.

Hendrickson reminds the reader that the realist tradition has always been attentive to limiting tyranny, be it exercised over individuals, groups, or the entire society of nations. Thus, from the (Holy) Roman Empire on, the right to exit and to change allegiances has been essential for the kind of political freedom realists are sensitive to, and the corresponding right to entry – even more the right to find refuge- are fundamental counterparts to the "exit option" insurance against domination. This, unless the arguments of "unalterable loyalty" were still valid: but this view has been almost universally abandoned with the acceptance of the right to exit. Besides political freedom, there are a lot of other material and practical advantages in free movement, for the individual or the collective, which the realist has no reason to deny and which to the contrary in the realist tradition have often found a suitable place, as for instance the necessity of commerce. In accordance with these and other interests, the state is allowed to shape its migratory policy so that it can reflect its economic and strategic interests, its cultural and ethnic identities, its foreign

⁴⁴ P. 218.

⁴⁵ P. 219.

relations and alliances, and all the more vital private interests of its citizens such as family reunification. On this view, the special rights afforded by Germany to people of German descent, or the migratory policies of the state of Israel with regard to Jewish immigrants, do not pose any problem for a realist and, Hendrickson argues, should be as unproblematic for the liberal communitarian and many natural law theorists as well. As we will see, he is basically correct.

The right to migrate is limited by considerations of national vital interests and safety, no differently than *any* other right in a realist perspective. If these are not all-important, they surely cannot be made unimportant, and in combination with individual interests and choices and with other contingent factors, including the likeliness that other nations are to reciprocate to one's openness, and all practical and political considerations, short and long-run advantages, they determine one country's migration policy. However, for the realist to be a realist, this does not imply that such interests can be interpreted as an abstract waiver of the right to entry: they must always be assessed *realistically* with respect to a specific situation and circumstances.

Over this specific problem enquiries in great length and detail an essay by⁴⁶ John A. Scanlan and O.T. Kent. Hendrickson presents himself as a realist, but then advances his case in the terms of an internationalist and mainly on the basis of international customs and laws, with the assumption that a realist standpoint would indirectly coincide with such findings: his main theoretical references are Wight and Bull⁴⁷. Scanlan and Kent are thus even more unmistakably realist, in so far as the argument they present is described as "Hobbesian", and its premises are actually derived from the works of Thomas Hobbes. Nonetheless, in resonance with Hendrickson, which also included a note on the relevance of moral considerations *in foro interno* even for Hobbesian thinkers⁴⁸, they also set out with the qualification that moral considerations *do* play a role in the theory of migration they propose.

Coherently with realism's contextualism, they analyze the "case study" of US migration laws and, in accordance with realism's historicism, they do that by reviewing the historical evolution it underwent and the circumstances that accompanied it.

The authors recognize that moral considerations are subordinated to the national interests, first and foremost that of national security: as Hobbes noticed in arguing for forms of migration –

⁴⁶"The Force of Moral Arguments for a Just Immigration Policy in a Hobbesian Universe: The Contemporary American Example".

⁴⁷ Hendrickson, "Migration in Law in Ethics", pp. 227-8.

⁴⁸ P. 231 note 31.

and emigration – control that were customary at his time, the state of war in the international arena is a permanent reality independently of the presence of outright conflict, since the absence of a global Leviathan makes the possibility of war, even without its reality, permanent, and the consequent fear, insecurity, and prudential defensive attitudes must be no less permanent⁴⁹. Even if the picture is not as gloomy as in Hobbes’s times, as Charles Beit demonstrated with many examples of international cooperation⁵⁰, the general empirical and normative elements of Hobbes’ international theory would still hold true during the Cold War, when the authors were writing, and nowadays.

However, these abstract and general characterizations of the claims of security and national interests would hardly satisfy the realist, who is rather inclined to wonder what is the national interest precisely and what can guarantee security under certain specific circumstances. Thus, Scanlan and Kent go on arguing that the national interest cannot but be derivative from the interests and preferences of the citizens: and by “derivative” it cannot be meant a simple sum or aggregation of their choices, because some of these might have a moral and thus a prominent character – except when confronted with even more prominent factors such as the survival of society. But in the case of the United States, a “nation of immigrants” for whom openness to migrants has been a defining trait for a long and foundational period in national history, the national interest would include maintaining this national character and keeping the ethics of human rights, including the right to refuge, as an actual guidance and a national ethos rather than as an opportunistic and ideological pretext, as often has happened in practice⁵¹.

It then become a legitimate and crucial question to ask whether the exclusionary treatment which affects some class of citizens under the reason of “protecting national stability and security”, and which is legitimized in legal theory and judicial review as an exercise of sovereignty which cannot be corrected by the courts, would be tolerable with regards to a citizen or another class of aliens. The example on which Scanlan and Kent build their case is mostly the Chinese exclusionary act and other related practices of restricting Chinese immigration. Without calling into question the discretion of the sovereign in deciding when it is necessary to close the border, they dispute the content of the decision and its grounds: excluding Chinese immigrants only in the peak year

⁴⁹ Scanlan and Kent, p. 71.

⁵⁰ P. 75.

⁵¹ P. 83.

of their immigration, when they still represented not more than 5% of total immigration and by far a smaller group than the native American Indian,⁵² could not be disguised as necessary to fend off an invasion, since “there was no likelihood [...] of California or Oregon going Chinese virtually overnight”⁵³. Such a decision is rather to be imputed to racial prejudice, and as such to be rejected. Scanlan and Kent conclude that the excuse that the exercise of sovereign discretion, in itself legitimate, should not be subject to moral constraints *in the field of immigration only*, while similar discrimination has happily been abolished in other domains of domestic and foreign politics, is a “relic”⁵⁴ of a distant past. The Hobbesian framework does not in and by itself guarantee a similar incoherence.

The case put forward by Scanlan and Kent shows that realism and liberal egalitarian values are not necessarily at odds, but also confirms Hendrickson thesis that realism could well support a presumptive right to immigration.

These elements of a realist theory of migration, and this closeness with liberal egalitarianism and other standpoints allowing for a significant freedom of movement, even if within the framework of national security and sovereign rights to determine, shape, and orient the migration policy, are confirmed by a quick look at those liberal egalitarians who have been ready to acknowledge many arguments usually attributed to the realist tradition.

In his critique of Joseph Carens’ conception of the right to free movement, James Woodward does in fact rely on liberal egalitarian values to argue that the preservation of basic state institutions ensuring public welfare and democracy would allow for restrictions⁵⁵. The assumption made by Carens that the right to free movement would simply count more than other issues which are important to liberal egalitarians, such as economic equality in a given society and the guarantee of workers’ right, seems to Woodward not to give the necessary consideration to the competing and clashing of such alternative goods in a real-world scenario. Also, the empirical observation that people do not tend to extend the same solidarity beyond national borders would make a Rawlsian suspect that these principles of cosmopolitan justice would not be agreed upon under the veil of ignorance. That is of no direct relevance for a realist account, but all the more, claims Woodward, similar principles are not to hold in a world of partial compliance where even

⁵² P. 92.

⁵³ P. 70.

⁵⁴ P. 95.

⁵⁵ “Commentary: Liberalism and Migration”, in Brian Barry and Robert E. Goodin (eds), *Free Movement*, pp. 59-84.

precepts of justice are imperfectly observed⁵⁶. Woodward concludes his commentary with the even more realistic consideration that under present conditions, with the population in destination countries quickly aging and that of sending countries growing at unsustainable rates, migration will be simply inevitable, and the real philosophical questions are whom to select and how.

A similar persuasion is defended by Frederick G. Whelan⁵⁷. Despite showing sympathy towards liberal egalitarian ideals, Whelan shows that, in a diversity of historical circumstances, Thomas Jefferson, Richmond Mayo-Smith, and Bruce Ackerman all agreed on the legitimacy of immigration restrictions. The point is that for liberal egalitarianism to survive, it is necessary to guarantee the stability of a state and of its political constituency. Thus, even if without conflating these institutions with liberal egalitarian values as such, Whelan believes that democracy, community, and the state are normally associated to them and often constitute the material presuppositions for them to apply. I would suggest the analogy of the body and soul to synthesize why “material” institutions ruled by realist(ic) laws are necessary for the “high” life of liberal egalitarianism or other political doctrines to arise.

II.I.3 Conclusions

In the face of dramatic events like the migrant crisis, many argue that political theory lacks, or would need, a substantial dose of realism. What is meant by this term, however, is often unclear. In this chapter, I have shown that realism is a rich and varied tradition, which has adherents both in international relations theory, political science, and political theory proper. Although, even among those, the meaning of the term realism and the borders of the realist tradition and methodology are usually accepted for what they are: very flexible, general, and underdetermined.

This renunciation to rigid definitions does not imply that realism does not contain a “conceptual repertoire” which is extremely useful in dealing with the migrant crisis. I have recalled many examples and I hope the reader noticed the continuity that runs from one section to the other: “reason of state” which is, according to Haslam, the core concept that defines realist thought, is also the main criterion on which Whelan believes the cosmopolitan claims of liberal egalitarianism

⁵⁶ p. 78.

⁵⁷ “Citizenship and Freedom of Movement: An Open Admissions Policy?” in M. Gibney (ed.), *Open Borders? Closed Societies?* Pp. 3-39.

should be tempered. The ancient doctrine of the balance of power, which surfaced continuously in Europe after the setting of universal powers at the beginning of the modern age, is also the rationale on which Zolo argues that the present, asymmetric structure of the international society is perilous to world stability. And the plurality of human goods, which Gray saw as the main lesson to be retained from his master Isaiah Berlin to bridle normative utopias, is at play in the trade-off that Woodward recognizes between uncontrolled borders and welfare. The methodology of all the thinkers recalled is rather common: looking at the present circumstances and at history, relying on established legal and social norms, avoiding imposing an ethics-first approach that would presuppose an abstraction of this very ethics from the world of politics and economy.

I would believe that the schemes of realist thinking I have reviewed allow both a diagnosis and a prognosis of the problem of the MC described in the first part.

The diagnosis is that the problem of migration, as such, does not exist. One always faces the problem of a certain agent or group of agents moving under certain specific conditions to another specific context: even more precisely, one might have to evaluate the situation of, say, this particular boat of migrants, some refugees, some not, reaching shores in Southern Italy in 2017. There cannot be an abstract solution since the problem itself is not abstract, and responding to this situation would be very different from responding to, for instance, a shortage of resources for an Erasmus program, even if, as the example provided at the end of the previous chapter would show, both are related to human mobility. In the diagnosis of the migrant crisis a realist approach would consider the variety of circumstances that have caused the movements – wars, economic differences, even cultural phenomena – and the real-world conditions of the countries of destination. But the lesson of Scanlan and Kent’s insightful analysis is also that one cannot invoke a realist reasoning when one pretends that Chinese must be excluded from the US for “reasons of state” that would overpower moral grounds, if these Chinese immigrants are harmless and come in the number of the few thousands. Also, one cannot claim Chinese must be so excluded if at the same time Mexicans workers are accepted, unless one can show evidence of a greater political menace coming from China in comparison to Mexico, which was simply empirically false at the time of the Chinese exclusionary act in 1882. Translating this matter in the abstract wording of a sovereign state making an autonomous decision subservient to its national interests is just another way of covering a discrimination through ideological theorizing, something which is not more excusable because realist terminology is employed. In a similar way, a realist considering the

migrant crisis would pay substantial attention to the West's foreign policy which contributed to create it or to exacerbate it: for example, the repeated destruction of the statehood of Iraq did not only directly cause refugees, as a consequence of the war and of the civil conflict that followed it, but also exacerbated the shortages of the employment capacity in all the Middle East, since Iraq was one of the most industrialized country in the region⁵⁸. The diagnosis of the root causes of the migrant crisis would also insist, as Zolo does, that in an extremely and still increasingly inter-related and globalized world it is anachronistic to delegate the use of force to the winners of a conflict which ended more than seventy years ago, and to procedure of decision-making which were mostly projected before the process of decolonization. The realist diagnosis of the migrant crisis would also detect the massive employment of ideological diversions, not only in media discussions on migrants, but even in theoretical and ethical schematizations that do not bring to the fore excruciating issues in the MC, such as that the definition of refugees was suited to the necessities of the Cold War, some Western countries have a rejection rate of applications of refuge differing by many decades of points in percentage, the political rhetoric against "illegal" is very harsh but then punishment against their employers in the underground and informal economy is much lighter, and so on.

The prognosis offered about the migrant crisis would also be very distant from the stereotype according to which anyone who is indebted to the realist tradition would always put state interests and state discretion over all things. For a realist the possibility given to people to escape conflicts and oppressive regime, thus preventing a further destabilization of their country of origin, is extremely relevant, and so are the economic, social, and cultural interests that would drive a so called "economic migrant" into a distant country, not to mention the sometimes even greater interest an economy with a shortage of labor and an aging population might have in taking an immigrant in. Thus, a realist addressing the migrant crisis would rely on empirical science and data to determine the relative numbers of entries which would be possible to accommodate without running intolerable risks to state security, which is also depending on the processes of migrants' acceptance and integration. What counts as "intolerable risks" will always be a qualitative determination by a political agency, and not a quantitative and mechanical one: in the best scenario the agent taking it would be a democratic community endowed with good procedures and

⁵⁸ See the contribution by Gerasimos Tsourapas, "The politics of Egyptian regional migration. Examining autocratic cooperation processes in the Arab world", in *Fortress Europe*, pp. 51-71.

possessed of satisfying means and data to deliberate. The realist would not be blind to human egoism and to privileges sometimes unjustly conferred to the members of the conflicting groups in which our species tends to divide, nor a realist could ignore the corrupting force of power gained over other human beings simply thanks to their being “foreigners”, or to the fear, be it rational or not, that a right conferred to someone else might result in a liberty taken away from oneself. The realist knows that some resources are scarce and frail, and environmental balance is easily disrupted by massive movements of population, as is the no less frail social fabric, which is sometimes torn apart even in homogeneous society due to ideological and other conflicts. The realist, as Gray most evidently shows, is conscious of the conflict between different goods and rights, and of the tragic decision that sometimes must be made between them, apparently without the possibility of an outcome that would be satisfying to all. For the realist, compromise and practical agreements are less frightening than the proposal of unlikely utopian transformations, even if utopia correctly understood, as in the kind of utopian thinking we will consider in chapter IV.II, and the corresponding imperative to “desire the impossible” are not incompatible with realism. Even an uncontrolled resort to the language of rights is problematic for the realist, for there are societies like the Chinese, as Zolo recalls⁵⁹, who had to invent a new term literally meaning “power-interest” to translate the Western “subjective right”, and Geuss reminds us that this terminology is more or less evidently an invention of the late Middle Ages even within European civilization⁶⁰. Marx was among the first to notice that this language corresponds to the modern individualistic society, and brings with it many of its qualities and defects. And yet, having recalled all these, and having them granted and conceded, I believe that the main result of my overview is that it is reasonable to defend a “right to migrate”, or to “free movement”, as part of a political theory which is sensitive to the contribution by the realist tradition. Geuss himself notes that there is no contradiction in showing the relativity and the imperfection of the language of rights and then in using it: similarly, one can say “the sun is quickly setting under the horizon” without being an adept to Ptolemaism. A language is what it is, a language, with an expressive power partially determined by the context, and every language is largely metaphorical, imprecise, and imperfect.

⁵⁹ P. 112 of *Globalizzazione*.

⁶⁰ *Philosophy and Real Politics*, p. 65.

The substance of the overall thesis I defend here, and not only its phrasing, is similar to the one defended by Hendrickson, but in the next chapters it will become progressively clear that my defense of the right to movement is broader and more demanding, despite the challenge posed by the MC. My understanding of the right to free movement is open to the recognition that there is a hierarchy of rights and human goods, sometimes obvious, sometimes difficult to be apperceived, so that defending a right to movement does not imply granting it to an armed terrorist, nor to grant it unconditionally even at the cost of other rights such as security and welfare. But the recognition of the right to migrate would require that in every instance where this right cannot be realized, due to the plurality of human goods to which realists are so sensitive, reasons must be given by the society who denies it. These reasons will sometimes be more subjective, sometimes objectively ascertainable. So that if a country cannot plausibly say that it must refuse entry to foreigners due to impending overwhelming if its migrant population is counted between two or three percent relative to the native one, similarly to what happened with Chinese exclusion in the US and to other blatant and unreasonable discriminations elsewhere, it is instead possible to argue – with Carens and contra Woodward⁶¹- that relatively closed, isolated, and homogeneous societies such as Japan and Iceland have a right to impose stricter restrictions to immigration than other. Circumstances matter, and equality for the realist is always equality under a certain and well specified respect: imposing the same number of entries to the small and the huge country, to the rich and the poor, to the multicultural and traditional society, would be unequal in the moral sense of the word.

As I said, a further discussion of the implications of my approach would be possible only when the more specifically normative debates will have been considered: yet it is not too soon to argue that even in migration theory being realist does not rule out demanding the impossible.

⁶¹ See Woodward, “Commentary”, p. 83 note two.

II.II Realism and the Ethics of Immigration

Review of a Difficult and Necessary Encounter¹

Abstract

Realism is an ambivalent topic in migration theory. On the one hand, refraining from arguments of a realist kind has been praised by James L. Hudson as a positive and defining feature of philosophy: on the other hand, authors such as Joseph Carens have reevaluated contextualism and a “shifting presuppositions” realism as a way of reducing the gap between normative demands and reality (social, institutional and legal realities in particular). If some philosophers, including David Miller, are wary of counterfactual scenarios and idealized abstractions, Phillip Cole claims that “liberal realism” is potentially self-contradictory, unless one abandons (liberal) morality altogether. What seems uncontroversial, despite the opposing views, is Sune Lægaard’s claim that the “refugee crisis”² has made the question of realism inescapable

In this chapter, I review the “difficult encounter” between realism and ethics of migration. In the first part, I reason on the meanings, the ambiguities, and the usage of the “label” of realism. I also advance considerations on the question of ideal/non-ideal theory, and on the limitations of the Rawlsian paradigm. In the second part, I review some of the most relevant and better refined positions. In conclusion, I recall and evaluate briefly the elements introduced by defending a realist(ic)³ approach to the ethics of immigration, while arguing for its compatibility with demanding normative principles such as “open borders”.

Key words: Ethics of Immigration, Political Realism, Open Borders, Ideal/Non-Ideal Theory

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² Here I use refugee and migrant crisis interchangeably; I also use “immigration” in the place of “migration” to be consistent with authors I consider. For a detailed critique of the terminology, see the previous chapter.

³ “Realist” here refers to someone belonging to the tradition of political thought, “realistic” has the same meaning as in ordinary language, and “realism”, no less ambiguously than the ordinary expression, refers to both. See the Introduction, section 1.2.

Chapter Structure:

II.II.1.1 Introduction: A philosophical “Sense of reality”

II.II.1.2 Definitions, Distinctions, and Overlaps

II.II.1.3 Non-Ideal Theory, Realism, and Migration

II.II.2 Five Accounts of Realism in the Ethics of Immigration

II.II.2.1 James L. Hudson: Philosophy of Immigration as Alternative to Political Realism

II.II.2.2 Phillip Cole: The Contradictions of Liberal Realism

II.II.2.3 Joseph Carens: Open Borders and “Shifting Presuppositions” Realism

II.II.2.4 David Miller: Liberal Nationalism as a Realistic Constraint

II.II.2.5 SuneLægaard: Realism and the refugee crisis

II.II.3 Conclusions

II.II.1.1 Introduction: A philosophical “Sense of reality”

On 31 January 2017, David Herman published a bitter reflection on public intellectuals and philosophers in the *New Statesman*⁴. His analysis set out from the death of the eminent philosopher Derek Parfit, and the article begins with a complaint for poor coverage of Parfit’s obituary by media and television in particular. However, the author took up the opportunity to propose a wider and systematic analysis of the role and appreciation of philosophy in and by society. Herman’s take is tailored to the context of the United Kingdom, but its scope seems to extend much beyond. He cited numerous examples to show how philosophers have moved on from being consulted by governmental bodies, as happened to Mary Warnock and Bernard Williams, to a condition of almost complete anonymity, at least among plain persons and the political public. Herman wondered who, outside the academia, could name one of Parfit’s books, and then, more radically, “how many could name *any* British academic philosopher?”.

According to Herman, reasons are not hardly found: a general shift in society and culture, the requirements of academic career, a difficulty in assessing the impact of intellectuals now more present on internet and social media than on traditional channels of communication, and so on. But the most serious and challenging is the uneasy judgment coming from within the philosophical field itself: Herman quotes John Gray to claim that what is missing is “a sense of reality”, as Isaiah Berlin named it: a closeness to “moral and political realities” which was common in the biographies and thoughts of H. L. A. Hart, Stuart Hampshire, and Berlin himself.

What is the import of this allegation? Surely, fame and “impact” are less vital for philosophers than for football players. Nonetheless, many philosophical traditions, including the Enlightenment, emphasize public commitment and social responsibility. The concern is thus not for the forgetting of names: the concern is for the blatant dismissal of ethics itself. Therefore, the problem of “realism”, has become crucial in philosophy of immigration as in other fields. The MC now pushes the tension between principles and practices to the extreme: thus, I would argue, political theory needs avoiding the two extremes of becoming strictly *political*, and also the opposite and often overlooked danger of being rendered exclusively *theoretical*. Both would be violations of its disciplinary integrity and of its significance to science and society.

⁴ David Herman, “Whatever Happened to the Public Intellectual?”, in *NewStatesman*, 31/01/2017. I would like to thank Eugenio Petrovich for signaling this text.

II.II.1.1 Definitions, Distinctions, and Overlaps

The terminology and concept of realism have been evoked frequently in the debate over the ethics of immigration. In one early discussion⁵, philosophers were praised for providing a longed-for, alternative, and nonetheless scientific approach to a pressing political topic. Migrations had assumed their contemporary features since decades, for instance and most notably thanks to the development of global integration, global rights, and refugee law, and thus it appeared very fitting that philosophers turned part of their attention to it, no less than with other issues of applied ethics. In a first stage, and for long, realism was often presented as equivalent to a pre-moral, immoral or utterly anti-moral viewpoint. At the very least, it amounted to a restriction of morality⁶. Apparently on the contrary, philosophers have started more recently to characterize realism in a relatively positive manner, as a feature that a theory would rather display⁷. At last, the discussion over the methodology of philosophical reflection in this field has been revived by the MC of the most recent years. Perhaps, the tougher political climate is also playing a role: the general atmosphere of the political debate has become inclined to hard-headed and heavy-handed solutions to actual or ideological threats, be they those of terrorism or other with a similar nature. The MC has thus triggered a crisis of the philosophy of migration itself⁸ and, perhaps, one of a creative sort.

Although, the fact that a term becomes of common usage, does not by itself explain its meaning. What kind of realism is it that is the subject of many reflections in philosophy of migration, and the object of this chapter? The answer is a rather complex one, and to provide it, it is useful to draw preliminary distinctions.

A first, apparently better defined, and yet no less complex meaning of realism is the one used to identify a tradition of thinkers. This is the sense which I proposed in the previous chapter. In the opening of his article on this topic⁹, Joseph H. Carens distinguishes his realistic approach from the classic philosophical ideas of Aristotle, Machiavelli and Rousseau, and from the more recent developments by Max Weber and Michael Walzer. As Carens notices, this tradition would deserve attention, but this is not the aim of his analysis and, since the object of this chapter roughly

⁵ See the section on James L. Hudson below.

⁶ This is the first acceptance of the term in Phillip Cole, however restricted to the international arena.

⁷ In very different fashions, this is the view held by David Miller and Joseph H. Carens.

⁸ See section I.II.2.5.

⁹ Carens, "Realistic and Idealistic Approaches to the Ethics of Migration", in *The International Migration Review*, Vol. 30, No. 1, (Spring, 1996), pp. 156-170.

the same as Carens' but for some additional concerns and the advantage of a two decades' hindsight, this version of realism can be considered sufficiently expounded.

The second and less obvious distinction to be drawn is with realism in international relation which was also mentioned in the last chapter. Both Phillip Cole and David Miller evoke this school, and they attribute to it a specific and relevant kind of argument about global ethics. This second acceptance is usually considered as an interlocutor in the literature reviewed here, hence it will be necessary to return it more extensively. Cole is the author that gives it the most prominent place in its migration theory, but he is also an ardent critic of it.

Then we have a third kind of realism: a more general, less theoretically charged understanding of the importance to derive the premises and the setting of the argument from realistic (that is, verisimilar) or even actual data and facts. At the same time, this conception of realism implies dealing with social sciences and sometimes even "hard" sciences: it is preoccupied with the laws of causation, effect, correlation, and with statistical association, which are of prominent relevance in the "real" world as we can know it. As a third and last feature, this understanding of realism wishes to infer normative conclusions which are realistic, that is, which have a chance to be considered by actual moral agents living under present circumstances. This latter version is the conception of political realism Carens and, to some extent, Miller appeal to: it partly characterizes the approach taken by Cole, Wellman and Lægaard as well. Therefore, this actual-world, scientific, and non-supererogatory approach is the conception of realism mostly dealt with in the ethics of immigration, and I take this latter, usage-based and practical definition to be the best one available. It would not be easy to spell out its implications *completely*: but completeness is often a much unconsidered aspiration in philosophy. It will be enough to explain and deepen the features most useful and relevant to the purpose of this work.

To rephrase, the constructed object of this chapter is to investigate A) what form of realism is debated and sought for in the ethics of immigration. As a provisional and general outline to start with, I would define it as B) a way of making political theory which takes into consideration the moral and factual features of the world, B1) in its setting (the problems, the scenario it deals with) B2) in its causal inferences (the relationships of cause-effect and of reciprocal influence which are held as valid: these are derived from sciences and common sense rather than from abstract and pure logic only) B3) in its normative conclusions (which are considered for the possibility of being applied and accepted by moral agents, not only for the moral and logical correctness of their

derivation from principles). To use an analogy, one could say that the relation between realistic and pure theory is akin to the relation between mathematics and physics, or between the latter and applied physics or engineering put to practice.

Before moving on, it is better to make sure that the distinction is clear, and to emphasise some aspects which are often overlooked. Realism can characterize the premises and the background, as well as the methodology and the results of a theory. When encountering the term realism so often in authors like Carens and Miller, one can be puzzled by the diversity of their conclusions: how can two authors who both praise realism end up by being radically at odds on fundamental questions? As an explanation, I would suggest that, while Carens is principally, even if not exclusively, emphasizing the employment of the real world as a scenario for his thinking¹⁰, Miller insists on a stricter correspondence of the *moral* premises with reality. In other words, the latter stresses realism in the outcome of moral and political reasoning more than the other. It must be noted that this analytic distinction is not to be over-emphasized with respect to these two authors: Miller is of course concerned with the actual condition of the world and Carens insists on his suggestions being fully feasible, even if in a distant future. But the distinction between ontological realism (discussing about the world as it is, for instance by assuming the existence of sovereign nation-states) and normative realism (exacting feasible and reasonably costly acts from moral agents) is useful to be kept in mind.

In this inquiry, I will deal with both kinds of realism, primarily because this is the kind of realism to be found in the literature on immigration, and secondarily because they have obvious practical connections¹¹. It seems acceptable to believe that if we start by describing the planet earth as it is, we are more likely to end up with a moral conduct at least generally similar to that displayed by human beings, or at least comprehensible to them: things would go differently if we started with an outline of the Martian society. However, it must be noticed that in theory nothing prevents the opposite from happening, as it has been perhaps the case in the history of philosophy¹². A science-fiction thought experiment can be used to advance a hyper-realistic morality, while a historical narration can end with a defense of utopian moral codes.

¹⁰*The Ethics of Immigration*, Oxford University Press, New York 2013. See its Introduction and Appendix to understand why this preoccupation with reality affects the chapters running from 1 to 11 in a special way.

¹¹ It might be possible to establish an analogy with the distinction between equality of opportunity and equality as such, which is clear in principle but becomes more blurred once that “the cards” of equal opportunities are played in a complex social world. I owe this remark to Annabelle Lever.

¹² Here I have in mind something of the kind of Bernard Mandeville's *The Fable of the Bees*.

To conclude this section, it is better to notice that the distance between *classical realism*, *realism in international relations*, and *common-sense realism* should not be overstressed, despite its importance. Evidently, Machiavelli was defining a much-refined version of common-sense realism by referring to the “effective truth”, and the tradition of realism in international relations is in turn patently and sometimes explicitly influenced by classic thinkers like Machiavelli and Hobbes. As we have seen, realism is “a spectrum of ideas”¹³ and it would do one no good strictly to distinguish in theory what is, usually, inextricably intertwined in practice. Even Cole, the philosopher of migration who inquires most carefully into the nuances of political realism, turns to realist(ic) counter-arguments sometimes. Despite the relevance of a more general discussion regarding the definition and status of realism, here the main focus is only on the impact of realism on the “narrow” topic of philosophy of immigration. Thus, by now, the subject of this enquiry should have become sufficiently clear thanks to the reflections introduced, and by contrast to the previous chapter.

II.II.1.3 Non-ideal Theory, Realism, and Immigration

Despite the many clarifications already introduced, some general points should be enunciated also on the relationship between realism as conceived here and the wider debate on ideal and non-ideal theory, which for many represents a translation into Rawlsian terms of the question of realism, or a response to it within the same framework. The debate is obviously conspicuous in political theory, and even more is the awareness of the necessity of confronting social realities in the philosophy of immigration¹⁴.

According to the introduction to one such text, discussing immigration only from the point of view of ideal theory would give us “relatively little guidance in addressing some of the most pressing ethical issues regarding immigration in the real world”¹⁵. The obvious point that could be advanced as a reply is that ideal-theory is *not* meant to derive such specific orientations. It is only after the development of a suitable non-ideal theory that philosophy can provide more practical

¹³ Haslam, *No Virtue Like Necessity*, p. 249.

¹⁴In addition to the already cited *Journal of Global Ethics* special issue, I would also recall *Moral Philosophy and Politics*, special issue, “The Ethics of Immigration in a Non-Ideal-World”, Jan Brezger, Andreas Cassee and Anna Goppel (eds.) 2016; 3(2).

¹⁵ “The Ethics of Immigration in a Non-Ideal-World “, p. 135.

directions, even if in the end the job of structuring policies and institutions can well be “more than political philosophy”¹⁶. Up to very recently, the distinction between ideal and non-ideal theory has been glossed over or overlooked as non-problematic¹⁷. A systematic and careful treatment of the issue, mainly restricted within the boundaries of liberal/liberal-realist thinkers, is offered by John A. Simmons. Simmons’ essay is not only informative but also apologetic: he vindicates the legitimacy of Rawls’ distinction and, to some extent, the primacy of ideal theory. “To some extent”, because it would be an oversimplification to claim simply that non-ideal theory has an “ancillary” role with respect to ideal theory. Simmons recognizes that, if on the one hand ideal theory has priority in dictating the overall goals against which non-ideal theories must be evaluated and by which they are to be directed, on the other hand only non-ideal theory is capable of interacting with social sciences in providing more concrete and action-guiding principles which are closer to the questions posed by everyday politics. In the last note of his very articulated essay, Simmons also claims compatibility with the thesis of Gopal Sreenivasan¹⁸, according to whom non-ideal theory can be chronologically prior (“anticipatory”) and advance towards general ideal goals without detailing them. The substance of Simmons’ article thus consists in illustrating Rawls’ acknowledgment of the indirect practical role of ideal theory. Simmons distinguishes also between six different kinds of non-ideal theory – applying to individual, basic institutions, and the international arena – which are further articulated around the opposition between blameworthy and non-blameworthy actions¹⁹. That is, Rawls’ abstraction from condition of imperfect compliance and of limited resources would also contain invitations and instructions to develop a “realistic” account of the moral faults, but also of the practical and material conditions implied in addressing theoretically specific non-ideal political problems.

A related point is advanced by Adam Swift and Zofia Stemplowska while reviewing the same problem and building on the account provided by Simmons. They argue that critics of Rawls often fail to capture the function of Rawls’ distinction and of his choice to set out with a purely

¹⁶ Adam Swift and Zofia Stemplowska, “Ideal and Non-Ideal Theory”, in *The Oxford Handbook of Political Philosophy*, David Estlund (ed.), Oxford University Press, Oxford 2012, pp. 373-389, p. 386.

¹⁷ John A. Simmons “Ideal and Nonideal Theory” *Philosophy & Public Affairs*, Vol. 38, No. 1 (Winter, 2010), pp. 5-36. See also Matt Sleat: “Realism, Liberalism and Non-Ideal Theory Or, Are there Two Ways to do Realistic Political Theory?”, in *Political Studies*, Vol 64, Issue 1, 2016, pp. 27-41.

¹⁸ The passage is taken from “Health and Justice in Our Non-Ideal World,” *Politics, Philosophy & Economics*, 6 (2007) pp. 218-36; p. 221. Confront with Simmons, p. 36.

¹⁹ Simmons, p. 17.

ideal and theoretical political doctrine. They also consider specifically the realists' critiques²⁰ and those advanced, from the opposite standpoint of a purer theory of political values, by G. A. Cohen²¹. In order to resist both kinds of criticism, Swift and Stemplowska vindicate the realistic character of the Rawlsian utopia, which does not require the morality "of the saint and the hero"²². They also show how disagreement with Cohen would fade away once that the target and referent of his and Rawls' philosophizing about justice are identified and recognized as not coinciding. To this, they also add a critique to the divergence, in Cohen's theory, between an unjust society and the actual existence of individual acting unjustly, since for Cohen the ideal of justice might well be unattainable, while the contrary holds for Rawls – an important consideration on the realism he claims for his own theory.

Among other works which are worth recalling while characterizing the ideal/non-ideal divide among other preliminary distinctions, it might be fitting to conclude with the different kinds of non-ideal theory discussed by Laura Valentini²³. Valentini has not only contributed to the heated debate on the meaning, the legitimacy, and the role of the distinction between ideal and non-ideal theory, but has also proposed an extensive mapping of different forms of non-ideal theory. Indeed, the main distinction between realism of the background and realism of the normative outcome I introduced could possibly be translated into Valentini's distinction between utopian/realistic reasoning and full compliance/partial compliance, which is based on the classic definition provided by Rawls. Nonetheless, the overlap is only imperfect. As for Valentini's distinction between end-state/transitional theories, this could easily map onto Carens' and Miller's provisional accommodation to the current-world scenario, ad refusal to exit from it.

Thus far, the Rawlsian distinction between ideal and non-ideal theory has only been eviscerated, but it is exactly when entering the debate over citizenship and migration that more critical scholarship appears. Seyla Benhabib criticizes at length Rawls' (mis)treatment of the issue of migration²⁴: despite not dealing explicitly with the ideal/non-ideal theory distinction, some of her remarks are relevant with respect to that debate, and even more with respect to its implications

²⁰ Swift and Stemplowska, "Ideal and Non-Ideal Theory", p. 380.

²¹ Ibid. p. 383.

²² Ibid. p. 376, referred to John Rawls, *A Theory of Justice*, Harvard, Harvard University Press, 1999, p. 419.

²³ Laura Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map", in *Philosophy Compass* 7/9 2012, pp. 654–664. I thank Jérôme Grand for having drawn my attention to the similarities and dissimilarities between my own account and Valentini's.

²⁴ Seyla Benhabib, "The Law of Peoples, Distributive Justice, and Migrations", in *Fordham Law Review*, Volume 72 Issue 5 Article 19, 2004, pp. 1761-1788.

for the ethics of migration. Firstly, Benhabib criticizes Rawls for not giving the topic of migration its due importance in a theory of justice. This point is common in the –understandably scarce– literature on Rawls’ (non) dealing with it²⁵. Rawls seems to advance, or even to presuppose, some very heavy normative conclusions on migration despite not considering the issue at length. However according to Benhabib, his account of a complete and self-sufficient closed society is inadequate both empirically and normatively. The toughest critical point is expressed through Benhabib’s modification of Rawls’ phrase: she speaks of Rawls’ “*realist utopia*”²⁶ in so far as Rawls’ *Law of Peoples* is conceived on a nation-state centered view, and the primacy of state sovereignty is taken for granted. To this, Benhabib adds that Rawls would have betrayed the original ideal of Kantian cosmopolitanism, for which a right to hospitality was crucial to reaching the “realistic utopia” of endless peace.

Another important source of reflection is found in Matthew Gibney’s account of the ideal/non-ideal distinction. While having in mind above all the topic of migration or, more precisely, asylum²⁷, the goal of Gibney’s inquiry is to specify and analyze some characteristic features of the constraints political theory faces while inquiring into migration. On this respect, Gibney’s points are complementary with those proposed in the kindred analysis provided by Carens in the article that will be more closely inspected below. Gibney insists on the specific genealogy and attributes of the modern conception of sovereignty: he fully spells out the history, the relevance, and the working of political constraints, especially with respect to the modern nation-state based on exclusive citizenship. Whatever normative evaluation or response one provides, it is indeed paramount to recognize that the modern and contemporary nation-states is shaped and organized to be attentive and responsive to citizens primarily. Another theme explored in Gibney’s analysis is the limitedness of the epistemological power of social science: Gibney invites to be attentive while discerning the provisions by expertise on how migration affects society, although in conclusion he emphasizes that the evidence provided in the field is rarely universally valid and uncontestable. Despite evidently sharing Gibney’s concern that normative

²⁵ See for instance the short paper by Karoline Reinhardt, “No Migration in a Realistic Utopia? Rawls’s *The Law of Peoples* and the Topic of Migration”, published in the “Proceedings from the 49th Societas Ethica Annual Conference 2012; Theme: Ethics and Migration”; August 23-26; 2012; Lucian Blaga University Sibiu; Romania (and accessible online at <http://www.ep.liu.se/ecp/097/015/ecp12097015.pdf> , last accessed 23/11/2017). Some of Reinhardt’s remarks coincide with Benhabib’s.

²⁶ Benhabib, p. 1773.

²⁷ Matthew J. Gibney, *The Ethics and Politics of Asylum*.

theory should not be allowed “to drift loose from the real world of political debate, choice and, ultimately, action”²⁸, Carens identifies and focuses on two “triplets” of realistic constraints that should be included into any theory of migration: the institutional, behavioral, and political, and then the “psychological, sociological, and epistemological prerequisites of an effective morality”²⁹. Both articles offer precious insights on a handful of deep problems a philosopher should pay attention to while applying political theory to migration: in the taxonomy of this chapter, they would be classified as belonging to the class of realism widely understood, that is, as pertaining to the third conception of realism explained above. But again: relations with traditional and common-sense realism are evident.

What should be inferred from this brief and preliminary literature review? I started from the consideration that authors in the philosophy of immigration are giving attention to the distinction between ideal and non-ideal theory, with a general preference for the latter. I then reviewed some of the contributions to the debate which clarified and defended Rawls’ account, and in so doing I also quoted more critical voices. These latter insist on Rawls’ “realist” utopia being normatively and empirically dissatisfying, because it relies on an abstraction of closed and self-sufficient societies which has surely never existed in history, is probably not the unquestionable ideal of a global political society, and is surely disabling while considering the morality of migration. Without the pretense of addressing more general questions which I will not and need not treat here, some further considerations are nonetheless indispensable while elaborating a reflection on realism and the ethics of immigration.

First, it can well be conceded that the elaboration of a philosophical-political abstract ideal, an “ideal ideal” (adjective and noun) so to speak, is necessary or at least useful while proposing a doctrine regarding just basic institutions or political principles to guide individuals or the international society. The defense of Rawlsian theorizing has been focused on showing that this ideal is neither too demanding - so to say, *too high* – nor too empirically grounded – too realist(ic), too *low* -, but that it would be the correct balance to be drawn while proposing an ideal theory that is to be later supplemented with more-ideal (Cohen-like) and non-ideal accounts (down to specialistic applied ethics). To this I would reply not in general, but with an eye to the problem of migration ethics: in that respect, and to insist on the spatial analogy, the Rawlsian ideal has been

²⁸ Gibney, p. 228.

²⁹ Carens, 1996, pp. 158, 160.

presented as *too far*, in the sense that its inadequacy – except for stereotyped comparisons with idealistic moralism and cynical realism – is simply and foremost the vagueness and the distance of the Rawlsian model from the actual conditions and even the terms of the problem. This lack of grasp goes to the point of compromising an elaboration of a non-ideal theory based on it, even if one tried. Evidence for this critical claim is that not careless and occasional readers, but experienced and close Rawlsian scholars have drawn from this model conclusions on migration and international justice that Rawls was later to debunk or utterly reject. But if it is *that* difficult to derive a non-ideal theory from an ideal model, the fault seems to lie at list in part with the ideal model itself, and not exclusively with the readers' misunderstanding while applying it to the world. This would *not* suffice as a general critique of Rawls, but appears a serious lack originated by the ambiguity of his account and the arbitrariness of his presuppositions -a society of self-sufficient, closed sovereign nation-states - at least with respect to migration.

A second remark is again derived from Benhabib's hardly resistible dissatisfaction. When she says that Rawls has been "realist" in abstracting in a way that is so oddly compatible with nationalist dreams of homogeneous and self-sufficient closed communities – which, it is barely the case to restate Benhabib's point, never existed in history nor exist in today's political geography – she also points to a form of idealization which goes beyond the acknowledged elements of full compliance and moderate abundance of resources. With the same features – resources sufficient to institutional and individual prosperity and individuals' compliance to the principles of justice – it would have been quite easy to imagine a completely different scenario, for instance that of a world-society or of a society of porous and reciprocally interdependent states. This would have been no less "realist(ic)" a utopia, and again the fact that many Rawlsian proceeded in such a way quicker than Rawls was to correct them gives enough evidence to support the point. Rawls has decided not only to assume conditions which were indispensable to develop stable principles of justice, at least according to his account of ideal theory, but as part of this simplified image of a theoretical model he has introduced elements which are too strikingly similar to a certain conception of current institutional arrangements not to be asked to revise such model: that is, a version which is not "ideal", but "idealized" or, even worse, "ideological". Above all, the "ideal" of closed and self-sufficient nation-states inadvertently masks the "organized hypocrisy" according to which, say, prosperity in the West would be totally independent from centuries of colonial exploitation of the rest of the world, from the present hierarchical conditions of

international relations, or from current economic neocolonialism. The true mark of political and ideological power is indeed not that of governing the answers, but rather that of shaping the questions, and Rawls' account is unfortunately succumbing to or harmonious with such power to the extent that disquieting questions of membership are difficult to pose therein: they are assumed away in principle or, as he remarkably says, are "eliminated as a serious problem in a realistic utopia"³⁰.

A third point is now necessarily added, to justify why the institution of the "Society of liberal and decent Peoples"³¹ is not sufficient to solve, however indirectly, the problems of migration. On the one hand, Rawls' remark is useful to emphasize the uncomfortable truth, too often overlooked in the ethics of migration, that much of the migration problem *does* depend on other, relatively independent shortcomings of the international society, such as oppression, exploitation, war, famine, imperialism, and the like. It is an important truth that the issue of migration, once that prosperity and homogeneity are assumed in principle, would be probably dissimilar from the tragic migrant crisis we are witnessing now, or be no issue at all. Unfortunately, this is not clearly distinguishable from the tautological claim that when all causes of problems are assumed away, all problems are solved too.

As a fourth critique, though, one is left to wonder whether, given that Rawls' society is not simply the "perfect world", but still a *realistic* utopia, this would really mean that *all* problems of justice related to migration would fade away. Rawls assumes the state's sovereign right to determine who is to enter. Now, what if a person or ethnic group wants to leave the homeland out of a whimsical decision whatsoever, but they are not welcome in the intended destination? What if this same person or group would have corresponding welcoming individuals, groups, or institutions, to wait for them, but would be refused entry by a majority at the nation-state level? What about, more simply but still gravely, two individuals who want to meet or enter into a relationship, when for an accident of policies such as exhaustion of that year or decade quota neither of the two would be allowed to emigrate into the other's country? What about a minority of political dissenters who, even without persecutions, after a momentous referendum or election do not identify themselves with their homeland anymore, and want to migrate *en mass* to some

³⁰ John Rawls, *The Law of Peoples. With "The Idea of Public Reason Revisited"*, Harvard University Press, Cambridge 1999 p. 8.

³¹ *Ibid.*

foreign country, while no one out there is willing to receive them? It seems that migration would still pose problems for the balancing of rights, and especially the main theoretical problem whether it is the state's sovereignty or the individual's liberty to move which has priority, even before the necessary qualifications are introduced. A preemptive assumption in favor of state-sovereignty would once again amount to an imposed intuition rather than an argument. Migration would not regard the most excruciating violations of justice anymore, which are instead present in the case of refugees' mass push-backs, but if it will not be a question of justice at all in a realistic utopia, than one could suggest to recast this very utopia, so that not only the root causes of migration and refuge are assumed away, but even migration itself. However, this appears only as a way of begging the question.

A fifth, relevant point is to be addressed to Swift and Stemplowska's claim that to demand "that political philosophers deliver concrete action-guidance is to ask them to do something more than philosophy"³². This is to be paired to Simmons' prudent distinction between what one ought to do, think and write as an activist, and what as a political philosopher³³. It is important to retain the distinctions and to require that philosophy be done scientifically, by considering principles, data, and logic, while the activist would indulge more on intuitions, identity, emotions, interests, and other subjective traits, and thus embrace an excusable partiality, analogue to that of a defense attorney. What defines activism is adherence and devotion to a cause; what defines philosophy is a certain methodology of arguing and reasoning based on logic: the reasons why one adheres to a cause and the argumentative way she or he arrives at and defends it. This said, the two are not opposed in principle: they could well be complementary, as it often happens in reality. Furthermore, excluding "concrete action-guidance" from the job of the philosopher would be a significant deviation from what philosophy was, and, I would argue, generally *is*: Plato was Dyonisus I of Siracuse's most unfortunate advisor; Aristotle was Alexander the Great's more fortunate tutor; and the list could become all too long with the inclusion of the contributions to politics by the modern, such as Niccolò Machiavelli, Thomas Hobbes, John Locke, Jean-Jacques Rousseau. Perhaps even more famously, our contemporaries Jürgen Habermas, Norberto Bobbio, and Michael Walzer have all advanced detailed "action-guiding" proposals on the most difficult and politically significant issues of contemporary wars, and on other political problems. To provide

³² Swift and Stemplowska "Ideal and non-ideal theory", p. 386.

³³ Simmons, p. 35.

an example among those to be advanced shortly, Sune Lægaard's take on a certain understanding of helping refugees in refugee camps surely implies "concrete action-guidance", but it is unclear why one should then consider him to be "doing something more than political philosophy". His action-guidance is not derived from a popular mandate expressed through vote, nor from a charge of representing refugees' instances, but is rather proposed as coherent with a more general political theory. Why should philosophy become something different in that respect? No doubt, philosophers must not be forced to intervene on such topics, and no one can exert on them political, social or other pressures. Lacking the partisan interests and memberships, together with the urgency of the decision maker – this latter, especially in the age of globalization, another important factor to be noted – they can well abstain from giving answers to political questions, including on their own research topics, sometimes even when requested. This is part of scientific freedom and serves to the advancement of knowledge. But this does not amount to saying that they cannot look for such answers *moving from within their scientifically construed political theory*. The examples provided by Swift and Stemplowska – that "Most of us accept that the work done by *mathematicians, logicians, or historians* has some value even where it is of no practical use"³⁴ – are telling in that respect: it would seem that, for a good share of cases, these disciplines are of huge practical import. Elementary mathematics constrains everyone every day and guides one's action while paying for shopping or measuring an apartment to be sold: advanced math constrains the development and usage of advanced technology in a way that is no less practically relevant, but perhaps only too complex to be understood by most people. Logics could guide one –if only one heeded to it- in the most banal circumstances, while listening to an argument which is "affirming the consequent", or implying the most evident fallacies. And logics is the base for informatics, again in a way which is no less "action-guiding" but definitely too complex to be grasped by non-experts. As for history, its findings usually have enormous practical and political implications, not only when one inquires into the historical circumstances of the writing of the constitution or of a revolution, but even when it comes to subtle and tiny questions – a historian determining the age of a jar can turn its value from zero to billions. I would see nothing strange in a public intervention by a mathematician correcting some politically relevant statistics or, more directly, a collective or individual behavior³⁵, a logician solving problems of global interest – like

³⁴ Swift and Stemplowska "Ideal and non-ideal theory", p. 387, my italics.

³⁵ A nice example would be mathematician Bruno De Finetti dubbing lottery "a tax on people's stupidity".

the decryption of Enigma -, or a historian intervening in a debate on national identity and proposing a reconstruction of some foundational events that leads to interpretations differing from those traditional. Similar cases happen daily.

I would agree on the analogy with these sciences being very apt: it is the conclusion on the practical relevance that leaves not fully persuaded. And as it would be wrong to interrupt a mathematical research in its hardest midst to answer what the practical results are, so would be to force all philosophers to show such longed-for results irrespectively of broader considerations. In a similar way, a scientist researching on an unknown molecule also must not be interrupted by public scrutiny to be asked what that is for, contrary, perhaps, to a practicing doctor, but in the long run it would well be reasonable on the part of the public opinion to evaluate the utility of a research project –including that scientist’s contribution – say, for the prevention of some grave disease. Thus, the philosopher’s job cannot coincide with that of the politician or the activist, but the philosopher can well propose a policy – both Miller and Carens do provide detailed “action-guiding” directions – and a politician or activist could be informed by a structured political philosophy. However, as I noticed in the introduction, this has become rarer than in the past.

Again, this is not in itself a critique of Rawlsian conceptions of the duties of philosophers, which would be much beyond the purpose of this chapter. It can be noted nonetheless that Rawls *did* provide action-guiding principles, even if those were particularly oblivious of the issue of migration. From the main writings of Rawls one can easily identify the topics of major concerns: justice as fairness, liberal egalitarianism applied to the nation-state and the international society (for which migration is but one among many problems), the secular state and pluralism and, perhaps with a crucial place, the methodology and role of political philosophy. From Rawls’ treatment of the ideal/non-ideal distinction it emerges that his principles are primarily meant to regulate the way of doing research in political theory: they were primarily addressed at other philosophers, while perhaps writers in non-ideal theory and in the ethics of migration do often try to speak to a broader public. And from Rawls’ theory it is not too difficult to derive clear practical guidance on spheres different from the one inquired into here: for instance, on what arguments are to count as based on public reason. Whatever one thinks of the merit of Rawls’ stance, it is difficult not to recognize it as “action-guiding” with respect to the ethic of public debate and many other fields.

But from the consideration given to the case of Rawls and to the account of realism provided by Gibney and Carens, I would derive this final and fundamental conclusion: abstractions and idealizations do not concern aspects such as imperfect compliance and scarcity of resources only. Choosing to elaborate a realistic migration ethics implies assuming as part of the theoretical world – as I say, of its “ontology”- objects like the nation-state. In this respect, Rawls was more than “realistic”: as Benhabib said, he was something of a “realist”. But still according to Benhabib, he was unrealistic – not anti-realist – in assuming incoherently that those states are complete and closed societies, which is a condition very distant from political reality, so distant to make the derivation of practical guidance or of even a related non-ideal theory almost impossible. After all, “realistic utopia” is, linguistically speaking, an oxymoron, and it is unsurprising that such a rhetorical device and the respective theoretical ideal bring with them tensions and ambiguities. As part of the methodology I would propose, ethics could assume from the real world as many relevant entities as possible– states, organizations, and others -, but possibly in a coherent way, and while at the same time retaining the philosophical detachment which is necessary to propose demanding normative arguments: realism of the premises does not imply realism in the normative outcome. That is, one should have the courage to think that things could be different, and one should not be dependent, as politicians or other kinds of expertise necessarily are, on loyalty to a party (largely conceived) or public consensus. As for the closer engagement with politics which I recommend – with all the caveats, restrictions and qualifications detailed above, and perhaps other that would be fitting in an essay specifically devoted to the duties and the distinguishing role of the philosopher, but not here – I admit that this cannot but be hard and dangerous. Maybe no less difficult than armchair thinking; probably more dangerous also. Nonetheless I am persuaded that leaving politics and theory part company, so to be left with a non-theoretical *realpolitik* on the one side, and on the other with a non-political idealized theory *only* - again I am not arguing against the utility of ideal theorizing in itself –, would be even more difficult and dangerous. With the difference that this latter danger would threaten not only the philosopher, but his public and society in general.

II.II.2 Five Accounts of Realism in the Ethics of Immigration

Many authors have dealt with realism and immigration specifically: the method here will be that of retrieving some central elements from their approaches and engage with them critically. I have selected some of those who use the term “realism” explicitly and give it a prominent place in their theories. The purpose is not that of writing a history, but the sequence follows a loose chronological order. Correspondingly, the issue of realism is addressed with a growing degree of complexity: from a rather stereotyped rebuttal of political realism, to a more positive and complex evaluation of its legitimate role. I begin with a classic article by James L. Hudson, where a common libertarian approach is sketched. There, it appears a mainly negative version of realism, a “strawman” which is also the preferred adversary of Cole’s post-colonial liberalism. The next account considered would be the ontological, methodological and normative realism put forth by Carens. An appreciation and an extended reply to Carens is provided in the account advanced by Miller, but this latter insists staunchly on going “tougher” and differentiates his liberal nationalism from Carens’ realistic open borders approach. I will conclude this series of examples with a posterior “critique of the critique”: Lægaard’s critique not of Miller’s methodology, which seems rather assumed, but of internal weaknesses and of the incoherence of Miller’s version of realism. In all these sections, I will praise and/or criticize features while emphasizing what I see as tending to foster the debate over migration or to impede it. I will make my own views clearer when I will engage critically with the authors and derive general conclusions from all the sections of the papers. In that final part I will show that the attempt at being “realistic” is not to be interpreted narrowly as a claim in favor of “realism of the outcome”, that is, weak normative requirements. Similarly to Carens, I will argue that a realistic approach to the ethics of immigration³⁶ is in principle compatible with a defense of open borders. This, however, is a task that cannot be exhausted here: the following chapters of this work will hopefully strengthen the methodological and substantial project that I am laying down in this and the previous chapter.

³⁶ The word “immigration”, which is preferred in the sources I am referring to, is useful to acknowledge that I write from a situated geographical and historical perspective: to wit, the perspective of a citizen in a country of immigration. Another and much welcome perspective would imply discussing matters more broadly (see for example Christopher Heat Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?*, Oxford University Press, Oxford 2011, p. 228 note 48). That is why for my project I prefer the global and postcolonial perspective of ethics of *migration*, rather than the Western and Eurocentric established view. This does not mean I can transcend the limitations of my perspective any better than the authors writing about *immigration*.

II.II.2.1 James L. Hudson: Philosophy of Immigration as Alternative to Political Realism

I would like to start with a rather classic intervention on philosophy of migration by J. L. Hudson³⁷. There are several reasons to pay attention to it, in addition to the general robustness of its argument³⁸ and the simplicity with which it is advanced. The article is a synthetic and clear defense of the kind of libertarian approach to the ethics of immigration which has been vindicated prominently, among others and more recently, by Chandran Kukathas. Hudson is such of a forerunner to be able to write that “the volume of work on immigration from a philosophical perspective is still very small”. At the same time, he is courageous enough to predict the “overwhelming rejection” of the right to restrict immigration³⁹. At least in the academic community, Hudson’s prevision seems not losing out so poorly⁴⁰.

There are two other reasons to find Hudson exemplary: first, his departure from original theoretical premises only generally outlined in the articles he engages with. These consist in holding that: “all the familiar basic ethical theories are cosmopolitan rather than nationalistic”⁴¹: Hudson thus draws from his sources and further develops an “overlapping consensus over open-borders” that brings to mind Carens’ more famous 1987 article⁴². But Hudson has also the insight to recognize that Rawls would have found himself uncomfortable in accepting the cosmopolitan premises many would have presupposed for his theory of justice: something that Carens would have realized to his disappointment only later⁴³. Hudson senses that Rawls was more of a realist in his political ontology – to make use of the distinctions introduced above – than his for many other respect very idealistic theory would lead to think. This is in perfect agreement with the critique of Rawls’ stance on migration I sketched above.

³⁷James L. Hudson, “Philosophy of Immigration”, in *The Journal of Libertarian Studies*, Issue 1, Volume 8, 1986. The article is made available online by the Mises Institute: <https://mises.org/library/philosophy-immigration-0>, last accessed on 14 March 2017.

³⁸By this I mean the defense of open borders in the face of sheer *Realpolitik*, which I think can be distinguished, from other less essential aspects, e.g. the author’s old-fashioned wariness of Walzerian “socialism”, as he calls it.

³⁹Hudson, p. 60.

⁴⁰I am inclined to thinking that the philosophers tilting in favor of open-borders might be a majority. In the absence of any figure, however, this can but be a personal impression. Things go very differently outside of the academia: this is perhaps less disputable.

⁴¹Hudson, p. 53.

⁴²Carens, “Aliens and Citizens: The Case for Open Borders”. Joseph H. Carens. *The Review of Politics*, Vol. 49, No. 2. (Spring, 1987), pp. 251-273. Note that Hudson extends the consensus to all “human rights or natural rights theory” (Hudson p. 53): that is, beyond Rawl’s egalitarianism. I believe that this is also soundly argued: see chapter IV.II.

⁴³Carens, 2013, p. 339 note 3.

The second reason for considering this contribution is bound to Hudson's formulation of the phrase "philosophy of immigration"⁴⁴: a lexical contribution to the outlining of a precise and growingly independent domain of research. Hudson engages critically with Michael Walzer's seminal treatment of the issue⁴⁵, but once again he is remarkably original in stressing how Walzer's position is an attempt at answering what Walzer's critics had described as "statism without foundations"⁴⁶. The question of realism is thus brought to the fore, since Walzer's focus was not "philosophy of immigration", but rather questions of membership derived from more classical interrogatives over sovereignty and justice⁴⁷. Hudson holds that the intervention of philosophers in the debate, as part of the "applied turn" in moral philosophy, is precious precisely because philosophers are not constrained by considerations of "political realism". Here Hudson is thinking about political interests and partisan identification with existing institutions: his critique of Rawls is in this sense exemplary. In the article, though, there is a crucial tension between this distancing from politics and the requirement for philosophers to become "amateur social scientists"⁴⁸, a requirement that he found had not fully been met⁴⁹. Hudson also criticizes a kind of abstract idealization that would disable one even from formulating the very question over the right to migrate *and* the inclinations to *Realpolitik* which he detects in Walzer. According to Walzer, Hudson contends, what is easier and more "natural" to bring about is *ipso facto* the correct way of responding to a moral problem. Hudson appears to be criticizing the normative realism that has been described above, and of which Walzer's theory of membership seems a paradigmatic representative. To sum up, Hudson defines the field of enquiry of philosophy of immigration and recognizes its novelty, integrates this problem drawn from "social science" with the import of the main moral and political standpoints in philosophy, and rejects a narrow identification of this interest in political realities with the belief in the necessity of some present-day institutionalized practices such as the state's unconditional control over membership.

⁴⁴ Here I use this phrase interchangeably with "ethics of immigration", even if I take "philosophy" to be more general in that it could refer to e.g. aesthetics and other kind of reflections on immigration rather than restricting the focus on the moral and political aspects. I take it to be evident that here these latter are of greater concern.

⁴⁵ Michael Walzer, "The Distribution of Membership," in Peter G. Brown and Henry Shue, eds., *Boundaries: National Autonomy and Its Limits*, Rowman and Littlefield, Totowa 1981, reprinted in Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, Basic Books, New York 1983.

⁴⁶ Hudson p. 55.

⁴⁷ In the article by Hudson one can find accurate references to forerunners and initiators, back to Henry Sidgwick.

⁴⁸ Hudson p. 52.

⁴⁹P. 60 "I must admit that the discussion so far has not always exhibited the virtues I attributed above to the philosophical treatment of public issues".

II.II.2.2 Phillip Cole: The Contradictions of Liberal Realism

If Hudson's article exemplifies a "philosophy of immigration" that parts way with ideal(ized) theorizing, and at the same time refutes the necessity strictly to adhere to a "realism of the outcome" normative standpoint, it is interesting to consider how these points are developed in Cole's theory. Writing more than a decade later, Cole already displays a significant level of specialization, and thus is of primary relevance to the ethics of immigration and to the elaboration of a conception of realism therein. Three main points can be distinguished in his formulation: 1) the theorization and refutation of extreme realism, that is, as he says, Hobbesian or, as it could be otherwise named, nihilist realism, *Realpolitik*, or political cynicism 2) the development of common-sense realist(ic) arguments in exploring, for instance, the political and economic implications of open borders 3) the demand for a historically, politically, and geographically grounded political theory which would lead to the "melting point" of liberal theory⁵⁰.

The first point is important in that it introduces another distinction: realism as a *negative* standpoint on moral and political theory⁵¹ vs. realism seen as a *positive* methodology. Realism seems to play both a destructive and constructive function: theory-sustaining and theory-eroding. Thus, it is presented primarily as a negative obstacle to theory: the idea that morality does not apply beyond borders, in international relations, or, less radically, that (liberal) moral values cannot be applied to the question of membership. The more restrictive justification for this latter view, which would for the rest concede that international relations are not a realm of "Hobbesian anarchy", is that open borders would destabilize the state to the point of rendering the exercise of its primary function and prerequisite of legitimacy –being a purveyor of basic human rights- utterly impossible.

Thus, we can transition to the second main point, related to the problems of economic and social sciences' predictions evoked by Hudson and Gibney: is it true that open borders would have such catastrophic effects? How to evaluate the evidence provided by social scientists, especially if this is contrasting or needs being balanced out with the consideration of a right to free movement?

⁵⁰This conclusion is first developed in Cole, *Philosophies of Exclusion*, pp. 166 and following; and a related question is posed in Cole's conclusion in *Debating the Ethics of Immigration*.

⁵¹ Robert E. Goodin goes to the point of saying that "it is not clear that it constitutes a moral stance at all", in his "Commentary: The Political Realism of Free Movement", in Barry and Goodin (eds), *Free Movement* pp. 248-264.

It is once again an argument elaborated by Walzer⁵² that converges with Cole's critique of the "Hobbesian response" to open-borders. Without going into detail here, it seems that both Walzer and Cole present sound remarks against the claim that everything is morally permissible under conditions of duress, or when it comes to the sovereign authority over membership. But after defining it, they both have to move beyond this characterization of realism which is, it seems, mainly a theoretical strawman. As it has been shown in the previous chapter, very few people would always act on the assumption that the state's interest prevails over any other consideration, especially of a moral sort⁵³. And yet, even *fewer* people would defend this practice in a moral argument⁵⁴. If someone did so argue, the philosophical answer would imply considering issues of a more positively conceived kind of realism: for instance, by focusing on consequences, especially of a social, cultural, economic, and political kind. Few deontologist philosophers would be ready to say that, once established that there is a human right to freedom of movement, possible consequences such as the disruption of social fabric, the lowering of wages, or even riots to the level of civil war would not matter. Thus, Cole turns to questions ranging from the effect of migration on "labor market and wages", to its impact on welfare, to the destabilizing revolution of the political and cultural pattern of the receiving society, and so on⁵⁵. These topics are also treated by Wellman among the "utilitarian" considerations for open borders⁵⁶.

The third point is now easily explained: Cole uses this negative and extreme version of realism as a *reductio ad absurdum* to question the capability of classic liberalism in dealing with issues essentially related with Western colonialism in politics and in political theory. Migration cannot be thought of coherently in the context of unquestionable Westphalian sovereignty.⁵⁷ Therefore, Cole insists that only by giving history and power-relations the attention they merit one can work out a realistic and consistent theory of migration and membership.

⁵² Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Basic Books, New York 1977, see the opening chapter "Against Realism".

⁵³ The *Stanford Encyclopedia of Philosophy* entry on "Patriotism" attributes to Machiavelli the idea that "The paramount interests of one's country override any moral consideration with which they might come into conflict" (Primoratz, Igor, "Patriotism", *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/spr2015/entries/patriotism/>). In fact, the motto (and the idea) that "the salvation of the people should be the supreme law" has a much longer history and wider usage, from its ancient formulation in Cicero, *De Legibus*, III, III, 8 on.

⁵⁴ With regard to Realism thus conceived, Goodin's remark seems appropriate.

⁵⁵ Cole, *Philosophies of Exclusion*, p. 168.

⁵⁶ Cole and Wellman, *Debating the Ethics of Immigration*, chapters 5 and 14.

⁵⁷ See for instance pp. 160, 216.

II.II.2.3 Joseph Carens: Open borders and “Shifting Presuppositions” Realism

Carens’ *The Ethics of Immigration* has come out as complete handbook on how to address moral problems related to migrations from the standpoint sympathetic with open borders. For what regards the question of realism, many of Carens’ considerations stem from a reflection he initiated no less than 17 years before, when he published his article on “Realistic and Idealistic Approaches to the Ethics of Migration”. What is to be stressed here is Carens’ dialectic methodology, his concern with the impact and the intelligibility of his philosophy, and the extent to which he is able to reconcile these two features with his conception of philosophy as a revolutionary activity.

Carens’ ethics of immigration can be characterized with respect to the realism of its *premises* and of its *outcomes*. To the first point, one can notice that Carens’ realism is *ontological* in that it adapts to the features of the real world by provisionally conceding the legitimacy of state control over borders. Until the 11th chapter Carens is speaking of a world that does not require any stretch of imagination to be conceived of. This, as he says in the final chapter, enables him to have a say on questions which it would not have been possible even to raise in the open-borders scenario: questions of guest-workers, illegal immigrants, nationality tests, refugees, and the like. Without this expedient concession, it would not have been possible to see clearly into the open-borders utopia: Carens’ thoughts would have fallen too distant from reality, the “ought” of his moral philosophy would have been separated by too large a gap from the hard “is” of newspapers and reports⁵⁸. To the opposite, by resorting to his double-layered immigration theory, Carens is capable of advancing theses which are *normatively* realistic as well. He recognizes the “psychological, sociological and epistemological prerequisites of an effective morality”⁵⁹ by making his theory of social membership⁶⁰ rely on commonsensical assumptions about the relevance of time and cooperative interaction for integration. Citizenship rights are connected to membership in a given community, thus questioning the presuppositions of the most individualistic version of liberalism, but also giving an effective response to exclusionary doctrines of membership⁶¹.

⁵⁸Carens, 1996, p. 156.

⁵⁹ P. 160. These considerations are deepened in the reflection over moral empathy in the context of immigration and asylum I propose in chapter IV.I. .

⁶⁰Carens 2013, in particular chapter 8.

⁶¹ In fact, I fear that the importance that Carens gives to belonging might turn out to be dangerous and even counterproductive for a universalistic argument, and this to an extent he does not seem to realize. But except for this caveat I will not take issue with Carens’ theory of social membership here, given constraints of space and of focus.

Carens' presuppositions (in the proposed terminology, his ontology, the set of entities included in the background of his theory) seem to be consistent with a plausible and suitably structured anthropology.

As for the second point, the immediate normative outcome of Carens' book is realistic in claiming for practices and principles similar to those already established in an open, multicultural liberal state like the author's residence, Canada. But this realistic approach is made compatible with the strongest and most demanding claim: freedom of international movement. Carens appears, all throughout *The Ethics of Immigration*, less concerned with empirically-grounded objections than Cole⁶². Nonetheless, he reserves a space to take issue with the kind of realistic counter-arguments Cole considered too – work market and welfare, salaries and the effects on the worse-off, stability and security concerns- and provides answers to all. These answers hinge upon a consideration of the basic democratic principles which are Carens' general normative premise, and often advanced through discussing actual cases⁶³.

Beyond the realism of the premises – realism of the outcomes dual methodology, a third point is noticeable. In the book, as in his 1996 article, Carens supports his most radical normative claims for open borders through historical examples of practices which were taken as commonsense and which were then successfully challenged, theoretically and practically, and overturned. Segregation and subordination of women and institutionalized slavery are only the most relevant examples⁶⁴. Carens' methods thus include answering realistic objections with realistic counter-arguments, and nothing is more realistic than undisputed history. But by pointing to these examples, Carens shows that one of the most important feature of a realistic philosophical approach is that of being capable of being unrealistic when needed, in the sense of being enough visionary and demanding when appropriate. His flexible methodology of shifting presuppositions is thus capable of accommodating a stringent and verisimilar account with a rather utopian and ambitious moral agenda. In this way, it singles out issues, such as global inequality, which stand in the way of bringing the most idealistic and realistic parts of his theoretical vision to coincide.

⁶² It is telling to compare Cole's and Carens' accounts on this respect. The extended ethics of immigration presented in *Philosophies of Exclusion* is introduced by a descriptive chapter on the phenomenon of migration in the present world. Furthermore, the question of de-colonizing political theory and political institutions is given less importance in Carens' than in Cole's argument, even if Carens allows, it seems, for it to be given some important role.

⁶³ For instance, while arguing that free movement would not create disastrous effects on public order, Carens relies on the historical example of the European Union: Carens p. 277.

⁶⁴ Carens 2013, p. 225; Carens 1996 pp. 164-5.

I.II.2.4 David Miller: Liberal Nationalism as a Realistic Constraint

It is with the last cited feature of Carens' account, among other, that Miller takes issue. Carens is the first person that Miller cites among those who "deserve special mention" in the acknowledgments of his latest book and, coherently, he is the thinker most often referred to in the index of the same⁶⁵. But even when he does not refer to him, it is evident that Miller is entering a critical dialogue with Carens and with theorists of a similar fashion. Realism occupies a central place among the divisive issues: Miller claims that it is useless to hope that the just immigration policy is the one that would hold "in a world that was also just". He argues that "by shifting to the ideal level, we avoid having to think hard and making tough choices about what should actually be done" but then this "counterfactual approach does not help us [...] to choose here and now..."⁶⁶. The argument seems to affect Carens' claim that open borders should resist in a world of relative socio-economic equality only, and that one cannot put forward such an ideal scenario (according to a realism of the premises) directly by now, given the institutional policy and the political climate, but should be contented with a more modest agenda – perhaps a realistic ideal of *more* open borders- until more general and demanding requirements are met. Methodologically, I would concede Miller's claim that some counterfactual arguments risk being effective only when reflecting on counterfactual worlds: this is one of the main reason ethics of immigration as applied and applicable philosophy needs confronting with the question of realism.

It seems problematic to Miller's argument that morality and all the more moral theory imply *by themselves* advancing arguments which are to some extent counterfactual: without conceiving of alternative to choices, ethics would collapse into history. For example, one can evaluate Miller's statement that, in response to the migrant crisis, "Steps are to be taken to reduce the migrant flows themselves to manageable proportions"⁶⁷. Is it not a demanding moral assumption that points to a counterfactual scenario? A reduction of the migrant flows seems more modest a claim than Carens' plea for widespread equality in the world. But given the relatively difficult condition of international relations, the world imagined by Miller remains distant from the actual one. Above all, one is to remember that Carens is advancing an argument to help people

⁶⁵ David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, Harvard University Press, Harvard 2016, pp. 212-13. Note that Carens is no less ready to acknowledge influence by Miller's previous works.

⁶⁶ P. 154.

⁶⁷ P. 172.

“think more critically about the way the world is organized”⁶⁸. The counterfactual of a world with fewer inequalities is set as a goal, and not as a premise, and by aiming at it one becomes able to put in perspective the steps to be taken immediately, and in a second moment. Miller contents himself with a more reachable objective, but this does not make his reasoning qualitatively different: rather, Carens’ observation on the “realized utopias” -the abolition of slavery etc.- would apply here. If Miller were not making claims which are at tension with present-day political reality, he would be merely describing it, not doing moral philosophy. It is also worth repeating that the main part of Carens’ *Ethics of Immigration* relies on moderately realistic presuppositions. Thus, much of the distance between Miller’s and Carens’ realism is explained if not fully solved by the distinction between realism of the presuppositions and realism of the outcomes⁶⁹.

In a methodological perspective, I appreciate the depth, clarity, and originality of Miller’s engagement with realism. To that extent, I find his point on the insufficiency of lofty moral complaints about widespread racism and xenophobia to be well placed also. These complaints are obviously necessary, from a philosophical point of view, but they are hardly sufficient to devise a good immigration policy. To content oneself with denunciation of racism and of its pernicious effects is all too comfortable for a philosopher, because such sentiments and persuasions are commonsense within the educated public. It is much more difficult, and therefore much more interesting and urgent, to inquire into how to widen the agreement over values such as tolerance and equality given the anthropological and psychological human reality with its limits and faults. But substantially, the core of Miller’s realism is his social-democratic welfare nationalism. Indeed, Cole takes issue exactly with it by resuming Ryan Pevnick’s critique of its empirical grounds⁷⁰. The “social trust” argument for nationalism relies on data gathered in Sub-Saharan Africa and the United States, and which are neither uncontroversial nor easily generalizable. Miller’s central argument stands or collapses together with them, and thus, even if his methodological realism is still of value, his normative view risks being undermined by a no less realistic refutation.

⁶⁸Carens 2013, p. 296. On this point, Rainer Bauböck advances a critique which resembles my remark of Rawls’ ideal being “too distant” to elaborate any non-ideal or applied theory based upon it: “The problem with moral defences of open borders like Joseph Carens’ is that they invoke an ideal world without saying how we could get there starting from a world in which states have sovereign rights to control immigration.”, in “In Defence of Free Movement”, published online at <http://www.iwm.at/read-listen-watch/transit-online/in-defence-of-free-movement/>, 12/01/2016 p. 6 (last accessed 24/11/2017).

⁶⁹ Another important source of methodological disagreement between Miller and Carens with respect to realism is the use of personal stories and “case studies”: see chapter IV.I.

⁷⁰ Ryan Pevnick, “Social Trust and the Ethics of Immigration Policy,” *The Journal of Political Philosophy* 17, no. 2 (2009):146 –167, quoted at page 269 of Cole and Wellman, 2011. See the discussion therein.

II.II.2.5 Sune Lægaard: Realism and the Refugee Crisis

Sune Lægaard has turned against Miller precisely his assumption in favor of a realistic methodology⁷¹. One of the presumably more realistic stances taken by Miller is his view of how to address the problem of refugees. He assumes it as part of a realistic ontology, that is, he believes there is no point in escaping the problem by relying on the presupposition that refugees would disappear in an unrealistically pacified world. Miller proposes normatively realistic guidance in formulating a restrictive definition of refugees also, and in defending practices of coping with refugees flows which are already acted upon by many countries, e.g. the externalization of frontiers through international agreements. And yet to this very regard, Lægaard claims, Miller's stance is incoherently unrealistic. Miller believes that for what regards the classic philosophical problem of defining who is a refugee "[t]he source of the threat does not matter; what matters is whether it could be averted without the person moving". Then it is the same Miller to acknowledge that "[t]he problem is that my definition involves a *counterfactual* element"⁷². To the spontaneous question of what makes this specific counterfactual viable, contrary to Miller's general claim, he explains that the question is where exactly one draws the line between feasible and unfeasible, realistic and unrealistic. Again, the normative discourse is to some extent unrealistic by its very nature, and it is not the usage of counterfactuals *as such* that is problematic, but rather their usefulness in the descriptions or the prescriptions which compose the normative discourse. Thus, it is unsurprising that Lægaard sees Miller's definition of refugees as problematic: it is almost always reasonable to think that a conflict could be avoided or resolved somehow and that refugees might be helped in some other ways than by taking them into affluent countries. It is no less obvious that such counterfactual reasoning is unhelpful in deciding over whom is a refugee in our world, because a judge with a sufficient political imagination could well deem to exist no genuine refugee. Then one understands why Miller's view is described by Lægaard not only as incorrect, but as deeply misleading: it might be a dangerous tool for ideologically justifying the refusal to give refugees the assistance they deserve. Even worse, it might endorse problematic "alternatives", such as military intervention or permanent confinement in camps.

⁷¹Sune Lægaard "Misplaced idealism and incoherent realism in the philosophy of the refugee crisis".

⁷² Miller 2016 pp. 167-8, cited in Lægaard 2016 p. 273 (my emphasis).

I would add to Lægaard's account that it also becomes difficult to understand why the value of nationality, even if one concedes it, should trump other dramatically relevant aspects. Why the fact that refugees could be helped elsewhere, thus preserving the Western countries' homogeneity and, as Miller assumes, their welfare system, would count more than the costs of exploring such alternatives, potentially very high? Why one should, e.g., program a military campaign with huge expenses and dubious results, if one is able to, say, help the same persecuted ethnic minority by welcoming them in as refugees? I will develop these points in the next chapter.

In the second part of his article, Lægaard discusses the "immediate vicinity" arguments, according to which refugees should be accommodated by neighboring countries rather than being resettled to the West. He reports several reasons in defense of this view, many of which appear sound. Neighboring countries have closer cultural, ethnic and linguistic ties; displacements are shorter and less dangerous; repatriations, in the wished-for occasion of a reestablishment of stability in the refugees' country, would be much easier. Lægaard notices, I believe correctly, that this line of theoretically sound arguments could be problematic in the real world. While international law, and in particular the principle of non-refoulement, is easier to impose on states when they actually have to do with the arrival of refugees, it would be more difficult to persuade Europeans to significantly help refugees in their own neighboring countries⁷³. I would add worries for the disrespect of the refugees' choices, the overlooking of the reasons why they move further on, the special responsibility of countries which are sometimes much powerful and eager to intervene abroad, but not as much enthusiastic in dealing with the consequences⁷⁴, and a realistic appreciation of the special risks refugees would run in the same regions of the conflicts they are fleeing. Yet, I think, Lægaard's proposed solution is no less problematic: pushing refugees "into specially created economic zones"⁷⁵ would risk exposing them to exploitation. If we assume a realistic perspective, it appears very difficult to control corporations hiring refugees, especially if one considers the precariousness of their residence and their conditions. Furthermore, this economically-driven "solution" of making refugees work without reintegrating them in an authentic and fitting community seems to raise the very realistic problem of the consideration of refugees (and migrants) as persons endowed with integral dignity and agency.

⁷³Lægaard p. 276.

⁷⁴ Miller sounds somewhat peremptory and hasty in disavowing "guilty feelings" of this sort: Miller 2016 p. 173. This again I criticize at length in the next chapter.

⁷⁵Lægaard, p. 276.

II.II.3 Conclusions

This exploration on the topic of realism and philosophy of immigration has been rich enough to end it, and it is time to review the methodology, the results, and the questions which are answered as well as the interrogatives left unanswered. I begin with these last. After distinguishing among different kinds of realism, and discussing the ideal-non ideal divide, it would have been impossible to discuss the relation between realism and contextualism as well, even if the often mentioned article by Carens abounds in considerations to this respect and I do not think the reader would struggle much to understand the relations between the two sets of problems.

Nonetheless, I hope that many important tasks were instead fully accomplished. I decided to compare some exemplary theorists in the ethics of immigration in order to eviscerate the ways they deal with the theme of realism. They were writing at different moments and with a diversity of purposes, but the centrality they give to this question, and the usually thick net of mutual quotations, make it possible to reconstruct an understandable dialogue. As it appears from the points I have drawn from their interventions, the distinctions between classic realism, realism in international relations, and a realism based on realistic assumptions, considerations of scientifically ascertained or verisimilar social laws, and reasonable normative burdens, seem to be shared by all these five thinkers. They all belong to the “realist in immigration ethics”-field, but different forms of realism are also object of their critical reviews, and perhaps even sources.

Given the attention they all pay to the question of realism, it seems safe to claim that a main part of philosophy of immigration can be comprehended into the domain of non-ideal theory, something which was not possible to assume in principle since, as I claimed, it is possible to conceive of forms of migration occurring in an ideal world.

From the article by Hudson, I recalled the views that philosophy provides an independent standpoint on the theory and practice of immigration, capable of complementing and challenging more “realistic” approaches, but also that philosophers must be capable of understanding realistic critiques to enter in dialogue with them and with the wider public. Hudson tries to steer a third way between ideal(ized) theory and *Realpolitik*, an approach that has dominated the field and that has led to the crucial question of where exactly to draw the line marking the appropriate level of realism and theoretical abstraction. I would also personally endorse, among Hudson’s and then Carens’ normative conclusions, the claim that the open borders approach is the most plausible

philosophical stance on a variety of more general moral and theoretical standpoints *and* it can be defended even on realistic grounds.

I then moved on to consider Cole and I mentioned his acquisitions that realism as a purely negative account of morality is easily contestable, even in the international arena (a point which has already and famously been defended by Walzer in the context of just war theory). Cole also claims that, besides any presupposition of a moderate or extreme partiality towards compatriots, a more defensible version of realism involves concerns relating to national security, economy, stability, and culture – a claim that is transversal to many authors.

From Carens I took away that there are degrees of realism at which an account can be construed, and that it is often wise to work on several of these levels at the same time or in consecution, without forgetting to explain what relations are to be expected between the more utopian and the more realistic ones. Furthermore, the distinction between realism of the premises and realism of the outcome (the terminology is of course not used by Carens) are key issues in making the philosophy of immigration talk to the general public. Finally, Carens restates, articulates, and defend the persuasion that realism does not rule out, and can even endorse, especially in its historically-informed version, the most radically revolutionary reforms advocated through philosophy, cosmopolitanism and open borders included.

I then agreed with Miller's consideration that a politically credible realism implies reflecting on how to deliberate as a society in a world like ours, that is, by assuming a morality that does not coincide with that of an enlightened and exceptionally virtuous minority – in that scenario, we would be close to the Rawlsian idea of perfect compliance. Yet, *pace* Miller, I specified that realism cannot involve excluding counterfactuals as such: it may rather imply a careful discussion and distinction on the appropriateness of this or that particular counterfactual and of its plausibility. Miller is also exemplary in showing how empirical claims can sometimes be decisive to assessing political theories, and thus these latter are sometimes made dependent on the outcome of a debate over what is the case in social sciences. Unfortunately for Miller, despite agreeing on the methodological point, I am not sure that his conception of the necessity of a shared nationality for a solid social trust would pass muster: in the next chapter I will present other reasons.

I finally used Lægaard's account as an example of how the refugee crisis has pushed philosophy of immigration even more *inside* the boundaries of a realistic theory, and of how

critiques about the realism of a thesis can be independent from an author's more general theoretical and methodological assumptions, as is the case with Lægaard's treatment of the "vicinity" argument. Realism implies also that a different evaluation of circumstances and different practical forecasts will yield different normative solutions, even when assuming the same moral principles as premises. Yet this is not to step out from philosophy, since the evaluation of the circumstances can well be indeterminate and value-dependent to some extent.

Through this critical recollection of insights, I hope and think I have been able to seam together a quite complete and solid version of realism. This will be the solid foundation on which I will erect the heavy normative conclusion of my thesis, in the next chapters and part. Besides doing this, I have introduced some distinctions which are useful to dispel the confusion surrounding the often-employed, much contested and, paradoxically, theoretically charged term of realism. To a critical selection of some of the authors' theses I added some of my proposed corrections, so that this chapter should both act as a useful list of references and syntheses for the interested reader, and as a customized methodological foundation for the normative argument I am to advance, which is more relevant with respect to the rest of this project. Nothing I have said is meant as an unattackable theorem: rather, I am proposing a version of realism which is derived, so to speak, from how it is "practiced" in the field of ethics of migration. And I would hold that the points I have selected are the most strongly endorsed in the literature, so that the foundations, besides being broad, varied and complete, should also be firm. Sure, I did not exhaust the lists of arguments which were worth attention. On this, I would quote for one last time Carens, who, in the introduction to the *Ethics of Immigration*, remembers that, while writing to defend the lofty principle of open borders, he has stuck to the hard-headed methodological axiom: "Don't get it right: get it done" he was once taught by a colleague. This, I would take, is again a laudable example of reasonable realism.

Part III
Ethics

III.I The Migration Ethics of Liberal Nationalism

A Critical Assessment

Abstract

In migration theory, the approach which is usually seen as more distant from open borders and as representing the more moderate alternative to it is liberal nationalism. In this chapter, I present the foundations of the liberal nationalist approach, and I advance a critique of the version elaborated by David Miller.

Liberal nationalism is not easily identified and distinct from related views: thus, in the first section after the introductory story, I begin by listing the main authors I would associate to this standpoint – Michael Walzer, Yael Tamir, and the same Miller – and by expounding on their central theses.

In the second and third section, I schematize more precisely Miller's philosophy of nationality and his related philosophy of migration.

With the fourth and fifth section, I move on to criticizing Miller's normative proposal: I start with "peripheral" aspects such as the lack of attention he gives to colonialism and in general to issues of power, coupled with an insistence on a view of the demographic crisis which I argue is outdated, and I continue with a critique of the main tenets of his theory. The "principle of nationality" I show to be vague, protean, and much more limited than one would initially assume from Miller's presentation. I also call into question the theory of migration derived from it as being indeterminate and, contrary to Miller's intention, insufficiently realistic.

I finally draw conclusions by assessing the relative merits and shortcomings of Miller's theory, which can in part be applied to liberal nationalism in general.

Keywords: Liberal Nationalism, Left Communitarianism, Closed Borders, David Miller

Chapter Structure

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III.I.1.1 Introduction: Unity in Diversity?

That of European Union is perhaps the most recurrent example provided by both those who adverse the development of supranational structures and those who support it.

Initiated in reaction to the havoc of World War II, European integration consisted in the grandiose project of bringing together those very nationalities who for centuries had fought to the destruction of each other, of peace in the Old Continent, and of the world. “Unity of Diversity”, the motto of the Union, epitomizes the ambitious goal of uniting French, British, Germans, Italians, and tens of other distinct national communities under the ideals of peace, freedom, solidarity, security, and cooperation. Few observers would question the initial and substantial success of the EU: its main objective being the establishment of durable peace in Europe, it now seems unrealistic, if not dystopian, to think that any of these states would precipitate into an armed conflict in a short or even foreseeable time. But the Union has achieved much more than this: in the decades of its first steps especially, it has accompanied economic prosperity and mutual exchanges to an extent never observed before, perhaps even including other such supranational organizations in other continents. To come to the focal point of this work, freedom of movement was durably sanctioned under the Schengen agreements, which made possible for EU citizens to travel across state boundaries without even noticing them, and thus to have the feeling of being at home and abroad at the same time.

However, many would now see these and other features of the EU as bitter delusions. After having the proposal of a European constitution rejected through referendum, and after having witnessed the undermining of its cultural foundations and the strict limits of its solidarity with the Greek crisis, the Union has been be-headed by the British voluntary decision to leave. In decades, that of a joint European army has only remained a courageous proposal, while each international crisis has shown the readiness of national communities to act on their individual interests and to speak in their own voice, sometimes without even consulting European partners.

Even in this exceptionally closed community, thus, it seems that nationalism remains among the most relevant political principles, and the recent interest by political theorists in making sense of it and reconciling it with other values appears justified. It is thus convenient to consider nationality and its implications more closely before moving on to the open-borders ideal.

III.I.1.2 Communitarianism, Nationalism, and Liberalism

In this chapter, my principal aim is to discuss the philosophy of immigration proposed by David Miller, and some of the main arguments for “closed borders” it is founded on. Yet, both the opposition to a substantial freedom of movement and the theoretical background that sustains it are shared between Miller and an area of thinkers which I characterize as “liberal nationalists”. If some of the points I will be advancing are relative to Miller’s proposal as such, in fact many of the crucial critical points extend to all those who in recent times have attempted at making nationality one of the core principles of political theory. Thus, to understand Miller’s own position and my critique to it, and to appreciate the relevance of this standpoint, which goes much beyond the personal stance of an individual author, I present the debate in its context.

Once again, the question of labels is not easily settled. If one of the authors I collect under this headline, Yael Tamir, has proposed her main intervention on the topic precisely under the title of *Liberal Nationalism*¹, the other two authors, Michael Walzer and David Miller, are more commonly associated with left communitarianism, social-democracy, and nationalism proper. Nonetheless, they all firmly and explicitly share the principles which are considered fundamental in liberal theory, and thus I thought it appropriate to associate them with Tamir’s catchphrase. If, on the one hand, I hope that even the quick resumé of their positions I am about to provide will show how substantial is the agreement between them, on the other hand I hope there is no need to insist on the conventional nature of such categorizations and on their usefulness for expository purposes.

Liberal nationalism is the view that the basic liberal ideals of freedom and equality of moral agents are compatible with the principle of nationality and the importance accorded to national communities and institutions: more strongly, the liberal nationalist view holds that to uphold these ideals the national community is necessary.

Walzer has been one of the first to delineate and defend such a standpoint in contemporary political theory: in the relative seminal essays and books², Walzer has defended the idea that the first political good is the good of membership. Every political distribution, including that of the goods or resources necessary to basic needs, and that of fundamental liberties which Walzer, being

¹ Princeton University Press, Princeton 1993.

², Michael Walzer “The Distribution of Membership”, *Spheres of Justice* (both already cited).

a liberal, wants to be distributed equally, presupposes the arrangement of a society whose members share a common ethos beyond significantly their private differences. Thus, society is like clubs and families, rather than neighborhoods, in so far as it must control accesses to control its identity and destiny, including the persistence of its liberal constitution. Denying or disrupting this communal control would not ensure a greater and least of all a universal diffusion of liberal values, contrarily to what critics of border control argue, but rather enable private identities and interests to emerge and build “a thousand petty fortresses”³ in its place. Thus, paradoxically, closed borders at the nation-state level are necessary to preserve freedom of movement at its maximum possible extent.

It follows that other general principles to be observed in migration and refugee ethics, such as principles of mutual aid and of reciprocity and humanitarian duties in general, are limited by the necessity to preserve the national community and to guarantee its self-determination. Racist and other overtly anti-liberal political principles are ruled out by Walzer, but for the rest the country is free to determine its identity and to determine its admission policy accordingly. Families and other forms of association, such as sympathy towards countries and citizens with similar conceptions, and respect of international and historic responsibilities such as the debt incurred in being aided or sustained by militants of the same ideologies abroad, obviously concur to determine migration policy. Thus, even refugee claims are not granted acceptance or success in principle and without limits⁴.

Even if Walzer is usually seen as a “communitarian”, this category would also apply easily to Tamir: indeed, according to the Israeli philosopher, nationalism is but an instance of the “morality of community”⁵. This morality of particular attachments – family, friendship, interest groups...- would not be at odds with the moral universalism and impartiality required by liberalism: to the very opposite, it is only by being educated in a community that the individual is enabled to transcend egoism and anti-moral tendencies. According to Tamir, thus, there would be no reason to suppose that a “morality of community”, and all the less nationalism, would make someone more disinclined to give moral consideration to non-members. In most cases the recognition of the importance of nationality would lead to the creation of regional and

³ *Spheres of Justice*, p. 39.

⁴ P. 50.

⁵ *Liberal Nationalism*, pp. 95 and following.

supranational bodies⁶. The powers to make decisions over different spheres, like culture, ecology, and defense, would then be diffused between these bodies, ensuring embedded loyalties and harmonic cooperation between liberal and nationalist and other communal principles. In general, a homogeneous society with a strong national culture would be a preferable and better-working democracy, but Tamir quotes from John Stuart Mill, an author who is massively influential on her proposal, to show that sometimes it is better to “make a virtue out of necessity”.

Besides Miller and Walzer, among other foundational sources of Tamir’s theory are the philosophers most often associated with communitarianism, Charles Taylor and Alasdair MacIntyre, but between the two she seems much closer to Taylor in her unqualified sympathy for liberal views. From them, Tamir derives the starting thesis of the book which is that the identity of the individual and its capacity to take autonomous choices and determine their life depends on the resources offered by culture. It is on this “idea of the person”, which could also be called Tamir’s anthropology, that all the arguments about the compatibility between liberalism and nationalism rest⁷. Tamir proposes to steer a middle course between an unrealistic atomism of individual free choosers disjointed from everything and everyone, and an oppressive organicism of tribalism which leaves no place for individuality⁸. Her appreciation goes to the classic tradition of liberalism, represented by Mazzini and Herder, according to which national bodies were meant to oppose domination by tyrannical and anti-democratic rulers. The emancipation of the individual and that of the individual’s community would then go hand in hand, because it is only in a body which is responsive to the needs of the individuals’ identity that it is possible to express and satisfy them.

A form of control over social environment would obviously be represented by restrictions to immigration. Tamir believes that freedom of movement and preservation of the national character are both desirable, and sets forth relative guidelines accordingly. She specifies that “[a]lthough [these] cannot bridge the gap between the ideal of free immigration and the ideal of national self-determination, together they may lead to a reasonable balance between them.”⁹.

⁶ P. 150.

⁷ P. 13.

⁸ P. 16.

⁹ P. 159.

Among these guidelines, there is an almost unconditional acceptance of the claims of refugees, considered *absolute* obligations “as long as their lives are at risk”.¹⁰

It would also not be possible to deport, denationalize, or otherwise discriminate national minorities, even if they are present in the country out of a previous injustice.

But as a third principle Tamir defends the possibility of limiting entries, in the original perspective of such restrictions acting as a form of “affirmative action” that would ensure the right of the nation-state to retain control over its identity, and of the corresponding national culture to be expressed freely¹¹. From this form of justification, it is apparent that even immigration restrictions have, in Tamir’s intention, a restricted and limited nature.

With respect to this, but also in conclusion on Tamir’s liberal nationalism, it comes as no surprise that many see her as a liberal and not a nationalist at all¹². In addition to the noted anthropology, which begins with the individual and gives to the community a somewhat instrumental role, and to the theory of migration, which, as we have seen grants less space to restrictions and the development of an original national character than Walzer, one is impressed to see how Tamir disposes of some of the main tenets of classic nationalism in one sentence when claiming that “The popularity of this concept [that of the nation-state and of cultural nationalism] rests on several widely held fallacies, namely, that free institutions can only operate within a homogeneous nation-state, that a state can mobilize its citizens only by invoking the power of national ideals, and that economic development and modernization require cultural homogenization.”¹³

We will now turn to verify that Miller’s nationalism is in fact much more demanding, and that the two elements which Tamir promptly discards as “fallacies” – that a certain homogeneity is indispensable to democratic institutions and that mobilization, especially of the kind required by welfare, is impossible to multinational societies – are, with some specific differences, at the core of Miller’s long-standing defense of nationality. And yet, the points of convergence between Miller and Tamir are at least as numerous and maybe even more crucial than the differences.

¹⁰ Ibid.

¹¹ P. 160.

¹² This is the reading expounded and endorsed in Cole, *Philosophies of Exclusion*, chapters 5-6 and especially p. 113. My critique of Walzer, Tamir and Miller is much indebted to the critical interpretation proposed by Cole: however, as the reader will see in the following part of the chapter, besides a parallelism about the role of “civic nationalism” and “ethnic nationalism” in Miller, our arguments are quite completely independent.

¹³ P. 163.

III.I.2.1 David Miller's "Principle of Nationality"

Miller's nationalism has been articulated in a variety of books and articles¹⁴ and has generated wide-ranging discussions, to the point that the British theorist is surely among the thinkers who come to mind first when one reflects on the ethics of migration. But as the articulation of the book by Tamir has shown, the order of a philosopher's reflections can tell something regarding the hierarchy of relevance of the claims she or he makes. So, if with Tamir the method involved beginning with a rather liberal characterization of personal agency and with presenting nationalism as a requirement for that agency to function, with Miller it is important to notice that he starts with theorizing social cohesion and nationality and moves on to question of migration only later and partly as a response to his critics. In this and many other respects, he is the mirror image of Carens, with whom the disagreement is in reality more limited than it would appear at first sight, as I will show by adding new reasons to the ones advanced in the previous chapter.

Immigration was not explicitly part of Miller's central agenda when he explored the issues related to nationality and nationalism¹⁵: in his *On Nationality*, discussion regarding immigrants' rights and limits to admission are mostly concentrated in two pages¹⁶, and a relatively open attitude towards immigration is advanced to differentiate Miller's own theory from conservative nationalism. Although, the points advanced there and the later, protracted intervention on the migrant and refugee crisis are understood only in the light of the doctrine I am about to resume.

Miller begins by showing the importance nationality has assumed after the end of the struggle between the two world ideologies which confronted one another during the Cold War, liberalism and communism. The dissolution of the Soviet Union and Balkanization, together with the reunification of Germany and the development of the European Community, are cited as the most evident examples of the importance nationality has gained in political theory. Despite being ready to recognize that such a view is not shared by many liberal thinkers, Miller endorses the idea that nationality carries the importance displayed in those examples. He advances a full inquiry to

¹⁴ The main sources on which I rely for this account are *On Nationality*, Clarendon Press, Oxford 1995; the two articles which anticipated and resumed that main book: "The Ethical Significance of Nationality", in *Ethics* Vol. 98, No. 4 (Jul., 1988), pp. 647-662, and "In Defence of Nationality", *Journal of Applied Philosophy* Vol. 10, No. 1 (1993), pp. 3-16. For Miller's communitarianism see *Citizenship and National Identity*, Polity Press, Cambridge 2000, especially chapter 6. On Miller's philosophy of migration, I draw especially on his already cited *Strangers in Our Midst*.

¹⁵ *On Nationality*, pp. 2-4.

¹⁶ Pp. 128-9.

show the foundations of the “principle of nationality”, its essence and definition, and its implications on questions of national self-determination, membership, and public culture. Miller’s style and method are realistic and he concludes his book *On Nationality* with a closer evaluation of the British debate, which is also the main source and scenario of his examples all throughout his intervention on the topic.

The principle of nationality that Miller proposes has three main dimensions: one is personal, and amounts to the extent to which belonging to a national community is relevant to one’s identity; the second is ethical, and concerns the way nationality elicits certain forms of cooperative behavior; the third is political, and implies that a nationality is reflected in specific institutions and a territory¹⁷.

To clarify the nature of nationality, Miller’s method is to work by way of contrast with “two common misunderstandings that bedevil this question”¹⁸. On the one hand, a nationality cannot be confused with an ethnic identity. Language, religion, even somatic features might well play a role historically in identifying a group, but a nationality in a liberal state cannot be restricted to these rather private aspects. On the other hand, nationality is not citizenship: belonging to a state, observing its laws and respecting its institutions, even formal-legal recognition as a member, all these are not sufficient to participate in the nation. Loyal co-nationals can be found beyond state boundaries, while not all the people conforming to political norms share also into the corresponding nationality. “National communities are constituted by belief”¹⁹, and contrarily to ethnicity and to many other forms of association they are not ascribed, inherent to specific agents. This gives them much of their political relevance: Miller holds that, while being a development of the primitive tendency to associate in tribes, contemporary nations are distinguished by their emphasis on agency, on their being self-determining bodies of people. The process of being so constituted realizes itself in a shared history that is “mythical”, in the sense of being composed by narrations, sometimes even fictional or non-literal or fantastic ones. However, these narrations have the performative function of constituting a national identity and thus of ensuring the emergence, stability, and continuity of the nation as an ethical and political community.

¹⁷ Pp. 10-11.

¹⁸ P. 18.

¹⁹ P. 22 and following.

“These five elements together – a community (1) constituted by shared beliefs and mutual commitments, (2) extended in history, (3) active in character, (4) connected to a particular territory, and (5) marked-off from other communities by its distinctive public culture, serve to distinguish nationality from other collective sources of personal identity”, says Miller²⁰. Yet, this essence is not rigid and static: members of a nation-state, according to the third distinguishing trait of nationality, that of being active in character, are to shape and re-shape it continuously. Even if national identity is a given, within the universe of meaning it provides it is possible to exert determining choices: the fact is, according to Miller, that it would be rather impossible to choose without such a web of meanings and personal relations: “The very fluidity of national identities, which, as we have seen, gives rise to the suspicion in some quarters that they are essentially fictitious, also entails that in maintaining them people do not commit themselves rigidly to a particular set of values”²¹.

As for the ethical aspect of nationality, Miller claims that it is impossible to capture and sustain it from the perspective of moral universalism. He presents and discards the two possible approaches that have been proposed to that purpose, a sort of voluntarism that would make special commitments dependent on their being freely established by autonomous and responsible moral agents, and the view according to which national and other special commitments would be proxies subservient to general principles such as utilities or other universal moralities. None of these explanations, Miller argues, seem to hold in the face of the strong motivation and the disinterested objective of national loyalty. To the contrary, moral particularism would begin by assuming the existence of such web of obligations: thus, the subject actively identifies with the group and behaves as if he or she is furthering her or his own interest by defending those of the collectivity, even to the point of self-sacrifice. Miller is ready to acknowledge that a similar result is not achievable if nationality is not supported by a strong public culture, especially through a strong education. Also, the principle of national self-determination, which as we will see shortly favors coincidence between national and state boundaries, would strengthen solidarity and cooperative behavior through institutionalized incentives and rewards. Nonetheless nationality, with its identification of personal with collective identity, is necessary to go beyond strict reciprocity:

²⁰ P. 27.

²¹ P. 45.

Miller thinks that neither liberal citizenship nor a liberal national identity would sustain themselves alone.

Again on moral universalism and particularism, Miller is clear that his theory does not amount to a rebuttal to universalism as such, nor does he propose to jettison all commitments which stem from principles independent from nationality. However, cosmopolitan duties are kept under any threshold that would make them stronger than what is needed to sustain basic needs. Nonetheless, since the principle of nationality is iterative, it is to be applied to one's own nation as well as to all the other: thus, the principle would imply endowing each national community which is fitting – for instance, national communities which are dispersed and intermingled are excluded – with the status and resources necessary to exert national self-determination.

While drawing conclusions on the politics of nationality from Miller's overall conception, it is useful to consider his evaluation of multiculturalism also as a sketch for his ethics of migration proper. According to Miller, strong multiculturalist proposals are misleading in their promise of emancipation of sub-national communities. There is no reason to think that an identity more parochial than nationality would be more authentic: to the contrary, any more "private" group could rely on much more mythical and uncontrolled assumptions than public culture and nationality themselves. Thus, while a public recognition of, and education on, differences is more than welcome to Miller's eye, it is first and foremost necessary to establish a common ground, a language, a cultural curriculum to which all subgroups are required to give disinterested allegiance. The alternative would be transforming public debate and deliberation in an arena of conflict between group interests: but as the (alleged) spokespersons of sectorial identities (those of ethnic groups) representatives of minorities would set their claims on premises which are by definition non-public. Thus, deliberative democracy, where all views come to interact on a background of mutual trust and respect and with the aim of arriving at the kind of compromise which is most expedient to ensure group unity and prosperity, would be rendered in fact impossible.

In conclusion nationality appears necessary to ensure the kind gratuitous giving and receiving which lays at the basis of welfare systems, but also to guarantee integration into a unique and ongoing "discourse" which is indispensable to open, inclusive, and effective deliberation. In so far as it grants these conditions, nationality is also a guarantee for the possibility of an active and democratic character of political communities: these are, according to Miller, all features worth defending, even at the price of outsiders' claims.

III.I.2.2 David Miller's "Philosophy of Immigration"

We are now ready to see how Miller's political conception affects his ethics of immigration and his dealing with the MC more particularly. I shall begin with his first and more general intervention on the topic to illustrate the main threads and tensions which run also through Miller's more recent elaboration.

In his *On Nationality*, Miller presents ethics of immigration as a point that would differentiate him from the conservative nationalist in the sense that according to his "principle of nationality" "hostility to immigration can be dissipated"²². Miller's account of nationality as an open discourse, in the sense of being accessible to a variety of people from different backgrounds in order to ensure its statewide dimension, and in that of being changeable and in continuous evolution, implies that no prejudicial restrictions should be opposed to present and prospective immigrants as far as they accept to enter that debate by endorsing the fundamental tenets of the welcoming society and by cooperating in a climate of mutual trust, solidarity, and respect. But these restrictions, as we have seen, hold also for natives, especially for those that would be tempted to consider national allegiance as an item to be bargained in a free global market, with a merely egoistic, individualistic, and opportunistic attitude. The two only exceptions Miller would allow for – but he presents them as such, as *exceptions* to an attitude of general openness, integration and accommodation- are the situations when an immigration rate is so high to make it impossible to the receiving nation to integrate all the newcomers into a unified community, and the one in which, as with the Palestinian-Israeli hostility analyzed in chapter I, the immigrant community wants to constitute itself as an independent state at the expense of the one already existing .

In substance, this blueprint of a theory of immigration, combined with the importance attributed to the "principle of nationality", is still valid to understand Miller's stance on the topic.

In his extensive intervention, the book entitled *Strangers in Our Midst*, Miller proposes to tackle issues related to immigration, refuge, and citizenship by applying the principles of weak cosmopolitanism, national self-determination, fairness, and social integration²³. While national self-determination and social integration are the results of the breaking down of what he conceives as two fundamental aspects of nationality, fairness in treatment of moral agents and the assumption

²² P. 128.

²³ *Strangers in Our Midst*, pp. 153 and following.

that all human beings would deserve their basic rights being enforced and their other claims being considered clearly show the compatibility of Miller's argument with the central claims of liberalism. However, Miller presents his view as "communitarian" and "social-democratic", thus highlighting which are the aspects and values he would rather emphasize.

Even this general introduction is sufficient to see that Miller's ethics of immigration is complexly articulated around the interaction and balance of different if not contrasting values. The result is a moderate rejection of open borders, which Miller presents as not backed by any sound argument: the doctrine of common ownership of the earth is refuted by him in all its various presentations²⁴, while the principle of equality of opportunity would not apply on a global level, among other reasons due to the different ways "opportunities" are to be understood and construed in different socio-cultural settings²⁵. Nonetheless, Miller is remarkably ready to admit that "there will always be *some* case for keeping borders open" due to the fact that "[m]ore freedom is always better than less".²⁶

If one were to provide a short phrase to represent Miller's attitude and situate it within the philosophical debate, however, one could not pass under silence that Miller expresses his sympathy for the general views expounded in his chapter on "Closed Borders". By this he does not mean that borders *should* be closed, since claiming this would be utterly incoherent with the arguments that has been resumed so far, but rather that there is no human right to entry and thus states *are allowed* to control and restrict immigration when they see it fitting.

Besides the most obvious observation that "any legal system worthy of the name requires a degree of stability in the population that it serves"²⁷, which would admittedly justify only a much thinner barrier to foreigners in comparison to those presently erected and to the kind of restrictions that Miller see as legitimate, the two crucial grounds for immigration restrictions are "the full range of social responsibilities carried by a modern democratic state"²⁸, self-determination and deliberative democracy. Miller complements them by showing that states cannot control the size of their population effectively²⁹ without border controls, and thus issues such as global warming and resources exhaustion are also indirect reasons for immigration restrictions.

²⁴ Pp. 38-44.

²⁵ Pp. 44-56.

²⁶ P. 55 my italics.

²⁷ P. 61. This, however, applies also as a restriction to *domestic* freedom of movement and to the right of emigration.

²⁸ Ibid.

²⁹ P. 65.

However, the three reasons which I recalled first – granting extended social rights, national self-determination, and the requirements of deliberative democracy- are presented by Miller as the core of his qualification on the claims of immigrants and they are a direct derivation – as it should appear evident from a comparison with the previous section – from his theory of nationality. A state is entitled, within the constraints imposed by human rights, to shape its own offer in terms of special subsidies, health policies, extensive education and so on to its members only. Abolishing border control would imply making the costs of these sovereign choices unpredictable and generally too high to put them in place. Thus “immigration control is an essential lever in the hands of the demos”³⁰. Without such control, the level of mutual trust and cooperation would decline to the point of making the value of membership into the community intolerably thin, since people are not as ready to display solidarity and make sacrifices for strangers as they are for those who are their fellows on a durable or more often permanent basis, and who share a substantial range of characteristics with them, from the most trivial to the vitally important such as allegiance to liberal-democratic values. Also, the public debate would deteriorate and be made unintelligible by its declining into a bundle of parallel and alternative cultures, mirroring the existences of parallel and isolated communities.

Having thus established the importance of national self-determination and integration, and since the principle of giving a fair treatment to individuals is limited to cases when fairness is relative to the relevant respect – thus there would be no discrimination in preferring nationals to non-nationals when legitimate preferences are allowed and human rights are not at stake -, Miller can derive the political implication of his theory within the framework of “weak cosmopolitan” obligations to observe and enforce human rights.

The first issue suggesting itself, probably out of its moral and political urgency, is that of the claims of refugees. Beginning with the classic problem of defining “who is a refugee”, Miller’s stance is once again moderate in that it grants the philosophical evidence that would lead to consider refugees also those people who are subject to natural catastrophes and the like, while recognizing the political expediency of preserving a legally stricter definition such as the one offered by the Geneva convention to ensure the highest possible compliance with international law³¹. Miller advocates global and multinational schemes of redistribution to share the burden of

³⁰ P. 62.

³¹ P. 83.

assistance more fairly, but also to enable states to exchange refugee quotas and to select refugees according to cultural similarities or other “particularity claims”. The justification of such preferential pathways, however, would be only their global convenience to address all refugees’ claims as such.

Refugees’ demands are not granted acceptance and their rights are not unlimited: thus, weighing numbers against national claims to determine them would be “a tragic conflict of values”³². Miller believes that the actual numbers of existing refugees are far from exceeding capacity for accommodation, especially once that fair and effective schemes are established and observed. He holds that even in the face of the refugee crisis³³ states should not only accommodate their demands, but even give them precedence over any other kind of immigrants’: thus, it would be hypocritical to refuse entry to refugees while hiring sport-stars from abroad. And yet, upholding refugees’ human rights is primarily not the duty of a nation-state, except from their own: assistance to refugees is only a remedial and thus a weaker duty. The conclusion is that societies, according to Miller, in face of refugees coming “in numbers that would transform their cultures and political institutions”, in the end have a right to say no, because “the obligation to admit would in these circumstances be humanitarian in nature, not something that justice demands, which also implies that it would be a matter for the citizens of the receiving society to decide upon – they could not be forced to comply, either by the refugees themselves or by third parties”.³⁴

Since in response to the migrant crisis Miller does not modify the principles of his ethics of immigration, but rather apply and specify them, for instance by insisting that coercive measures to remove illegal migrants are legitimate within the limits posed by human rights, I think that all the main elements of his theory have been recalled. Arguably, the migrant crisis has also brought multiculturalism to the extreme and, according to critics, to its failure – for instance according to Angela Merkel’s 16/10/2010 declaration. But Miller in his book on migration simply restates and deepens the critique of multiculturalism which I summarized above. The same applies to the conception of integration and public culture: Miller articulates the means through which to strengthen them, such as citizenship tests and an education with the clear goal of establishing a common nationality. The main issues are thus open and it is time to criticize them in detail.

³² P. 93.

³³ The “Postscript” of the book is devoted to applying its theses to the crisis which peaked just before print.

³⁴ P. 163.

III.I.3.1 The “Principle of Nationality”: Indeterminacy, Ambiguity, Limits

In this and the following section, I will present a critical evaluation of Miller’s ethics of immigration. My review is structured into three parts: first, I acknowledge the merits of Miller’s account and I stress the features which I want to assume as part of the philosophy of migration I am setting forth in this work overall; second, I present a critique of “peripheral” aspects of Miller’s theory; third, by relying on the shortcomings I individuate as introductory, I present the substantial weaknesses of Miller’s empirical and normative position. I will do these twice: once for the “principle of nationality” and the other for Miller’s version of “closed borders”. The two issues are indeed separate even if strictly connected. In the conclusions I will also reflect on the extent to which such critique could be generalized to “liberal nationalism” as I characterized it in the second section of this chapter.

I believe Miller’s “doctrine” of nationality has many merits, and each of them very relevant. It recognizes and gives adequate space to an issue which, until recently, was relatively neglected in political theory. Miller’s account seems to resonate easily with the institutional and legal arrangements of our days, which he often cites. This is part of Miller’s “realistic” methodology, which I already discussed in the previous chapter. But besides the effectiveness of such a balanced and moderate account, Miller’s reasoning is often convincing on its own, without need of a comparison with actual institutions and the more radical philosophical theories – extreme cosmopolitanism, conservative nationalism, and illiberal nationalism – amidst which he consistently proposes a middle course. I also believe in the soundness of the intuition on the value of nationality, which Miller can quickly show as illustrated by hosts of contemporary events, processes, political parties and ideologies, conflicts, and so forth. It is more difficult to inquiry into its components and to distinguish negative and positive traits: more than everything, it is difficult to ground such belief in an argument rather than in intuitive evidence. The self-evident value of nationality, while making it so strong a political principle, is, philosophically, a double-edged sword. Although, what I see as unproblematic, and my main agreement with Miller’s thought, is that nationality is useful insofar as it provides binding strength to ethical relations, and in this it is both compatible with, and very similar to, the kinds of familiar, personal relationships and the cosmopolitan or humanistic commitments it mediates between. No group can interact constructively and cooperate without a common culture and sets of norms which must necessarily

go beyond legal codes, in the sense of being more far-reaching and more flexible. Also, it is easy to derive from history lessons regarding the unifying boundaries of a specific people, and in as much as they reflect the sufferings, the joys, and the endeavors of those people, these lessons are to be revered, preserved, and transmitted. National identity, national solidarity, and similar sentiments and ethical principles seem to me as valuable as other forms of identities – for instance, belonging to a family, a team or a class – but since many vital interests are mostly exclusive prerogative of the nation – as defense from armed aggression or protection of the community’s health and welfare – its relevance is to be recognized accordingly.

These general and important truths, however, do not rule out the necessity of introducing qualifications and of a more skeptical – in the sense of inquisitive and detached – gaze into the essence and value of nationality. Qualifications and skepticism must vary depending on the huge variety of versions and circumstances in which “nationality” is declined, something which Miller is sometimes ready to acknowledge, but that also goes somewhat underappreciated in his account.

I would begin with two specific problems which Miller presents together: readiness to go to war for one’s country, and the emergence of supranational institutions such as the EU. Miller notices that according to polls and barometers European citizens still answer in the same way as decades ago to the questions: “are you proud of your country?” and “would you fight for it?”³⁵. At the same time, the interviewees are generally negative on the possibility of raising their taxes to help another EU country facing a difficult economic situation. Miller’s conclusion is that despite having changed and becoming to some extent weaker and vaguer, the “principle of nationality” is still among the most relevant political values to Europeans and even integration into the “common home”, by far the most ambitious project of supranational integration on earth, is no rival to it.

Since in that context Miller also makes the ironic remark that “The Italians scored above the means on the national-pride question, but came decisively bottom on the willingness-to-fight question”, I would for one time embrace the principle of nationality and defend the opinions of my fellow-nationals.

First, it must be noticed the enormous generality and ambiguity of the propositions Miller relies on. What is “pride”? What features are attributed to one’s country in responding? Also, what does “fight” mean? And most importantly, under what circumstances? Leaving aside the obvious possibility of including in fighting either a war in general or a football match, two very distant

³⁵ *On Nationality*, pp. 160-1.

things between which we Italians have a well-deserved reputation of confusion³⁶, if we concentrate on perhaps the most obvious interpretation, that of participating in a military campaign, there still remains a decisive ambiguity. For it is one thing to battle for one's country when this is cornered by Nazi-Fascist Europe, and far another to aggress an independent country *in* a Fascist army. All throughout his book Miller rules out in principle aggressive and racist accounts of nationality, but one cannot reread history through the lens of a philosophical stipulatory definition, nor this was presupposed in the poll, in which Italian respondents could well have thought of the Russian or Balkan or Ethiopian or other colonial campaigns and aggressions. If fighting in a defensive resistance in the former sense is surely a merit, and very often an act of heroism, to contribute to a war of the second kind does not seem morally virtuous, even if participants can sometimes be excused due to the perspective and propaganda through which they were indoctrinated and above all by the threats of force or even execution in case they refused to fight, a threat which sustained many "heroic" and "patriotic" campaigns on all sides during World War I.

With this in mind, the substantial success and the perfect achievement of Europe's main goal can never be underestimated, since after centuries of ferocious fighting the European Community has undoubtedly contributed to ensuring peace in the Western part of the Old Continent, admittedly among many other factors and through many difficulties. Parallel to that function of external containment, there is the function of internal stabilization, something which, once again, the Union has achieved successfully: according to the journalists Milena Gabanelli and Andrea Nicastro, who expound over the possible background of Jean-Claude Juncker's assertion that he does not wish a fragmented Europe, there are no less than 95 local secessionist movements who prefer the European Community to their own nation-state, to the very opposite of the interpretation of the combined polls provided by Miller³⁷. It is hard to evaluate how serious and homogeneous the claims by Catalans and Shetlanders, Galicians and Scottish would be. What cannot be questioned, because is proved by facts especially after Brexit, is that issues such as

³⁶ Thus, before facing the Austrian team in 1934 World Cup the coach called the athletes one after the other and recalled their fathers who have died in fighting "the Austrians" (actually the no longer existing Austro-Hungarian Empire) in World War I. No less illustrative is the episode in which all the Italian team withdrew from the Tour de France in 1950, allegedly on grounds of an aggression by French supporters.

³⁷ "Secessionisti a cui piace l'Unione Europea, ma non il proprio stato" ("Secessionists who like the Eu, but not their own state"), in *Corriere della Sera*, 22/04/2018. Juncker's declaration was broadcasted on 27/10/2017 and is widely recorded on the web.

Gibraltar and Northern Ireland become much more difficult to settle once that the common European framework is removed from around the contending parties.

What I am doing here is obviously more than engaging with two colorful questions raised by Miller. What is at stake is precisely the nature and the function of the “principle of nationality”. As the example of “fighting for one’s country” illustrates, “nationality” is often an empty box which can be filled by social and historical circumstances and political ideologies in very different if not opposite ways. Miller is sometimes open to acknowledge this, for instance when he recognizes that nationality is an open project and that a public culture must be attached to it. But in the introduction of his book, while facing the tough critique by those who remark that nationality varies a lot between societies and individuals, “in ways that might seem to through into doubt the project of describing and assessing nationality in general”³⁸ he replies by contrasting the standpoint of the nationalist with that of those who see the world as a “giant supermarket” and, while conceding that global economy and the erosion of national welfare have unfortunately diminished the role of nationality to the eye of many, he recalls the cases of people who became aware of its paramount importance only at the national victory of the European Cup³⁹. The reply seems too general and not sufficient. Miller might perhaps have shown that nationality is important despite being challenged, but the crucial question regarding the difference between being a Serb and being an American remains unanswered, not only in that section but all throughout the book, and to that difference one could add the difference between being an Italian at a certain time – say immediately after the Risorgimento or “national reunification”, when being Italian meant mainly being opposed to the imperialism of the house of Haupsburg – and being Italian at certain other – say under the authoritarian rule of Fascist monarchy or, even more distantly, the present conditions of European democratic peace. Miller also holds that the modern conception of nationality includes an active element, a form of collective agency, and sees it as combined with democracy and republicanism. But this still seems not firmly established, since “Tudo pela nação, nada contra a nação” (“All for the nation, nothing against the nation”), was also the motto of Salazar’s regime, which he was almost a literal quote from the elementary – and thus powerfully effective - rhetoric of Mussolini. I fail to see what there would be inherently in nationality, in being bounded together as a people or unity of other form, that would connect more easily with democracy than with authoritarian

³⁸ P. 13.

³⁹ P. 14.

rule, with the Senate rather than with the Fuhrer or the Emperor or the absolute king. In fact, historically speaking, the formation of modern nation-states did not disarm the Napoleons and the Hitlers with uncountable other. But even if one wants to accommodate Miller's stipulation, and remain within the limited scenario of liberal democracy, still the spectrum of variations is too wide to be ignored. A Japanese national, member of a country which has willingly isolated itself from the rest of the world for centuries, besides being pushed to this by geography, and which is so ethnically homogeneous that one is not surprised by the belief of belonging to a common family headed by the Emperor and by the establishment of a uniquely Japanese religion such as Shinto, would struggle to identify his "nationalism" with that of a citizen of the Russian Federation, a country which occupies one eighth of the world's core landmass and which is composed by a mosaic of ethnic groups, some of which have claimed statehood and even exercised it in the past, or are claiming it now. And yet both can include allegiance to substantial state-provided welfare assistance, which seems to cast doubts on Miller's central claim. Yet to claim that they do it for the same reasons, and that these can be subsumed under the "principle of nationality", seems an overstretch of the imagination.

But leaving aside this *indeterminacy* of the principle of nationality, its *limitations* are no less apparent. Miller contrasts the nationalist with the "giant supermarket" view of the posh cosmopolitan, uprooted from, and indifferent to, national values, because in the insensitive to *any* value. But Miller's methodology of proceeding by exclusions, which is applied frequently and as we will see is also to be found in his theory of immigration, has evident limits when contrasted with the alternatives we find in reality. I will only recall the four that come to my mind first: ideology, ethical persuasions, religion, and practical interests.

By ideology I mean all the kinds of political convictions and systems that may operate quite independently from nationality. Thus, Che Guevara and Garibaldi were more than disposed to "fight for", or even to "die for" establishing independence and socialist institutions in countries and among peoples which had few if anything in common with the ones they belonged to. None of them would have denied the importance of *nationality*, but what they *meant* by nationality – a certain conception of the peoples and their role in history – seem very distant from Miller's understanding. Thus, for Garibaldi, the "hero of the two worlds", fighting the Brazilian Empire for a separatist cause that ended in failure and fighting against other Italians such as the Bourbonic to further the dominion of the House of Piedmonts were both worth risking his life and perhaps, in

his mind and under the crucial respects, they even constituted one and unique cause. A similar principle of international solidarity was displayed by both the fronts fighting in the Spanish Civil War, which would have died to have Fascism or Republicanism triumph, but were rather indifferent to doing it in this or that national community, or even to killing co-nationals of the opposite faction.

An example more familiar to philosophers is that of ethical persuasions of any kind, and most evidently of a philosophical one. The schools of Stoics and Epicureans agreed at least in paying scarce attention to national or other communitarian identities, and in this they are similar to the contemporary cosmopolitans of all stripes which Miller discusses and to which he recognizes *some* constraining reasons, in the form of a *weak* cosmopolitanism with which nationality is to be reconciled. Philosophical and other ethical thoughts of this kind are presented by Tagore and Tolstoy, and, depending on category conventions, even in those with a more clearly patriotic vein like the “universal” nationalism which in Gandhi had obvious religious connotations.

The third source of ethical commitment alternative to nationalism is outright religious beliefs, with people of the sort of Albert Schweitzer or the missionaries of all times being ready to shed their membership in national communities to make substantial sacrifices and services to people of a different culture, language and ethnicity.

Finally, there are all sorts of practical reasons to behave in solidarity beyond national boundaries: the same kind of reasoning that make one believe it better to have an appointed firefighter to risk life in the place of a multitude can also elicit disinterested behavior on an international scale. Miller holds that only nationality, combined with citizenship, grants the sufficient level of self-identification with the interests of the group to transcend merely reciprocal cooperation, but it is unclear why the prospective of, say, laying down one’s life to save members of another national communities in the expectation that they will reciprocate by saving one’s own kin or fellow nationals in turn would not be reasonable on similar grounds. This is, at least to some extent, the way all sorts of international military alliances and other bodies operate.

The picture is complicated by the possibility of having these factors, including nationality, combined in any given scenario, so that ideological and religious proximity together with other ethical belief and the interests of a regional body can contribute to the extent its national subcommunities cooperate (see the US and Israel, or Syria and Russia).

This is rendered even more complex by the admission, which surfaces frequently even in Miller's nationalist account, that nationality is ambiguous in that to operate effectively it depends on ethnicity on the one hand and on citizenship – and the corresponding public culture - on the other. However, I think that Miller here is once again underestimating the implications for his account, for instance when at the beginning of his book he dismisses with too much confidence the “confusion between the nation and the state” as an “elementary error”⁴⁰, while the view that nationality would presuppose ethnic homogeneity is also seen simply as an unwarranted assumption⁴¹. Miller is somewhat softer with the latter claim, and in fact he comes to recognize that ethnicity has served to found nationality historically and that even conceptually a nation cannot be easily distinguished from ethnic traits. He goes to the point of citing approvingly A. D. Smith's claim that “without some ethnic lineage the nation-to-be would fall apart”⁴². Still Miller's admission of ambiguity appears insufficient in so far as “nation”, a derivative from Latin *natio*, is a standard translation for the Ancient Greek *ethnos* (ἔθνος). Thus, at least the original and linguistic relationship between the concept of “nationality” and that of “ethnicity” would be perfectly analogous to the relationship between the words “freedom” and “liberty”, which are mostly synonymous except for their respective derivation from a Germanic and a Latin root. Then Miller is obviously correct in claiming that the meaning commonly attributed to the word “nationality”, and the special, technical and normative meaning he wants to project on it can be shaped rather independently, but it is no less obvious that the relation between the two words also illustrate the complex and deep relation between ethnicity and nationality, which is being transformed by contemporary post-ethnic states, but which was crucial to the romantic ideologies which contributed to the rise of many of the European nation-states which presently exist. In many contexts, including liberal democracies, the distinction would not make much sense, as illustrated by Japanese former PM Taro Aso when claiming publicly that his was a country of “one nation, one civilization, one language, one culture and one race” in 2001.

The same is true for the relation between state and nation. Far from being an “elementary error”, as Miller overconfidently assumes, in many languages citizenship and nationality are simply synonymous and they are used interchangeably: thus, for instance, in Italian, if someone

⁴⁰ P. 19.

⁴¹ P. 21.

⁴² P. 123. See the preceding and following pages for a fuller admission of the role of ethnicity.

asked: “What is your *nazionalità* (“nationality”)?” after the reply it would make no sense to continue to go on with “And what is your *cittadinanza* (“citizenship”)?”, because the two terms, especially in technical legal and diplomacy language, have simply the same reference⁴³. Surely, British citizenship and nationality have been distinguished in the reforms which took place after the dissolution of the British colonial empire, but in many other instances it would be correct to assume that, as in the common hyphenated expression “nation-state”, the two are deeply intertwined and mutually influential to the point of not being easily distinguishable, something which Miller otherwise accepts, for instance by claiming that it is better for the two to overlap as perfectly as possible (a stance already taken by John Stuart Mill), or when he claims that nationality and citizenship, when separated, are vulnerable⁴⁴. This discussion, it should be clear, is also incidentally supportive of the claim that nationality as a general term is too indeterminate to derive the strict and exclusive ethical obligations Miller would attach to it.

Yet, once again, besides issues of words and meaning, there are further grounds to problematize the relation between state and nationality much beyond what Miller would be comfortable to do. For his recognition of the performative and open nature of nationality makes him also attentive to the fact that common interactions and cooperation as sustained by a state reinforce a nationality, but he would not go as far as to admit that they can *create* one, which in fact they might do. Many of the present-day nationalities, especially those who are split between different states or who do not have a state to rule of their own, are in fact the remnant of state-institutions of the past. Since, as Miller notices, a common history or even mythology can contribute greatly to the creation of nationality, there is little doubt that being subject to a jurisdiction was in origin established not to exert national self-determination, but simply as an

⁴³ So was established by the Tribunal of Reggio Emilia, Sentence of 9 April 2009, when it struck down the attempt by the police to distinguish between citizenship and nationality and denying on such grounds a visa to a foreigner who had naturalized but, according to the police, was not “a national”. The Tribunal made clear in the sentence that citizenship and nationality have been until then interchangeable terms in Italian law, and so are to be interpreted, and that introducing a spurious juridical value to the sociological concept of “nationality” as distinguished from citizenship would be tantamount to introducing a criterion for discrimination among citizens, which is unconstitutional. From this case it appears that juridically nationality can be 1) synonymous to citizenship 2) distinguished but subordinate or irrelevant 3) relevant, thus making citizenship itself insufficient to grant equality. In other words, you can have a juridically “thick” nationality only on condition of introducing different statuses among citizens, which many would find unacceptable. The issue can also be resolved (not without problems and complications) as in US legislation, by endowing all citizens with nationality, but not the other way around. This in practice applies to a very small set of cases such as the Samoans, and implies the subordination of nationality (as a legal category) to citizenship as merely its subset, which is exactly the point I am raising here in response to Miller.

⁴⁴ P. 73, note 25.

outcome of the expansion of political power, a group of subjects can be turned into a people. This is the meaning of the phrase of uncertain attribution “Having made Italy, we are now to make Italians”, but is also a concept one can see at work in the Swiss comedy *Les Faiseurs des Suisses* (*Die Schweizermacher*, “The Swiss-makers”), by Rolf Lyssy, in which people become naturalized and even “integrated” by going through a considerable amount of state-bureaucracy. But much more relevantly than these examples, the very establishment of welfare after the completion of the era of national unification processes in Europe has often served to transform diverse people in a coherent body of subjects: thus, as Miller seems sometimes open to acknowledge, the relation between welfare and nationality at the core of his theory can be reversed. And this applies to the example of the EU and of supranational institutions to which we can now return. For it is not at all determined that a stronger European or global solidarity would not emerge if efforts comparable to those which gave birth to national communities were devoted to it. The Greek financial crisis and Brexit, this latter an event that was determined democratically by a very small margin, could well have ended in an opposite way and have become steps in European integration rather than European disintegration. The histories of national unifications and supra-national integrations are full of such missed opportunities, and usually peoples are allowed to think again. Although, if persons and governments pay efforts to give reasons to create a common membership, this will be established, otherwise it simply will not.

III.1.3.2 Is Miller’s Ethics of Immigration Truly Realistic?

Miller’s ethics of immigration has undoubtedly as many merits as his theory of nationality. I have already claimed that Miller is exemplary in shaping a realistic methodology, as he says, “that starts by looking at the world as it is, with its manifold inequalities and injustices, and asks what range of immigration policies may legitimately be pursued by democratic states under these circumstances”⁴⁵. The fact that I question the normative outcome proposed by Miller together with many of his assumptions does not reduce the appreciation due to his methodological elaboration *in general*, and to the role with which he credits social sciences and even political, journalistic and other social debates. Even if I think I have drawn much more deeply from realism, including in the “technical” definitions of the term (we have seen that there are many), my overall work is

⁴⁵ *Strangers in Our Midst*, p. 208 endnote 8 to the ninth chapter.

evidently much indebted to Miller's paradigm. So is my attempt at moderation: Miller has a nuanced position, in which it is easy to trace tensions, but this is because he tries hard to explain clashing intuitions rather than shutting his eyes in front of what is unfitting to his theory. I think that much of his ethical proposal has been widely misunderstood, both because in appealing to realism he consistently refuses to lay down a politics, which he thinks – I believe correctly – is not the role of the philosopher, *and* because he has developed his arguments in contrast to the “open border view”. This opposition has made them sound more restrictive than they would appear when confronted, as we have seen, with conservative nationalism. Yet if one reads through his interventions, beginning with the very positive and open words on immigration which I quoted from *On Nationality*, one must recognize that Miller's “realistic” position is at odds with much of the current political practice. An outstanding example is his broader definition of “refugee”, something I will not discuss again here⁴⁶. This said, for philosophy to advance it is necessary to cast light on the blind spots of each theory.

As we have seen, “the” principle of nationality (I put only “the” in brackets because I have just argued that there are *many* principles operating with different nationalities and in different circumstances with very different effects) is in the very uncomfortable position of being squeezed between the encroaching neighbors of citizenship and ethnicity as, in a three-seat-row on a plane, the central passenger would need to ask the permission of the two surrounding to stand up or just to look out of the window, while having an hard time trying to sit peacefully because of their imposing statures. To this limited and difficult-to-ascertain principle, which is also restricted by its interactions with ideologies, philosophies, religions, and practical considerations of all sort, Miller assigns the expensive role of being the indispensable ground for social trust and membership, to the point that his doctrine of nationality and the rationale in support to closed borders have come closely to coincide. Although, these are not the only reasons to debunk Miller's claims regarding immigration restrictions that can be derived from an attentive scrutiny of his theory of nationality.

Indeed, Miller's general neglect of the role played by political *power* is at least as evident in his ethics of immigration as it is in his appreciation of the relations between nation, state, and ethnicity. If the boundaries of the nations are most commonly established by which aristocratic rulers were able to gain what territories in a number of campaigns, similarly the features of

⁴⁶ *Strangers in Our Midsts*, Chapter 5 and especially p. 82.

immigration fluxes reflect political arrangements, above all past and present Western colonialism. The very subtitle of Miller's intervention, *The Political Philosophy of Immigration*, in this in agreement with Carens' *The Ethics of Immigration*, reflects that the perspective assumed is that of the receiving states. If on the one hand I think it right to spell out the situated perspective on which one thinks and cannot but think – in the case of Miller his participation into the British debate over national identity and his philosophical response to the migrant crisis as a European – I believe that to make it fully explicit one should also mention and challenge its limitations. That is why I decided to speak of “ethics of migration” in general: to make more visible the hierarchical postcolonial order of international relations that forces ethics into the construct of countries of immigration only. Similarly, it is not a self-evident claim to argue that European solidarity to refugees should no come “out of historical guilt”⁴⁷. Even if I do not think that the term guilt would appropriately represent my position here – I would rather speak of responsibility, historical and present – it is too simplistic to say that in questioning the foreign and especially the military policies of Western powers one would incur in the contradiction of blaming them both for intervening (Iraq) and for non-intervening (in Syria), as Miller says. First, the impact of colonialism is not reducible to the most recent interventions, and for example the history of the American control of the Persian Gulf dates as far back as 1833⁴⁸: the British presence, which they substituted, obviously predates. But second, Miller does not seem to recognize the irony in his own claim when he says that “with hindsight it is of course easy to predict!”⁴⁹. After more than twenty years of international operations and “peace enforcement” in the Middle East and the Horn of Africa, we now have a consistent record of precedents: Iraq resulted into a bloody civil war and in the establishment of a terrorist regime which by all measures – oppression of minorities, worldwide terrorist activities, aggressive expansionism – surpasses the bleakest days of Saddam's rule; Libya is still divided between factions and it is unclear whether people of the like of Khalifa Haftar, a warlord and Gadhafi's ex-officer, would rule more democratically than the deposed leader; Afghanistan is still unstable and conflict-ridden. With this record and the reasonable principle of *primum non nocere* (“first, to do no harm”) in mind, it seems unlikely that another expedition would commend itself except in the most extraordinary and unforeseeable circumstances. Personally, I find plainly irrational to say the

⁴⁷ 173.

⁴⁸ Michael A. Palmer, *Guardians of the Gulf: A History of America's Expanding Role in the Persian Gulf 1833-1992*, Simon & Schuster, New York 1999.

⁴⁹ *Strangers in Our Midst*, p. 173.

least all the suggestions that it would also be possible to solve militarily tensions with a nuclear power such as North Korea or with an Iran that controls 30% of the world oil traffic in the strait of Hormuz. This way, to return to Miller's example, one can simply hold that as it was wrong to intervene in Iraq, at least in the sense of destroying the country politically, economically and socially, so it would be wrong to intervene in Syria, and that Western powers have already done too much harm in the latter scenario also. This would be a brief sketch of my view on the matter, and seems at least to escape Miller's accusation of inconsistency. But even if one wanted to defend West's interventionist policies, it is still arguable that the world powers should take responsibility and participate in refugee assistance correspondingly: capability of intervening itself and the choice of mingling with global affairs seem sufficient to ground a special duty, in the same way as a doctor who is facing the difficult choice between a surgical and a conservative treatment must in any case continue to assist the patient afterwards. Thus, in general, and without a fuller discussion of the ethical status of recent armed interventions, and of the much longer history of Western colonialism, Miller seems not sufficiently attentive to the role of inequalities of power as a factor of migration ethics.

There are other "peripheral" points of Miller's theory which I would like to challenge, however briefly, before moving on to the main and more theoretical critique. They are meant to give examples of how his stance can be resisted on several respects, but they also show that his argument is complex and relies on a variety of more specific claims to have the force Miller wants it to have.

Consider just Miller's crucial view, that more "communitarian" societies would be more prone to social-democratic arrangements with a substantial welfare in place. He is ready to qualify it by saying that "Admittedly, this is not so easy to demonstrate with hard empirical evidence"⁵⁰. Yet in the introduction of the book Miller quotes a report by the Organization for Economic Co-operation and Development (OECD) to support the reportedly alarming claim that immigration would reduce the percentage of GDP devoted to welfare. Thus, "the typical industrial society might spend 16 or 17 percent more than it does now on social services had it kept its foreign-born percentage where it was in 1970"⁵¹. Miller is quick in proposing his established interpretation, that is the reduction of social trust caused by increasing diversity and by the erosion of nationality. But

⁵⁰ P. 28.

⁵¹ P. 10.

the data do not speak to me in the same way as they do to Miller – perhaps it is my fault. From the quote, I would rather incline to take the opposite view, that is, to interpret migration as a contribution to welfare. And this is because the fact that the percentage of GDP invested in welfare is bigger does not necessarily mean that the welfare is comparatively more efficient or substantial, as Miller take it to be. Bigger is not stronger: higher percentages could also signal an ageing society, precisely the kind of problem states with lower immigration rates such as Italy or Japan are facing (lower by comparisons to multicultural countries such as Canada, the US, or Switzerland). But in the long run, such an imposing welfare expenditure is difficult to sustain, as demonstrated by quoting Boeri in chapter I.

This brings us to the second point I would like to sketch before moving on to the discussion of “open borders”, or the right to migrate. Miller quotes the demographic factor – containment of the world population – as another reason to limit immigration⁵². Granted, moving across a border does not increase the number of a human group. But Miller’s point is that by moving immigrants contribute to increase population in highly-industrialized societies, whose lifestyle has the worst impact on global warming and resource consumption. A *reduction ad absurdum* of Miller’s argument would be that this holds true also for industrial and technological development, so that a similar reasoning could suggest restricting the African countries’ ability to develop industrial economies and to raise the amount of material goods available to their citizens. But there are more surprising weaknesses in Miller’s presentation of the point. The first is that he goes as far as arguing that, without immigration restrictions, policies such as the Chinese one-child-only restriction cannot be enforced! This strikes me as a powerful counter-argument to immigration restrictions, since intrusion into family life of the kind of that regulation is incompatible with most accounts of limited state-power, liberal or of other stripes. But Miller does also notice that the policy has been abolished, without expanding on why. The fact is that in all the discussion Miller seems to be relying on outdated Malthusian assumptions, such as that population growth is dangerous to development and that we are on the verge of a demographic collapse. This thesis was popularized by biologist Paul Ehrlich in *The Population Bomb*⁵³, but the catastrophic scenarios suggested in it have been mostly discarded in the following decades. To the contrary, development economist Charles Kenny has argued that population growth is weakly associated with economic

⁵² Pp. 65-5.

⁵³ Ballantine Books, New York 1968.

development⁵⁴. And in any case, it is witnessed by uncountable public policies in economically advanced societies, by the very abolition of the one-child policy by the Chinese government as recalled by Miller, and by demographers such as Fred Pearce⁵⁵ that the current danger, at least in the West -but Pearce holds that with qualifications this applies to the world scenario-, is *underpopulation* and not overpopulation. Furthermore, as I will claim in the overall conclusions to this work, it is unsure whether measures of direct population control such as those advocated by Miller can be effective on a population whose precarious conditions would make it rational to ensure sustainment through numerous children. In addition, and on the contrary, fertility rates decline spontaneously when quality of life is improved, as Miller recognizes while speaking of the migrants' fertility quickly aligning with that of the receiving society. In any case, a right to *emigration* seems much more than sufficient to frustrate initiatives of the kind of the Chinese law, and thus Miller would be forced to make an argument against it too, something which he is generally unwilling to do.

What about the central question, the case for a right to immigrate as such? Miller rules it out by attacking all the “open borders” arguments which rely on an extension of the right to emigrate, but he does also refute the strategies that try to demonstrate the existence of such a right directly. When he discusses refugees, he sees their rights as grounded in a remedial duty of the state of destination which is left to obviate the situation created by the negligence of the sending state or by other circumstances. However, weak cosmopolitanism does not only imply respect and protection for all human beings as such, while still prioritizing one's own citizens: it does also include a duty to consider their claims, even if these go beyond the basic requirements collected in the list of fundamental human rights.

Thus, the mere willingness to migrate is not, according to Miller, morally irrelevant, being a free choice by a rational human being. To this it can be added that the choice can be motivated by objective gains that would be guaranteed in case of migration, say a manifold salary increase or advantages in terms of climate and security – although not at the scale which would make the claimants into refugees. Thus, both will and interest can coincide in grounding an individual's claim to immigration. To this can be added a general presumption in favor of freedom: this does

⁵⁴ *Getting Better: Why Global Development Is Succeeding--And How We Can Improve the World Even More*, Basic Books, New York 2011, see especially chapter 4: “The Good News: The End of the Malthusian Trap”.

⁵⁵ *The Coming Population Crash and Our Planet Surprising Future*, Beacon Press, Boston 2011.

not merely repeat the previous reasons, that of the individual choice and interest, since freedom is also on the part of the receiving government in reducing state-enforced restrictions – we assume the sending society cannot restrict exit. This way, it seems reasonable to argue that, out of a principle of “legal economy” – do not forbid anything in principle unless there are reasons to do it, the claim to immigrate would appear even stronger.

This is a picture which does not directly contrast with the one painted by Miller: I will now consider his constraints, that is 1) that this claim still does not constitute *a right* and 2) that the claim is outweighed by national self-determination, which in this context includes preservation of national identity, social trust, and substantial welfare as we have already resumed.

Why the space which is left to make an argument in favor of entries does not amount to establishing the existence of a presumptive right, according to Miller? I think this has to do with Miller’s own conception of what a right is. Self-determination itself is, according to Miller, *not* a right, but only “an important interest”⁵⁶. Miller’s reasoning on this issue is unchanged in the time of 20 years, so it seems reasonable to take it as a crucial feature of his theory of rights that “it devalues the currency of rights to announce rights which in their nature are sometimes incapable of fulfillment”⁵⁷. Despite Miller’s solid persuasion, this claim seems not immediately persuasive. What does “in their nature” here mean? A logical impossibility? But it is perfectly possible to conceive of a world in which all nationalities are self-determining at the same time, due to perfect coincidence between nations and states – a world of 179 Japans - or, more easily, due to adaptation of the conceptions of nationality to self-determining bodies. These two solutions, and especially the first one, are not realistic, but this does not amount to saying that “in its nature” self-determination cannot be globally achieved. Conversely, the same practical difficulties apply to many vital claims of which we would ordinarily think they are rights. If all citizens asked for medical assistance at the same time, would it be possible to provide it? The fact is, a more realistic view of rights should look at them in a more normative sense, although this might be misunderstood as a contradiction. It is the *moral pressure*, or, more positively, the *moral guidance* exerted by rights to life, liberty and the like that makes it suitable to declare them even in a world where they are continuously violated. Thus, the decision of declaring an interest and a choice a “right” rather than a strong claim or an important interest is not as unproblematic as Miller presents

⁵⁶ P. 70, confront with *On Nationality* chapter 5.

⁵⁷ *On Nationality*, p. 81.

it. Given the presumption in favor of liberty which Miller recognizes, and the special will and interest that an individual might have in migrating, I would rather claim that this counts as a right⁵⁸. It seems even possible to qualify it as a human right, provided that by “human” we mean mostly “applying to all human being as such” and “independent from membership in any specific society”. This seems fitting to a right, such as migration, which is by definition international. However, I am more than ready to recognize and repeat that it is clearly not a “human right” in the sense of being as fundamental as the right to life or to free speech, and that in general the necessity of safeguarding other rights like welfare – again a right which is difficult to grant to everyone all the time – restrict rights to mobility, and other rights as well. Another reason to choose to call it a right is that with the restrictive categorization employed by Miller, however prudential and sober, one is forced to be inconsistent with the wording of international law, which declares self-determination and many other similar claims – so far, not migration in the form of immigration – *rights*.

If self-determination and the wish to immigrate are both “important interests”, how are we to adjudicate between them? They appear to be, normatively, on the same level. Miller resolves the issue with an appeal to weak cosmopolitanism and partiality in favor of the claims of compatriots⁵⁹. Although, this seems more problematic due to several reasons. First, the “claims of our co-nationals” are not specific in the way some individual claims can be: when polls show us blatantly that people are worried of immigration and want to restrict it, we do not directly know how many migrants they would exclude, what rationales they would adopt, or how they would adjudicate any individual case. Would they reduce immigration rates to 5 or to 10 percent of their present level? Would they cut them indiscriminately, or rather select some jobs, or ethnic and religious groups? Would they perhaps let in short-term guest-workers? And for the skilled individual who has trained as a spatial engineer but cannot exercise in her home country due to shortage of required technologies? Also, would that “important interest” be expressed with the same importance as the other one? This would obviously depend on the individual case. Miller has noted that a majority of people declare they would be ready to fight for their country: is that

⁵⁸ Additional and stronger reasons will be provided in the final conclusions of this thesis, including a deepening of the argument presented here.

⁵⁹ *Strangers in Our Midst* p. 71.

reflected in the number of people trying to enter the armed forces? Does a national “taste” for foreigners count as much as a person’s attempt to determine her life by actually moving?

More crucially, Miller himself should mitigate the preference for co-nationals under many respects. For in presenting his principle of nationality, he is prompt to admit that “it would be an extreme and unusual case to find someone whose nationality always took precedence over every other source of identity”⁶⁰. It seems thus arguable that an individual or even a group can well give precedence to other identities, as for instance the four kind of normative sources which I listed in the previous section, and out of ideological choice, ethical or conscientious persuasion, religious belief, or practical interest, privilege some immigration claims at the expense of the principle of nationality.

Similar problems are to be faced in Miller’s theory of refuge. As we have seen, even in the case of refugees Miller holds on to the claim that “it would be a matter for the citizens of the receiving societies”⁶¹ to decide upon their admissions. This is coherent with claiming that duties towards non-citizens are only indirect and remedial: they are incumbent on other societies only when the refugees’ own states fail to observe them. Here I will not contest the bases of Miller’s reasoning, which still seems not persuasive to me since I would rather think that we have more substantive direct obligations toward other human beings. However, expounding over this point would require setting forth a fuller theory of global justice than is possible here. But even assuming Miller’s hierarchy between fellow nationals’ claims and those of all human beings, are not there limits to be introduced? Even if we concede that when two lives are at risk we have to give precedence to the co-national, does a vital claim such as being subtracted to death count less than a claim to preserve culture or self-determination?

As I said, I think that realism would induce us into thinking that Western states, out of historical responsibilities due to colonialism and recent military interventions, which Miller denies, coupled with their economic, political and geographical situation, which Miller also concedes, have in general even more pressing duties to consider the claims of refugees. Present-days real world refugees are not “hikers in the desert”⁶² as Miller presents them: they are people whose home we have contributed turning into a desert – often by extensive bombing – and sometimes we are

⁶⁰ *On Nationality*, p. 46.

⁶¹ *Strangers in Our Midst*, p. 163.

⁶² P. 171.

the ones entitled by power and circumstances to decide over their request for a safe heaven. Nonetheless, I think that even without accepting these additional responsibilities it is not persuasive to claim that national self-determination should trump global obligations no matter what, nor that refugee assistance is “not something that justice demands”⁶³. I think it much more plausible to advance an uncontroversial presumption in favor of a duty to assist, as in some legal systems, including the social democracies that Miller favors, would hold between a needy stranger and someone passing by.

Before finishing I would notice that Miller himself seems dissatisfied with his conclusions and willing to push obligations towards refugees further. He claims that states who refuse entry to refugees should not be allowed to accept “useful” migrants in because that would be hypocritical⁶⁴. This is something one could accept intuitively, but on closer inquiry it does not follow from Miller’s assumptions. If nation-states are free to determine the burden of humanitarian duties they are ready to discard, because this is not established by justice, and if at the same time agreements between “economic migrants” and national communities are based on mutual interests, there would be no reason why states who exclude refugees should be “punished” by being prohibited to let other migrants in – incidentally, I am not sure this would benefit refugees anyway: many Western publics would happily rid themselves of both. Similarly, if I refuse to give to a charity while still paying my taxes, I am at the same time free to waste my money in whatever way it pleases me. Also, from Miller’s theory it seems to follow that perfect closure, despite being a very peculiar choice, would be not only legitimate or morally indifferent as a national policy, but even something to be appreciated on some respects for its contribution to cohesion, solidarity, and deliberative democracy. However, in ordinary language “openness” is a positive term both when applied to individuals and to societies.

It is not easy to imagine a scenario Miller would commend because, besides expressing unease in evaluating politics of closure against needy foreigners, he refrains from offering policy proposals. That is meant to keep his view more strictly and purely philosophical: however, without more precise indications his theory seems open to varying interpretations which, together with the contrast with open borders I already noticed, has probably contributed to making it more controversial than it deserved.

⁶³ P. 163.

⁶⁴ P. 164.

III.I.4 Conclusions

In this chapter, I have explored the political theory of a group of writers I called “liberal nationalists”, but who could also be called left-communitarians, or simply nationalists for the importance they give to national community. I have focused on their theory of migration, but to understand that I introduced brief sketches from their more general theories of society and of the relation between individual and collective identity. The main subject of this chapter has been David Miller, which is the one who has probably written more and with more resonance on the topic.

My intention was not that of refuting the importance attached to nationality or to community, the anthropology or the “moral particularism” these authors exhibit in a variety of versions. I did not discuss these founding claims, but I am more than happy to acknowledge the value of nationality as a binding force and as a means to political self-determination. As it will appear from the general conclusion of this work, I am also in agreement with Miller on his challenge to the “coconut consensus”⁶⁵, at least in the sense that admission to the territory and citizenship rights should align with each other quickly. I believe that many national identities – the claim cannot be overgeneralized, as I explained – serve in general the purposes which Miller sets for them, and that to develop a national identity distinguished from ethnic identity is valuable – contrary to Miller, I am not as sure it should be clearly dissociated from citizenship.

With all these concessions, I presented reasons to reconsider and debunk some of Miller’s claims, including internal tensions within his theory. I claimed that being “ready to fight for one’s country” is not always valuable because what nationality means changes depending to circumstances and societies, and that supranational identities could well emerge if we allow processes and practices parallel to those which happened with national unifications to take place. It is to be specified, incidentally, that this latter supranational integration does not need or imply the abolition of current nation-states, but it might even support them in many scenarios, real and conceived-of, as the examples I made of Gibraltar and other would suggest.

More crucially, I argued that nationality is restricted by other “principles”, such as those offered by ideology, ethical and conscientious creeds, religious beliefs, and practical interests. Miller has already acknowledged other identities which concur with nationality, such as family and ethnic groups. But I noticed that ethnicity is much more central to present-day national

⁶⁵ *Strangers in Our Midst*, p. 161.

identities than Miller thinks, and that another of its crucial components is represented by citizenship, or membership into a state.

Since Miller's conception of nationality lays at the core of his philosophy of immigration, as I have shown, I think the preceding discussion important to qualify the role national self-determination is to play against the claims of immigrants. I begin with the observation that immigration and asylum are importantly affected by political processes such as colonialism and military interventions. To these, I argued, Miller pays insufficient attention, while his neglect of the role of power influences his not-so-realistic characterization of national identity, which in fact is generally the offspring of sovereignty exerted for a sufficiently long time and in sufficiently important domains – welfare, access to health care, military drafts and so on. Even the consideration of demographic factors is to be reassessed, because Miller does not even mention the problem of demographic decline. But it is widely reported that countries such as Japan and Russia are even in the condition of fearing *underpopulation*, with Japan discussing more than 800 cities and villages becoming extinct by 2040⁶⁶. Many ex-URSS countries and even Italy contemplate similar trends. In the context of demography endangering national survival, claiming that immigration is threatening the nation seems to need better grounding to say the least.

More substantial to Miller's and my own thesis is the claim that there would not be a right to immigration. I have recalled that Miller admits that there always will be cases for open borders, "since more freedom is better than less". But by scrutinizing more closely Miller's restrictive doctrine of rights, I have argued that, as with self-determination, also with immigration it would be more appropriate to call "a right" what he calls "an important interest" in order to have a terminology correspondent to actual moral strength. This is in turn derived from the strong interests and will immigrants display, and in the already mentioned principle that liberties are to be curtailed only when needed. I have also shown that Miller overplays the importance of national claims, for instance by giving precedence to them *in general* over the – literally – vital claims of refugees. Miller's own dissatisfaction with this conclusion would transpire from his contradictory claim that states should either accept refugees or reject all kinds of migrants.

It must be noticed that, since the foundations of their theories are to some extent common, many of the claims I advanced in critique to Miller apply also to other "liberal nationalist", as for

⁶⁶ Eric Johnston, "Is Japan Becoming Extinct?", *The Japan Times*, 16 May 2015.

instance with Walzer's similarly indeterminate and apparently exaggerated stance on the precedence of national identity over refugee rights.

Many important steps taken in this chapter have paved the way to move towards the normative conclusion of my work: the defense of open borders. It should by now be clear that I present the right to free movement as compatible with (moderate and reasonable) communitarian and national rights. I also specified the way in which rights are to be intended in general and all the more when dealing with a right which is admittedly not as fundamental as, say, the right to food and shelter. But when these combine, as in the case of refugees, the right to free entry seems very difficult to resist, except by similarly vital rights of the hosting communities. Weighting rights and moral claims in general is always hard, but it becomes possible only when a principle of proportionality and at least a very general hierarchy is observed: it is generally unreasonable to contrast a life-or-death matter with a cultural claim.

My hope is that the dialectic proposed so far is useful to circumscribe and make sense of my claim: thus, in the chapter to follow there is a summary of the relevant objections and counter-objections, in addition to more definitory and clarificatory work, which should suffice to ground and determine a right to free movement capable of withstanding the migrant and refugee crisis. But this right, as it was demonstrated here, is not at odds with national self-determination: it is rather meant to reinforce it, as for the free movement pillar of the European Union.

III.II Open Borders: A Vindication Persistently in Favor of a Global Right to Mobility¹

Abstract

As it has been illustrated in the first chapter, the world appears to be closing at a frantic pace, and exclusion of non-citizens is an established norm. This tendency, however, does not stem from philosophical questions, such as: What is the meaning of borders, be they open or closed? What is the status of border control in the view of political theory?

A classic argument advanced by Joseph Carens and recently restated by Antoine Pécoud and Paul de Guchteneire, but also restated by Carens himself, among others, holds that most prominent political theories would concede no room for restrictions to the freedom of international movement, and thus that basic democratic principles broadly conceived would compel to accept open borders. Carens' and similar reasoning have attracted widespread support, but also vast and radical criticism. In this chapter, I recall the objections to open borders based on 1) realism 2) liberal nationalism, and 3) freedom of association.

After resuming and supplementing the problems of realism and nationalism sketched in previous chapters, with the addition of the freedom of association objection, I show the main reasons why all these critiques fail in rebutting the claim for open borders, and therefore I argue that a right to freedom of international movement is no utopia but, when properly defined and qualified, it is the best normative answer to the urgent question of human mobility.

The implications of the debate have relevance, beyond the context of philosophy of migration, for a more general conception of the state. I will finally draw summarizing conclusions, especially on the issues of definition and contextualization.

Keywords: Open Borders, Freedom of Association, Free Movement, Ethics of Migration

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III.III.1.1 Introduction: Open Borders between History and Utopia

Unceasing movements of peoples are among the distinguishing features of modernity. The Ellis Island Immigration Museum provides a fascinating example: there, one can meet with the stories and faces of hundreds of thousands of immigrants who passed through the same rooms while devoted to very different purposes. The island has in fact served as the entrance gate to the United States: apparently a very open gate, if one considers that out of the 22 million immigrants arriving between 1892 and 1924, only 2% were rejected, mainly on grounds of serious health problems or criminal records². Thus, the sonnet *New Colossus*, written by Emma Lazarus in 1883 to celebrate the Statue of Liberty does not sound as inflated propaganda. Really the mild-eyed regard of the “MOTHER OF EXILES” should have appeared as a “world-wide welcome” to the “tired... poor... huddled masses” who crossed the ocean guided by a “yearning to breathe free”.

Later, Hitler's critique of this “mongrel people” and of its “genetic” weakness³ was to be proven inaccurate by history. If the First World War was to incite harsher relationships and closure among the nations, the Second World War led to the dismantling of radical nationalist ideologies, the creation of the UN, and the strengthening of US and USSR internationalism. This tendency, however, is not univocal nor unstoppable. Few years after the fall of the Berlin Wall, the US built fences between itself and Mexico. Recently, Donald Trump has made this wall and its meaning one of the main themes of his victorious presidential campaign, while restrictions to immigration and even refuge were among his very first presidential acts. Similar demands are advanced by Marine Le Pen and other right-wing populist parties, capable of winning an astonishing 46% consensus for the presidential candidate Norbert Hofer in Austria. Immigration control is also among the grounds frequently cited to explain Brexit. But even for liberal democratic states and parties which hold on firmly to “Fortress Europe”, militarily enforced immigration control is institutionalized everyday practice, from Ceuta and Melilla to Orbán's Hungary. These facts are as hard as concrete walls: nonetheless, the ideal of open borders has not yet perished.

² Figures can be consulted on the official museum website: <http://libertyellisfoundation.org/>, as well as on the website of the New York Harbor Parks www.nyharborparks.org. To appreciate the relative magnitude of this immigration flow and its background, it could be added that the US resident population jumped from 62,979,766 to 106,021,537 from 1890 to 1920 respectively: data are taken from The United States Census Bureau: <https://www.census.gov/en.html>.

³ On Hitler's ambivalent disapproval of America's multiculturalism, coupled with a praise of US eugenics policies, see Klaus P. Fischer, *Hitler and America*, University of Pennsylvania Press, Philadelphia 2011.

III.III.1.1 A Case for Open Borders

In 1987, Joseph Carens presented an ecumenical argument for open borders⁴. He claimed that the political theories of John Rawls, Robert Nozick, and mainstream utilitarian philosophers would not accord a place to migration restrictions, except for reasons of security and public order. In these theories, Carens identified what he was later to refer to as “basic democratic principles”⁵: that every rational agent is equal for what regards their choices, liberties, and utility. Liberty and equality are the foundations of liberal societies: therefore, it would not be permissible to introduce policies, such as migration restrictions, that would hardly be accepted by everyone reasonably and freely, or that would infringe on individual’s liberty, or fail to maximize general utility. Then, Carens did not provide a detailed account of how such a right could be practically implemented, as contrasted to the institutionalized “conventional views” that hold that states have discretion over entrance and membership with only marginal exceptions, most commonly those of refugees. However, he already allowed for nuanced and differentiated ways of implementation.

The case for open borders was advanced as a case of principle, firstly regarding immigration, and only secondarily affecting membership. The firmest normative point of Carens’ review of normative theories was that moral principles would imply much looser border closure than presently enforced. But the restrictions that would still be possible under this theoretical scenario would radically vary in meaning, size, and implementation methods.

After decades of debate, Carens has dared restating his central claims, despite that Rawls has distanced himself from them⁶. In support to Carens’ view, other philosophical traditions, or at

⁴ “Aliens and Citizens: “The Case for Open Borders”: see the discussion in chapter II.II above. Carens was neither the sole nor the first scholar to advance such a claim, and sometimes the arguments provided have been similar: a much quoted and seminal article in this respect is “The civil right we are not ready for: The right of free movement of people on the face of the earth”, by Roger Nett, *Ethics*, volume 81, 3, 1971, pp. 212-227 (Nett is cited, together with others, in Carens’ article note 1). Further examples of this early discussion with relevant similarities to Carens’ argument are Timothy King, “Immigration from Developing Countries: Some Philosophical Issues”, *Ethics*, Volume 93, No 3, 1983, pp. 525-36, and the already cited James L. Hudson, “Philosophy of Immigration”. Carens is presented as having defended open borders “most prominently” by Shelley Wilcox, in “The Open Borders Debate on Immigration”, *Philosophy Compass*, 4, 5, 2009 pp. 813–821. Wilcox rejects the idea of open borders *per se*. Peter C. Meilaender is also critical of Carens’ account of liberalism, but holds that “The Case for Open Borders” “remains the clearest and best-known statement in the literature of the case for free movement”. Meilaender names Carens as the “leading advocate” of such a position: “Liberalism and Open Borders: The Argument of Joseph Carens”, *The International Migration Review*, 33, 4, 1999, pp. 1062-1081.

⁵ Carens, *The Ethics of Immigration*. The reader can find in the same book more detailed reference to the criticism elicited by Carens’ article in 1987, and the answers elaborated by the author.

⁶ The evaluation of open borders in a Rawlsian liberal egalitarian perspective is too complex a subject to be added to the discussion here. Nonetheless, I find Carens’ counterarguments advanced in *The Ethics of Immigration* (see, for

least a significant number of their representatives, could now be invoked for a potentially widened consensus on open borders⁷. Carens is not the only one outstanding representative of the claim for freedom of international movement: for instance, a similar case has been advanced by Chandran Kukathas⁸ on a libertarian perspective, but also with economic arguments of a utilitarian fashion and a critique of the nation-state of a “Marxist” flavor, so to speak. The ideal of open borders is defended not only by philosophers but also by political activists such as Theresa Hayter⁹, and it has been strengthened and articulated by relying on a vast variety of arguments and perspectives¹⁰. Nonetheless, the case for open borders has met and continues to meet not only political but also theoretical resistance. To start with my own line of reasoning, I will now expound in general Carens’ views and comment on them, while recalling external potential validations offered by the examples of Peter Singer and Kukathas.

Both in the original article and in the later versions of his argument, Carens makes it explicit that he finds the Rawlsian version of the defense of open borders to be the most compelling. In the article, he applies the argument of an international “veil of ignorance” in order to question whether people in the original position would decide for or against free migration. Carens assumes, with a methodology similar to Rawls’, that there are no other revolutionary changes to the world order such as the abolition of the nation-state. He holds that, once all arbitrary distinctions of ethnicity, race, social status of birth and so on are filtered out, people would choose *not* to limit migration in an ideal scenario. Non-ideal theory should include the obstacles of partial compliance or even non-compliance to the principles of justice, and historical injustices should be rectified: even on this latter approach, however, Carens believes free migration would better accommodate the principle of equal liberty for all. As for equality, and as per the “difference principle”, for which it would be unfair to allow for inequalities which are not conducive to the

instance, the Appendix) sufficiently persuasive. Seyla Benhabib, in “The Law of Peoples, Distributive Justice, and Migrations”, elaborates a Kantian critique of Rawls that seems to go to Carens’ advantage, as it has been shown.

⁷ See the essays edited by Brian Barry & Robert E. Goodin, *Free Movement: Ethical Issues in the Transnational Migration of People and Money*, and the section on natural law especially: see also the chapter IV.II of this work. According to Mehmet Ugur (in Antoine Pécoud & Paul de Guchtenerie (eds.), *Migration without Borders: Essays on the Free Movement of People*, UNESCO Publishing & Berghann Books, New York-Oxford 2007 pp. 65-96), liberal egalitarianism and natural law theories are the traditions most clearly committed to open borders. Ugur’s account has methodological similarities to mine, but we differ in the reasons we offer and in the taxonomy of objections to open borders we consider: for instance, he puts the realist and communitarian perspectives together.

⁸ See among many his “Why Open Borders?” in *Ethical Perspectives*, No 4, 2012, pp. 649-675.

⁹ *Open Borders: The Case Against Immigration Control*, Pluto Press, London 2004.

¹⁰ See the pro-open borders online platform “Open Borders: The Case”: <https://openborders.info/>

benefit of the worst-off, Carens judges that it would be incompatible with migration restrictions. On several occasions, he proposes analogies between migration control and feudalism: a birthright privilege that inexorably affects everyone's status without choice, merit or fault on her or his part. Even if it could be conceded that the worst-off fellow *citizens* would be disadvantaged by freer movement, the relevant, just criterion should be the overall wellbeing of all *persons*.

Libertarian and utilitarian theories are accommodated even quicker and more easily by Carens. Nozickian theorists would distinguish between the property of the individual and the sovereignty of the state: the two would by no means be on the same moral ground. Since the state must be limited to the protection of liberties, and since among these liberties associations beyond the state's boundaries and a corresponding freedom of movement play an important role, libertarian political theory would be in favor of open borders. The utilitarian case is as straightforward since, no matter what conception of utility is considered, the fact that the recipients are citizens or not must be irrelevant. Even a counting for the racist and xenophobic preferences, whose moral relevance is dubious, would presumably be outnumbered by the prevalence of the world's poor.

These arguments seem no less compelling in Carens' more recent synthetic recapitulation of them as liberal democratic principles. Paradoxically, it is from the Rawlsian field that the strongest opposition in favor of state's sovereignty has been raised. Among the most prominent utilitarian spokespersons, Peter Singer¹¹ has suggested a pragmatic approach to the refugee crisis: to help refugees in their neighboring countries to maximize the purchasing power of the investment and not to fuel the West's xenophobic attitudes. His more radical and philosophically challenging suggestion, however, is that prosperous countries should increase their intake of migrants and refugees until they reach the verge of collapse. Considered that Carens would also accommodate, again in a Rawlsian fashion, for the necessity of keeping public order in the host society, the two arguments are generally in agreement, except for Singer's fewer prudence in protecting welfare and stability of the wealthiest in comparison to the rest of the world's. Singer's evaluation of the

¹¹ Among Singer latest and most pragmatic interventions is "Escaping the refugee crisis", published on 200 different syndicated journals on the 1st September 2015, and available online at <https://www.project-syndicate.org/commentary/escaping-europe-refugee-crisis-by-peter-singer-2015-09>. More systematic but still non-definitive interventions are in *Practical Ethics*, Second and Third Edition, Cambridge University Press, Cambridge 1993 and 2011. Singer devoted chapter 9 of the Second Edition to the issue, and then at page 9 of the Introduction to the Third Edition explains why he was dissatisfied with it and removed it. Singer is also the author, together with his wife Renata, of an article on migration seen from a utilitarian perspective published with the title "The Ethics of Refugee Politics" in *Open Borders? Closed Societies?*.

issue of refugees has changed over time, depending on how to account for the relevant social and political facts especially: the reaction of native populations to increased immigration flows, indeed, affects the counting of utility. Nonetheless it would be hard to say that he has distanced himself from the pro-open borders assumptions hypothesized by Carens, or that utilitarianism would tilt more for border control than for open borders. Simplistically speaking, Singer has turned more “realist(ic)”.

On the libertarian front, consensus for open borders is even clearer and stronger. In his article “Why Open Borders”, Kukathas defends the open borders perspective from the critiques of a more moderate Ryan Pevnick, who is instead trying to strike a difficult balance *Between Open Borders and Absolute State Sovereignty*¹², as the subtitle of Pevnick’s article reads. Kukathas is taking a much tougher stance against border restrictions precisely by stressing the theoretical point already emphasized by Carens: in a libertarian perspective, the state’s autonomous choice and association is surely secondary to the individual’s. This is the core intuition that I will develop later while responding to the “freedom of association” argument in favor of state sovereignty. Even worse: the state, says Kukathas, is a political fiction shaped by the ruling elites, and open borders would be a way of resisting this and, indirectly, other forms of socio-economic subjugation. Kukathas here is taking an almost anarchic standpoint, to the point of affirming that “the entity [the state] he [Pevnick] is describing, and to which he accords rights, does not exist”¹³. But even if this accusation turned out to be an extremization, it is evident that Carens is right in presupposing the libertarian front mainly to stand with him on the critique of closed borders.

To conclude this introductory section, the case for open border as an “overlapping consensus” between philosophers of different schools still has some force. 30 years after the publication of Carens’ essay, it would seem that no definitive refutation has been advanced¹⁴, especially from within the fields Carens appealed to in his argument for an overlapping consensus.

However, and rather surprisingly, what is the exact amount of the open border position is somewhat unclear. Since the debate itself started and developed long before satisfying clarificatory inquiries were introduced, I have decided to present it in this order also. But before going on, the question of the meaning of open borders has become inescapable.

¹² Ryan Pevnick, *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty*, Cambridge University Press, Cambridge 2011.

¹³ Kukathas, p. 668.

¹⁴ Here I assume the critiques I recalled and advanced towards the Rawlsian dismissal of Carens’ thesis.

III.III.1.2 Open Borders: An Analysis of Meaning

As Kukathas often says, a border is not “a natural kind”. A border is an imaginary and artificial entity – all too many borders in the world are contentious – and the question of its “openness” risks being rendered purely metaphorical and vague. It would be extremely relevant to have an analysis of what a border is by a metaphysician or a philosopher of language, but here we cannot venture into such an endeavor. Nonetheless, there are some constraining preliminary remarks to be made: a border is not a “primary” or “natural” object, as, say, a river or a mountain or a chunk of wood, but it is rather an artefact or, sometimes, an artificial and symbolic interpretation of objects of this very sort. This way, rivers, mountains, and wooden palisades have served and are serving most normally as borders, or as signs of the presence of an immaterial border. I would suspect we are blinded to much of this complexity by our culture and education: in school, we are trained to recognize and name borders since the age of five or six, and only later in life we personally come to the place and find to our surprise that borders are much more difficult to detect there than on colorful atlases. On these atlases, after all, even states’ and continents’ proportions can differ, because geography is not as immune from politics and practical goals as we are apt and made to think while learning the fundamentals as children¹⁵. Furthermore, many borders are *vague*¹⁶: a most obvious example would be that of a thousand of meters wide mountain, or of a mountain chain. This vagueness lends itself to the conflictual and symbolic aspect of the drawing of borders: the French and Italian dispute over who owns the tip of Mont Blanc/Monte Bianco is exemplary of this kind of problems. Unfortunately, however, not all such symbolic border disputes are as nonviolent as this one now is.

Whatever they be, borders are not immutable. Both war and pacification lead to borders making and border dismantling, to peaceful division or aggressive annexation. Or the other way around: to border abolition between friendly or unifying countries, and to newly drawn borders in

¹⁵ The controversy over the accuracy of the Mercator map is famous in the context of discussion over world development and Western ideology and hegemony. A popularizing introduction can be found in Stacy Liberatore, “The map that shows what the world REALLY looks like”, published on the *Daily Mail Online* on 1st November 2016 (<http://www.dailymail.co.uk/sciencetech/article-3894600/The-map-shows-world-REALLY-looks-like-Japanese-design-flattens-Earth-big-landmasses-oceans-really-are.html>, last accessed on 17/08/2017). To take but one example: in Mercator (common) world maps, Scandinavian countries are bigger than the Indian Subcontinent: in real proportions, India is three times the size of all Scandinavian countries combined. Mercator map is accurate for sailing purposes: it was in fact designed for that goal, at the booming of European nautical colonialism.

¹⁶ Even more, borders are the paradigmatic example and crucial issue of the epistemological problem of vagueness: see Elisa Paganini, *La vaghezza* (“On Vagueness”), Carocci, Roma 2008.

the case of wars of secession. Sometimes, these changes even contradict the generally held and statistically correct belief that the state is more stable than the individual, leading to several border changes in one's lifespan. Finally, naturally defined borders are subject to the unending changes of the planet earth: the art project *Italian Limes*, for instance, is constantly filming the slipping border between Italy and Austria, which moves by hundreds of meters in a relatively short time¹⁷.

With all its problems, this “geographic” conception of borders is still not the most relevant for the migration issue. For borders can reach much beyond a state's territory, as shown by embassies, and be better understood as *jurisdiction*. According to Kukathas, this is the crucial meaning, since “[b]orders are political constructions demarcating distinct and separate jurisdictions”¹⁸. Kukathas is here remarkably attentive to a problem of definition which is often surprisingly overlooked. He does also notice that jurisdictions might be overlapping: when abroad as a tourist I do not exit the jurisdiction of my citizenship but I institute some obligations toward the welcoming state. Besides providing us with a definition of borders as a demarcation of a jurisdiction, Kukathas also distinguishes between entrance and membership. This is a better-known divide in immigration theory, at least from the classic intervention by Michael Walzer on¹⁹. In opposition to Walzer, however, Kukathas²⁰ does not believe the problem of immigration to be correctly understood as being principally a problem of membership, since in crossing a border the fact of joining another community would only be one among many other aspects. Also, from a libertarian point of view, the association between fellow citizens is particularly feeble, since the state is a minimal guarantee for individual rights. I think that part of this difference of approaches depends on a question of terminology: that is, on whether jurisdiction is meant to be intertwined with, accompanied with, presupposing, or even coinciding with membership. If it is thus, Walzer has a good point in holding that according to democratic values one cannot “associate” as a purely ruled-over, and advances his critique of guest-workers and denizens accordingly. Otherwise, as Kukathas seems to hold, a state can devise much thinner forms of jurisdiction, independently from a membership that can also be thought of as less demanding than in Walzer's view. Although, there are other important distinctions to be kept in mind while discussing what the openness of a border is, again according to Kukathas. One is that between the rights people enjoy in entering a

¹⁷ <http://www.italianlimes.net/>

¹⁸ Kukathas, p. 652.

¹⁹ “The Distribution of Membership”.

²⁰ P. 654.

jurisdiction and processing in their integration to it, for instance from migration or refuge through residence to citizenship. This gap between an entitlement to certain rights and another to different ones is aptly seen as a “border”. The bundle of rights one is a holder of may change dramatically through moving and integrating from a poor to an affluent country, but also from a libertarian to a more welfarist one. And then, there is the important distinction between openness of a border *de iure* and *de facto*: it is well established that many countries tolerate the presence of millions of immigrants who are in the country in defiance of their migration law. Finally, all these dimensions might intersect to constitute some specific migration scenarios with the related ethical problems.

Kukathas’s analysis is aimed at elaborating a definition of *open borders*, rather than of *borders*: that is why, despite sharing its goal, I would personally introduce a shift of emphasis and an additional point in this definitory clarification. First, I believe that borders’ and migrations’ issues are today best understood as a question of *status*, or, at least, that it is expedient to retain an emphasis on this aspect. Belonging to a community, entering and integrating into a jurisdiction, and, above all, the enjoyment of rights therein, are all aspects that can be comprehended in this complex situation. A status may include, most importantly, rights which are explicitly legally granted and effectively enforced: this is the kind of status most migrants aspire to. But this status is also comprehensive of an identity one wants to project onto her or himself and to assume, perhaps in part, perhaps fully: some national “dream” or stereotype. In each specific case these dimensions might be aggregated or broken down: thus in one case the problem is that one claims to be protected by a country’s refugee law, in another that one wants to work and especially to do that with all the protection enjoyed under some specific jurisdiction, in a third example one could be fully integrated in terms of rights and even membership but denied (at least, by someone) a full-fledged identity because of her or his defying ethnical, linguistic, religious or sexual stereotypes. This last case explains why, in the migration and integration debate, phrases such as “second” and even “third generation” exist. Thus, migration, citizenship, national identity and similar topics are at the same time distinct and strictly intertwined, and a discussion of open borders can also imply discussing the crossing of all these complex divides between rich and poor, voting and non-voting, entitled and not entitled, black and white. For the sake of simplicity and precision, the debate on open borders is often centered on the issue of entering some state’s territory. This is the case for the present inquiry: but in order not be naïve or blind to the problems which are implicated and often charge this specific issue in political reality, one must be aware of all these other dimensions.

Furthermore, since the associations of entrance, residence, and integration into membership are often blurry and confuse, and since they entertain complex relations to one another, it will be necessary here to mention and passingly deal with some aspects going beyond simple migration – in the sense of movement into another state’s territory - in order to draw distinctions.

To resume what I mean with the points I have just advanced, I would suggest considering the example of professions: these statuses include specific rights (a judge can, for instance, enter a tribunal at times and in places other people cannot), a more or less defined socio-economic standing (a salary and certain hierarchical relations to other professions), presuppositions about someone’s training, skills, background, behavior, and perhaps other relevant social, cultural and economic aspects. In thinking about people moving from one territory to another, or giving up a certain citizenship for another, or just assuming a new one, a similar complexity is implied. It would be appealing to reduce all this to one single problem and dimension: but it is exactly because of this intertwining that migration and citizenship questions attract such a wide and deep concern. In conclusion, I would agree with Carens that citizenship and migration restrictions are at least comparable to a hierarchy of status as in a feudal regime, and that this is utterly problematic.

A second integration of Kukathas’s account, besides stressing that migration and citizenship are questions of status, would consist in noticing that he deals mainly with the definition of *borders*, but I believe it important to qualify what is meant by *open* no less carefully. I personally do not mean, for instance, the absolute and universal elimination of restriction to entries, even more of controls on these entries -nor it seems that Kukathas does. Again, the nature of borders renders it difficult to specify their quality. For, if it is easy to imagine what it means to open, say, customs, it has been shown that these do not coincide with borders. It can be noted, however, that some attempts at the securitization or the closure of borders proceed exactly in the direction of making borders and customs look alike. In general, a mountain or a river have no doors, and they cannot be permanently closed: closing completely *all* the borders by presiding them or through walls is a move that is rarely held to be reasonable or simply technically possible even by the most affluent, powerful and self-sufficient states. Also, as we noticed above, the most relevant borders are the procedures to concede visas, the norms and practices through which restrictions are enforced, and the like. Thus, the point advanced by Kukathas that to defend open borders is not only to wish for greater immigration but “[i]t is to call for the removal of a range of restrictions

on the movement of people from one jurisdiction into another” is well taken²¹. And still, to represent open borders as a simple removal of restrictions would be confusing and dangerous to the very cause of open borders. For it is evident that a policy cannot be judged to be better or worse, more or less just, simply because of the *quantity* of restrictions it allows for. I would believe my claim would be compatible with Kukathas’s overall argument and presuppositions, but it is important not to leave it implicit. A policy that would allow a terrorist in, or one that would not permit family reunifications, would be morally worse than other opposite policies, other things being equal, despite their being “less restrictive”. Also, the theoretical principle should not be confused with its practicalities. Carens is here again one of the outstanding examples of the awareness that is necessary for solving this puzzle: the recognition of a right is not to be hastily translated into a specific implementation which is not responsive to context²². This might sound hypocritical or confusing, but I would argue it to be the opposite upon attentive reflection. Think about the right to education: is it impaired by the choice of a school not to accept enrollments that would exceed a certain students-to-teacher ratio? Or by the decision to temporarily close a school because some facilities have been discovered to be inadequate? In the same way, while reversing the established view on the primacy of the state’s sovereign discretion over admittance, the theory of open borders might accommodate for a whole range of commonsense restrictions and qualifications. This applies to all other fundamental rights as well, when balanced against different rights or just distributed among equals, as the right to education interacting with safety or with limited resources in the examples above. Also, while claiming it to be a right – this is, for me, the essence of the open borders position- one is not committed to the right of free movement being as fundamental as other essential human rights²³, and always taking priority on, say, security, protection of the environment, or similar concerns. Indeed, what makes the case of refugees more pressing is partly the fact that in that context observance of the right to move is coupled with enforcement of other more fundamental rights, including sometimes the right to life.

²¹ Kukathas, p. 653.

²² I can refer, for instance, to the two-layered structure of his *The Ethics of Immigration*, where he distinguishes policy advices and possible achievements from the theoretical case in favor of open borders. See chapter II.II here above.

²³ “It is plain that the creation of such classes of citizenship is an offence against a human right – the right to have somewhere where one is incontestably entitled to live; not a right as fundamental as the rights not to be murdered, tortured, raped or deprived of one’s dwelling, which are those which we principally have in mind when we speak of ‘human rights’, and which Milosevic, Pinochet and other tyrants are accused of violating, but a right nevertheless.” Dummett, *On Immigration and Refugees*, p. 29.

To conclude, with “open borders” I personally mean (1) the claim for the existence of a right to international movement and (2) its general primacy on the sovereign right of the state to determine entry, *when not supplemented by other reasons and ceteris paribus* (“other things being equal”). Some ambiguities in these expressions still need to be spelled out: it must be nonetheless clear, and thus is fitting to repeat it, that such a definition would accommodate for the existence of qualifications and restrictions on the right advanced, no less than for rights of other kinds. A thusly motivated restriction to entry could well be legitimate or even laudable. I also leave open the question of how fundamental or hierarchically relevant such a right is. Finally, the modality to exercise such right are and must be state-regulated: in the same way as the right to vote does not mean one can vote whenever it pleases, so open borders are compatible with controls, maintenance costs, and waiting lists. On the other hand, and specifically regarding (2), without committing to Kukathas’s and others’ demanding approaches on the non-existence or the unescapably ideological and elites-dominated nature of the state, I simply require that the rights, interests, and choices of *persons* are to come first, and the political entity called “state” be subordinate to their services. In order not to be oppressive, state authority cannot rely on simple will or whim, and must provide reasons for interfering with the individuals’ associations or movements. These reasons need being especially strong if the individuals have on their part, besides their legitimate will, other pressing reasons or needs on which they are migrating. This point also needs clarification not to be misunderstood as an anarchistic claim: I will draw such explanations from the dialogue with the opposers to open borders I now set out to undertake.

I.III.2.1 The Realist Objection

Realist objections of some sorts have been expounded in part II already: it is nonetheless useful to resume them and see how they are tailored to answer the open borders position, before considering the response which is in turn offered by advocates of free movement. Even the supporters of open borders concede that the scenario they propose is distant from political reality: the realist objection stresses this tension and emphasizes the inapplicability of arguments of the sort of Carens’. The realist would mostly not contest the logic of the open border consensus, but s/he would rather criticize the attempt at making the moral principles it is based on work in the

international scenario²⁴. According to the extreme version of realism, liberalism²⁵ would be conceivable of only in the context of the nation-state, belonging to a society of sovereign nation-states or “peoples”, so that morality and politics are inevitably two-tiered and egalitarianism stops at the state’s borders. For a less radical formulation of this objection, it is only the distinctive, fundamental, and sometimes dangerous nature of the issues of membership and migration that prevents liberal principles from holding at this level. The state must ensure its own survival, and thus restricts liberalism to citizens for liberalism’s and citizens’ sake. The specific threats presented by immigration, the realist claims, are akin to a state of war, and they render a moral precept of the kind of open borders unfeasible in practice no matter its standing in principle.

The arguments realists usually offer are many but related. A major one is an anthropological account. This can be further split into two related elements: the argument from natural selfishness and the argument from the limits of natural generosity. These two aspects influence the variations of realism from an extreme to a more moderate account. According to the “negative” anthropology which has its sources in authors like Thucydides, Machiavelli, and Hobbes, human nature is self-interested, and moral principles have to be either based on the natural instincts of self-preservation and acquisition or to be overrun by them. When applied to membership and immigration, this view implies that, especially in a world of relatively scarce resources such as the present one, humans will not respect any lofty ideal of liberty or moral equality if taking part to a competition that threatens their material and social entitlements or even their survival directly. Confronted with extreme circumstances – and those surrounding migration and refuge especially are rarely ordinary ones – humans will choose their own immediate preservation and interests, and discard all demanding abstractions.

Surely, there can also be a form of natural generosity: despite the harshness of the human condition and the egoistic nature of mankind, humans are often altruistic. And this is so for a reason: they protect their own interests in others – for instance, when they struggle for their relatives and children – and they expect a retribution-yielding outcome from their behavior. The

²⁴ The “realist” or “Hobbesian” objection to liberal political theory is considered at chapter 8 of Phillip Cole, *Philosophies of Exclusion*. For theorists sympathetic with the realist perspective see John A. Scanlan, & O. T. Kent, “The force of moral arguments for a just immigration policy in a Hobbesian universe: the contemporary American example”, and Frederick J. Whelan, “Citizenship and freedom of movement: an open admission policy?”, and in general all the bibliography cited in chapter II.I.

²⁵ The realist objection applies to ethical groundings to the right to free movement other than liberalism as well: for an example of such groundings see chapter IV.II.

more distant other people are from the sphere of their own interests, or the less likely reciprocal aid is to be returned from them, the less interested in cooperation people will become. Thus, integration, citizenship, and similar forms of close association, are possible only between peoples having something in common -usually, practical and vital interests- and democratic, liberal, or other demanding forms of morality become utopian when disembodied from this factual situation. Unsurprisingly, realist arguments are often intertwined and even confused with communitarians, welfarist, and nationalistic ones: realists also tend to accept, even if with very different a perspective from ethical nationalists, the “classic” account of the state as a large family or a community of some sort. Notwithstanding that they can easily recognize these stories to be mostly useful fictions, they remark that the fiction cannot be pushed too far: people cannot be persuaded to associate with too distant others, and even association with close others requires a significant effort of state policy and education, if not outright propaganda.

For what regards welfare, welcoming migrants out of sheer charity would not work as an argument for actual human beings, despite sounding apt as a purely theoretical ideal or the imaginary law of a world of angels. Unless there are benefits to be reaped out of it, and some form of reciprocity is granted, people would refuse to cooperate. Now, reciprocity and future benefits are unrealistic when expected from the most dispossessed, and the strategic forecast of another people’s behavior would be based on one’s own. That is, scarce solidarity will be expected from scarcely related foreigners.

In conclusion, security, with its correlative psychological aspect of fear, together with the struggle for power, remains at the core of the realist objection to open borders as, more generally, of realist political theory. A people would not and perhaps even should not – depending on how normative a specific version of realism is meant to be - give up their firm control over land and resources, for obvious geostrategic and political reasons: unrestricted admissions would amount to a universalization of access to the requirements of ruling, and to the risk of being ruled for those who surrender them to others. But with this crave for power comes the ancestral fear of destruction: people will never accept the possibility of being overwhelmed and becoming themselves strangers and, possibly, a minority at their home. Having a definite, state-established, and controlled figure for entrances of foreigners is, as many other restrictions and controls, a way of containing the primordial terror of the unknown and the fear for a loss of control, political and social. Realist concerns do inform state policies and, as usual in the realist tradition, especially when it comes to

realism in international relations, they are informed by state policies in turn and modelled upon them: that is why a satisfying answer to them is as crucial as difficult to provide.

To summarize the main questions one final time: realists criticize the moralization of politics (extreme version of the Hobbesian critique), the attempt at extending liberal democratic values to the international sphere and the contexts of membership and admission (moderate version), and they advance a caveat based on human anthropology by stressing the importance of reciprocity of interests, security, and power.

III.III.2.2 The Liberal Nationalist Objection

It is possible to advance other objections to freedom of international movement from within the liberal tradition²⁶. Similarly to what the realists claim, but with less radical arguments and presentation, liberal nationalists do not suspend liberal principles in the international context – to the contrary, they usually accept a form of “weak cosmopolitanism”. Nonetheless, they present caveats principally related to the fundamental political goods of democracy and welfare. Despite being concerned with these two communal, or even communitarian, goods, which are unattainable if not in political consociations with others, liberal nationalists remain liberals in so far as they derive the importance of these socially constructed goods (and that of important goods such as culture as well) from the primacy of the individual. It is judged verisimilar even by advocates of open borders that the welfare system, at least a welfare system of the kind which is conceivable of nowadays, would collapse in case of unrestricted international movement. So, it is claimed, would democracy, or at least a robust version such as deliberative democracy, which requires belonging, commitment, and accountability.

One prominent ancestor of this view is John Stuart Mill with his *Considerations on Representative Government*²⁷, but roots of liberal nationalism could be traced even before, to the very origin of the liberal tradition. The process of formation of the nation-state is as ancient as the liberal revolutions and their forerunners: liberalism and the nation-state are surely combined as a matter of history, besides being theoretically associated, as it has been seen for the case of Rawls.

²⁶ See the discussion in the previous chapter.

²⁷John Stuart Mill, *Three Essays: Consideration on Representative Government, On Liberty, The Subjection of Women*, Oxford University Press, Oxford 1975.

In this scenario, the crucial liberal nationalist values of democratic deliberation, liberty, equality, and national identity might be threatened by the dissolution or even the relaxation of the political community. The political principles and all the conceivable institutions of democracy, liberal nationalists claim, presuppose and require a well-defined *demos*, a politically active and enfranchised people. This cannot consist of an inhomogeneous mass without binding relations of language, feelings and others: to have a shared deliberation, the possession of a common language is perhaps the most fundamental requirement, whose importance hardly needs being demonstrated. But even a minimal requirement such as a common *lingua franca* is not granted in a context of massive migration, and it could become extremely difficult to obtain once that open borders are established.

In reality, such a minimal linguistic homogeneity would not suffice without a corresponding unity, or at least a strong general likeliness, in culture, with a special emphasis on ethics and politics. For, besides a language through which to have the discussion, it is necessary to dispose of agreed-upon standards and principles to set priorities and address disagreements. But if homogeneity and a certain level of relatedness are indispensable to have a *demos*, all the more they are to exert *kratos*: that is, the people's power, the execution of its will or choice, the enforcement of the laws, the practice of self-determination. Any individual's liberty is conditioned on the subsistence of this background societal liberty, which is the liberty to deliberate together with the collectivity, and to protect the pursuit of private life plans from others' domination. Thus, the political and the individual self-determination cannot stand the one without the other: the liberal nationalist account, for instance in the form proposed by Yael Tamir, is deeply contaminated by elements of liberal republicanism²⁸.

But liberty and democracy are not the sole fundamental political values to be preserved through immigration restrictions and controls to the entrances: so is equality, especially in its socio-economic realizations. With reasons which complement those advanced by realists, liberal nationalists note that the welfare state and the communal control on each member's entitlement to a minimal standing would be possible only in a society that is to some extent closed. Introducing massive waves of immigration, even if coupled with carefully-devised processes for integration, would imply allowing for a second or even a third and fourth class of citizens and a fragmentation

²⁸ For example, Tamir often quotes Giuseppe Mazzini among her republican sources: see her *Liberal Nationalism*, pp 79; 92; 115....

of status. But with foreigners in general, citizens tend not to sympathize, and the national government might incline towards oppression. There is also a practical aspect of the welfarist concern: immigrants might well become net beneficiaries, rather than net contributors, to the state welfare system, so that their mere presence and fruition of social resources might be disruptive. But the more general and acute problem is that social trust amidst “strangers” would not be enough to support any substantial welfare state and a functioning deliberative democracy.

Finally, there is the role of national identity itself. Being one of the “sources of the self”, intertwined with the history of a country and with its institutions, such identity must be preserved as a vital interest for individuals and, as a matter of fact, the outcome of their free choice. National self-determination would then be the collective equivalent of individual self-determination, including the refusal to associate with others, with the crucially important difference of being a necessary prerequisite to the former. Thus, from the liberal nationalist argument that I presented as articulated on democracy and welfare, and then in further details on democratic deliberation, liberty, equality, and national identity, we can easily transition to the last objection to open borders.

I.III.2.3 An Objection Derived from Freedom of Association

From within the liberal field comes also another objection to the principle of free movement: since liberal states can be described as free associations whose members can exit at will, and since individuals have a right to form and define such associations thanks to the essential liberal right to dispose of their life and decide over its course, the state’s liberty in determining who belongs to the community cannot be restricted if not by the most exceptional circumstances – again cases of refugees and the like – and even then a compromise or a remedy is often to be found, as for instance temporary resettlement and burden sharing. Any interference in the societal establishment of the requirements to membership would be equivalent to an interference in the individual members’ right to free association. The argument is often presented and defended by way of analogies with clubs, the right to marry and divorce, and the like²⁹.

²⁹ The philosopher who articulated the freedom of association viewpoint is Christopher Heath Wellman, in Cole & Wellman, *Debating the Ethics of Immigration*. The first part of the book is a development of Christopher Heath Wellman, “Immigration and Freedom of Association,” *Ethics* 119 (2008): 109–41, and also a reply to Sarah Fine, “Freedom of Association Is Not the Answer”, *Ethics* 120, No. 2, 2010, pp. 338-356. My critique is partially convergent with and partially different from Fine’s.

The argument derived from freedom of association seems rather radical in its implications: doubts are cast even on the duty to let refugees settle stably. However, it seems compatible with some of the principles underlying many international practices, and it is presented as supportive of present-days global institutions and processes. The refugee question is accommodated by conceding that there is a general moral duty to accept asylum claimants *temporarily*, but a more general right to permanent residence and integration is lacking. A similar case is made with respect to immigration: immigrants can be granted touristic visas and the like, to the point that Wellman claims his view would allow for freer movement than presently enjoyed³⁰. But the sovereign right of the country to fix circumstances and limits to accessing full-fledged membership is granted precedence. The argument is coherent with a general theory of secession and independence. As with the creation of a new state, or the maintenance of autonomy from external interference, citizens have the sovereign right to decide whether to associate or not. The same is said with regard to entering and exiting international institutions and associations of states.

Nonetheless, and still in accordance with the international society, the freedom of association argument would identify limits to state sovereignty. Again, similarly to individuals' liberty being restricted by the harm principle, a state would be a legitimate self-determining entity only in the absence of massive violations of human rights. Deprived of this source of legitimacy, it causes refugees to find shelter abroad and is exposed to the legitimate and, possibly, even laudable interference by other states and the international society as a whole.

The two alternatives to accepting wider immigration Wellman suggests are indeed very well in harmony with the common slogan "help them at home": the two concrete forms of such help being development aid and armed intervention. This way, the freedom of association argument can accommodate for much of the egalitarian and utilitarian emphasis on the rights of people abroad. It is only the chosen means that varies: Wellman suggests that forcefully disarming a tyranny which is about to provoke refugees, especially if done in a preemptive manner, at the first signs of persecution, would be more effective and beneficial for the refugees themselves. A similar case could be made for international aid. If one considers the importance freedom of association is given in libertarian theory too, it becomes easy to see why Wellman presents his points as a systematic overturning of Carens' consensus over open borders.

³⁰ Wellman, "Immigration and Freedom of Association", p. 137.

A final aspect to grant coherence and practicability to the freedom of association theory of international movement would be the construction and enforcement of an international organization devoted to this aim. The example of the International Criminal Court and, more generally, the functioning of the UN would assure the feasibility and legitimacy of Wellman's claim regarding the principle of sovereignty and its limitations.

The core principle behind this structure is freedom of association as explored in and illustrated from a rich set of examples: from marriage to the regulation of the Jaycees non-profit organization, while the case of an abandoned child left on a doorstep would parallel that of a refugee. Migration restrictions are presented as extensions, derivations, and coherent developments of the moral intuitions sustaining the liberal regulation or non-regulation of such practices. In all these cases, there might be important moral elements and consequences for others: still, any person is free to marry or to refuse to marry on whatever reasons she or he finds important, a club can admit or reject potential associates, and the moral imperative of giving shelter to an abandoned child can well be respected by turning the child in due time to her or his original family or to some charity when adoption is not possible or simply not desired. People do not lose their rights to freedom of association upon entering into political associations such as states: those should rather be reinforced. They are obviously free to act openly and generously towards refugees and migrants if they wish, thus going beyond the minimal requirements of morality, but without doing direct harm to those foreigners they can also decide more restrictive policies, or opt to help them in other ways than by permanent admission to the territory. Wellman's thesis thus seems to capture a principle as simple as deep in liberal morality and to spell out its full consequences.

III.III.3.1 Refutation of the Realist Objection

As exemplified in the introduction, scenarios close to freedom of movement have been standard for long in history, and this observation already provides some ground for a refutation of the "realist"³¹ conception of international society, morality, and the norms of membership. The realist paradoxically pays a quasi-moral homage to sovereignty while at the same time denouncing it as "organized hypocrisy". Actually, it cannot be true that morality, liberal or otherwise, must

³¹ Here I am only referring to the critiques to open borders advanced above, and not to the fuller tenets of realist theory of which, as I have argued in chapter II.I, I am generally supportive.

confine itself within the nation-state's borders, even if realists note a very important point in stressing that classical liberal theories are designed to fit such a context. For what concerns qualified realism, the issue turns into an empirical evaluation of whether migration and open borders would really pose such an existential threat, so to justify restricting individuals' rights to international movement. Empirical cases such as the Schengen regime within the European Union and other sudden and massive immigration waves with few or no negative effects would show that it might be more reasonable to understand such misgivings as providing for qualifications and limits to the right to migration, as Carens does, rather than as theoretical counterarguments to it. But once again it is Carens' merit also to highlight that these problems are often of a derivative nature, massive migration being generally due to acute inequality, war, famine, and the like, and therefore it might be confusing and, in any case, indecisive to present them as a refutation of a right to migrate. These objections can thus be accommodated into the right to movement as defined above. In part, though, they are to be resisted.

To begin with the easiest task, it is evident that restrictions of some sort could and should integrate into open borders. All fundamental rights are thusly restricted. To illustrate such a line of argument, think about one of the most urgent rights: the right to health and physical integrity. Few people would deny that this right constitutes an important foundation for many nation-states. And yet, not the whole society is turned into a hospital, nor all the population is enrolled into the security forces. There are other goods and values with which even fundamental rights are to be harmonized. Thus, the well-established right to health care does not mean that one is entitled to free and immeasurable assistance for any nuisance affecting his or her health.

Then, a good deal of the realists' objections can be resisted. The point about the overwhelming of national communities is raised very often and in a host of different versions, not only in philosophy, but by media and in political analysis too. There is very probably a point where, under some conditions, the immigration rate becomes unmanageable and the receiving society collapses. In the most optimistic interpretation, one could say that the renovation and transformation rate would be so huge that the society is turned into another society, and what was a majority can become a minority or simply lose its hegemony, or disappear. One can imagine a transition from irrelevance (say a migration rate of some 0-1 percent of a society) to marginal (from 1 to 5%) up to considerable (5-20%), massive (20-50%) and overwhelming migration (more than 50%). But numbers and percentages say few things about the possibility to integrate. If one

was to draw a corresponding scale of the effects of immigration, from beneficial or irrelevant to negative and destructive, it would be very hard to establish a correspondence. During World War I, Belgians, in the order of the hundreds of thousands, fled to neighboring Netherlands: the locals and the world responded with solidarity³². The Central Powers, on their part, tried to halt the flow with an electrified fence which caused an unknown number of casualties: incidentally, it must be recognized that this was one of the most effective immigration restriction in history, as well as one of the most brutal. Nowadays, countries like Singapore, Switzerland, the European city-state monarchies and the Gulf States display impressive shares of foreign-born population. Foreigners are sometimes more numerous than the natives, even without counting commuters who come to work daily from the other side of the frontier, or “circular migration”. Why are there tensions for much smaller portions on other occasion?

The answer is difficult to find, especially when the perspective is general or universal. Ethnic similarities, common languages, culture, the specific historical context and the circumstances of migration can turn an invasion into a liberation, and a deportation into refuge: sometimes, opposites coexist in the eyes of different observers. The meaning and the impact of migration depends on too many circumstances to be over-generalized. Thus, the realist unrestricted claim that the question of membership in and by itself poses an existential threat to the political identity and autonomy of the community must be significantly debunked. The country’s essence is affected by migration in a similar way as it is affected by natality which, by the way, vary greatly depending on the ethnic group considered, thus altering the constitution of the people in the long run. In both cases, many forms of state policy and soft governance are compatible with democratic principles, but the sharp, forcible, and intrusive curtailing of private liberties is not. And the difficulty in consociating with distant others is not new in the history of institutional development: almost all contemporary nation-states, but especially the widest and, ironically, the most powerful, are composed of a mosaic of “imagined communities”, each of which much exceeding the “natural scale” of a family, a neighborhood, or a tribe. Nonetheless, solutions to ensure cooperation, solidarity, and the reduction of conflicts, have often been found to satisfying degrees, otherwise neither India nor the United States or the Russian Federation would resist and prosper to the extent they do.

³² The example has been made by Kukathas at a conference on “How to Cope with the Refugee Crisis”, held in Milan at the Politeia Institute and Library in October 2015.

As for the statist version of the argument, the idea that the institution of the nation-state and its sovereignty are immutable givens, and that their preservation is vital to democracy and liberalism, has already been responded to by Kukathas' critique of the ideological nature of the state and by Benhabib's rebuttal of Rawls' institutional rigidity. There is again no need to go to the point of claiming that the state does not exist: but each individual nation-state and the institution of the modern state in general are obviously mutable and transitory. Kukathas reminds us that many post-colonial states did not exist 70 years ago: some states merged and seceded several times in diverse entities. And in general, the institutional form and power of the state was very different only one or two centuries ago. The realists are correct in emphasizing the individuals' interest in stability and preservation of one's "human habitat": nonetheless, this does not necessarily imply the rigid fixation of some specific institution or state policy.

To sum up, many of the realist worries are taken, as they are presented, from political reality, and there is no reason to deny their relevance. Yet, they can well be rephrased, re-evaluated, and recast as qualifications to the right to migrate. The fact that a governance is needed is no objection against the right itself, no differently than the fact that there must be a limit and an order to exercise the right. Then this right will have to be harmonized and balanced with the individual and aggregated rights of others. The fact that a public school cannot accept more than a certain number of enrollments to work properly does not mean that the right to education is suspended or non-existent, nor does the fact that lessons are held only in particular periods and times. The concern for public order and the relative qualifications of the right to migrate was already explicit in Carens' *Case for Open Borders* article.

As for the essentialism of the closed and self-sufficient nation-state, it cannot resist historical awareness and mainstream political science. Few countries have ever achieved moments of almost perfect closure: many of them retained substantial foreign relations, including significant human in and outflows, even then. In general, politics is made up by the interchange and encounter of the members of an international society also, and if a political theory cannot accommodate for this by developing an international ethics, it must be only to leave the room for a complementary argument. The full exercise of the right to freedom of international movement can be understood as a "manifesto right", to use Joel Feinberg's terminology, as an achievement to be aimed at. Present world conditions such as constant wars, terrorism, and inequality, themselves of a problematic moral nature, do not disprove the existence nor the importance of such a right.

III.III.3.2 Refutation of the Liberal Nationalist Objection

The debate with the claims of liberal nationalism, especially welfarist liberal nationalism, has unfolded long enough to make the nationalist spokespersons admit that the empirical evidence for the negative impact of migration on democracy and welfare is not as uncontroversial as it would fit their argument. But here my refutation would proceed along other pathways also. The crucial problem for liberal nationalism is the distinction between migration and membership, which liberal nationalists have unsurprisingly criticized on independent grounds³³. On the contrary, when one acknowledges that strangers do not need to be members, or at least that it is not necessary to turn them into full members in a short time, the dissociation between membership and migration turns partially into a dissociation of the defense of welfare and democracy from the defense of closed borders, understood as a denial of the right to free movement. The obvious reply from the liberal nationalist would be the fear of domination or of metics-like conditions. This example accidentally reminds us that migration rates, democracy, and welfare, are not historically opposite one to the other, as the case of classic Athens illustrates. Democracy there was imperfect: but not more perfect was it in the homogeneous Sparta. More compellingly, it is possible to rejoin that contemporary international regimes such as human rights and international institutions allow for the status conceded to non-members to be much safer than the one granted to metics, and in the end consistent with democratic principles. When basic rights and standing are internationally guaranteed and, even better, when sending states' and supranational institutions' protections complement those afforded by international law, the strict coincidence between full membership and settlement in a country is not strictly necessary to ensure nondomination anymore.

Once again, it is not possible, but also not needed, to resist the objection that, say, overnight entrance of ten million new permanent settlers in a country of two million inhabitants would generally disrupt the socio-political fabric. Similarly, entrances of ten thousand patients in a two-hundred staffed hospital would likely make it hard if not impossible to effectively cure any of them, and for doctors to work. And yet, everyone's right to medical assistance needs not being denied in order to accommodate for such practical requirements: also, these catastrophic scenarios are rare in reality, thanks to collective coordination – degradation of life condition in a context

³³ Here I am again thinking about the seminal discussion by Walzer and the like.

would lead migrants to change routes, as sometimes observed during economic crises - and their existence is usually not caused by the establishment of the right itself.

Once that such obvious qualifications are granted, although, it becomes hard for the liberal nationalist to deal coherently with a principled defense of open borders. Take the principle of liberty: surely it is to be appreciated within a community but, in the case of refugees, even conceding that a significant restriction to the natives' liberty would ensue, admission would warrant substantial liberty to the persecuted or the wretched more generally. This is the core of Cole's critique of liberal principles in the context of migration and international justice: it is difficult to find reasons not to extend those principles to the consideration and benefit of the whole world population. Thus, if the social equality granted by a welfare system would be restrained by the draining effect of a massive immigration of needy people, still the extension of such protection to this numerous group would raise the question whether there has effectively been a net loss on a neutral standpoint. In this context, once again, the differentiation between membership, settlement, and simple access to the territory could safeguard at least the enjoyment of some of these rights without sacrificing all the other. In practice, for instance, if a large group was determined to immigrate, even to the point of renouncing to the full bundle of rights enjoyed by citizens in the country of destination, still it would seem less discriminatory to let them in rather than accepting a greater discrimination on access to the territory *and*, presumably, the enjoyment of such rights, which is usually more difficult in countries of emigration. Saying that the state's aim would be that of preserving homogeneity of treatment within the state boundaries would only be, once again, an unjustified restriction to the individual nation-state of the moral-political perspective.

Harder to address are worries concerning the functioning of deliberative democracy and of a substantial welfare system. True, it is difficult to imagine a political community without a shared language: it must be said, however, that technical improvements and mass education have diminished the impact of this issue, at least compared to Mill's epoch. Other than that, there is the practical solution, already enforced in most countries, of granting full membership only after a period of time which is well sufficient to the advanced learning of a country's native and principal tongue. In addition, it can be noted that all throughout history languages changed and integrated thanks to migratory waves. More broadly, cultural integration, given the usual numerical and proportional restrictions, would also pose no apocalyptic threat. It is a common misunderstanding of our era to generalize the difficulties of such intercultural dialogues as difficulties of the

migratory process *per se*. Migration is often demanding for human beings: for the welcoming and for the sending society, as well as for the individual migrant. Nonetheless, some aspects like the purported “clash of civilization”, or the indisputable danger of terrorism are only accidentally, even if sometimes importantly, connected with migration. It must be remembered that the first examples of mass-scale terrorism in the 21st century such as the 9/11 attack preceded, and did not follow, the migrant and refugee crisis. More generally in history, there have been tides of migration with lesser cultural friction: the Italian emigration to Argentina, for instance, despite its counting for around a half of the destination country’s population. Or the Chinese emigration to the United States, one of the most ancient flows to this country: again, except for troubles mainly caused by xenophobia, there was no large-scale abrupt cultural transformation, or any significant terrorist threat. With this I do not want to deny the importance of these issues: simply, the preservation and progress of a country’s national character are *in principle* well compatible with high immigration rates.

The issue of welfare is crucial to theoretical and political debates over immigration, having been discussed since decades in the context of rising migration flows. Carens concedes that preserving one country’s welfare, on the principle of collective freedom and responsibility for one’s own fellow citizens primarily, could allow for restrictions to the right to move³⁴. However, in the same article Carens concludes that such “arguments apply under some circumstances -but not, by and large, the circumstances in which the rich capitalist nations of the world find themselves today”³⁵. In the current scenario, it is not the collective choice of a people, except for the wealthiest countries, but, more often, the sheer limitation of resources that force people to emigrate. And such inequality of resources is much more difficult to defend, together with the corresponding privileges which immigration restrictions indirectly safeguards. Thus, once again, the validity of the concern for welfare within the nation-state is only one additional argument to expanding that concern to all the world. At present, migration to affluent welfare-states is, despite its limitations and contradictory aspects, one of the ways to address such concern and extending the coverage of welfare -until the welfare system itself resists. For the rest, it remains to be established whether migration as such is detrimental to the welfare state. Undoubtedly, higher

³⁴ Carens, “Immigration and the Welfare State”, in Amy Gutmann (ed.), *Democracy and the Welfare State*, Princeton University Press, Princeton 1988.

³⁵ P. 228.

unemployment rates, the need for support in integration and additional education, including language courses, and the difficulty of recovering from migration and refuge-related stress, render the migrants particularly burdensome. But their young age and the tendency of some to return to their countries of origin to spend the years of old age also make them particularly beneficial. In some cases, it has even been claimed that migrants were vital to supporting the welfare, as recalled in chapter I.I. And without pretending to adjudicate over this mostly empirical debate, it must be noted that, similarly to terrorism, the erosion of the welfare state in the West predates the MC, especially in the version required by neoliberal ideologies.

III.III.3.3 Overturning the Argument from Freedom of Association

Less dependent on empirical data is the line of argument proceeding from freedom of association. Despite having perhaps received lesser attention than the liberal nationalist line of reasoning, arguments from freedom of association turn out to be crucial to questions of migration. For, to secure a right to emigrate, it seems safe to anchor it to an essential individual freedom. Freedom of association arguments against freedom of movement rely on state sovereignty as an analogue and a derivative from individual freedom. Now, it is presupposed by the very rationale of analogical thinking that the source is more evident than the target. While claiming that “if club members have a right to reject application by non-members (A, source), then citizens also have a right to reject foreigners as immigrants and/or as new citizens (B, target)”, a hierarchical relation $A > (\text{more evident than}) B$ is instituted, or the argument would not make sense. In reality, many usual cases of migration are cases of individual associations – family reunification, employment offered to migrants, special affective ties – and in all these cases the very argument of liberty of association would presuppose the individual freedom of association to be more evident, and therefore to prevail, on the analogous and derivative collective freedom of association, *ceteris paribus*. As a matter of internal coherence and presuppositions, the argument of freedom of association would thus generally work in favor of a right to migrate rather than the opposite. Wellman shows some awareness of the problem when he notices that the freedom of association of the state can be countered by the freedom of association of individual citizens. However, he does not offer a solution except for restating the case and trying to add an *ad absurdum* counterargument by saying that denying the collective rights to self-determination would permit

annexation³⁶. The fact is, there could well be other grounds on which to defend independence, for instance historical arguments or an aggregation of individuals' self-determination: this would hold even more strictly since annexation implies being ruled over, that is, a "vertical" relation of subordination, while acceptance of new members is "horizontal" in that the entries and the naturalized would not immediately exercise any rule over the natives – especially if the former are minorities. Also, claiming that the numbers of persons involved would give the collective self-determination claim priority over the individual is dubious, as it is not evident at all that me and other inhabitants of my block are affected by our unknown neighbor's choice to hire an immigrant in the same way s/he would be affected by our interdiction to.

I would add to Fine's points that Wellman's reasoning itself would suggest individual choices to take precedence. Otherwise, why inferring the state's right to self-determination from cases of marriages and clubs, rather than the other way around? To this argument it might be replied that for a reason to be *more evident* does not in itself grant its being *stronger* than another. Thus, demonstrating the state's right from the example of two people wanting to marry would not mean that, if a person wants to marry with a foreigner, this latter claim would trump the state's choice on a strict migration policy. Theoretically, the harder to discover state's right could prevail in virtue, say, of its being the expression of a collective choice, or of granting that society is constituted in such a way that every individual's right to marry is ensured. In reality and in this specific case, it would be difficult to uphold such a reasoning, precisely because most states do recognize the citizen's right to marry foreigners of all nationalities and to make them immigrate under certain qualifications, therefore establishing that at least in this case there is no comparison between the constraining force of a migration policy and the validity of an individual claim to self-determination, in favor of this latter. But since in the majority of cases issues other than marriage and strictly private life spheres are at stake, and in principle it is true that for a claim to be more evidently valid it does not imply its being overriding with respect to another less evident one, I will add further reasons. Unfortunately for the argument from freedom of association, these are not hardly found.

First, the analogy at least with marriage and other private associations should independently be abandoned because of its misleading character. Fine suggests that the association in the country lacks the character of intimacy which grants the force to the right to marry:

³⁶ Fine, p. 342: quoting and discussing Wellman, "Immigration and Freedom of Association", p. 131.

nonetheless, in a complementary way, it would also lack the character of an expressive association like the right to religious or political association, and even the feature of being non-fundamental to the enjoyment of individual basic rights which is a distinctive attribute of associations such as sport clubs. But there are even stronger differences between marriage and association as fellow citizens. First and foremost, it is not necessary to marry, while deprivation of citizenship and statelessness have been condemned by international charters. Hannah Arendt has demonstrated all too compellingly, drawing from the historical catastrophes she bases her reasoning on, that the right to a citizenship is not a right among others, but the necessary prerequisite to the enjoyment of many human rights, a *right to have rights*. Thus, at least in the case of refugees arbitrarily deprived of their nationality, Wellman's case would not hold, but the consequences are much wider since one of his decisive analogy turns out to be fundamentally invalid as such.

Another characteristic of the association in the form of membership or migration would be that the state is a party to the bond, and not the background guarantor, as in the case of marriage or in countless other. This peculiar naturalizing and anthropomorphizing of an artificial entity such as the state, despite having some resemblances to the Rawlsian conception of an international original position as opposed to its interpretation by Carens, is inappropriate, contradictory, and, with respect to the argument we are considering at present, self-defeating. The inadequate recognition of the specificity of the state, which is not and under many respects does not even resemble a person, has been again one of the critiques advanced by Fine. But to complement such critique also, I would add that accepting an argument of this kind would go directly opposite to the trend of political liberation which has been characteristic of the liberal project Wellman intends to support. For at the core of liberal theories lies the claim that there are matters which can surely be decided privately and even arbitrarily, by groups or even individuals, but which are better taken out of the state's hands. An example would be the parents' right to initiate their children to a specific political allegiance or religion, which would be much more controversial on the part of the state. Collective self-determination must be compatible with the kind of self-determination previously granted to individuals, and not to erode back the rights concerning non-interference in their private affairs. If the state generally lacks a right to determine the color of my house or the number of my friends or children, it is not only because it is usually totalitarian states who want to decide on those issues. A democracy would be no more entitled to such interference in a strictly private sphere. In order to be able to say that my choice to associate with foreigners decisively

impact the lives of my fellow countrymen, so that they must be granted a say in the formation of such an association, it should be first of all shown in which ways *my* choice has such an impact. It is one thing to leave and work with a person, and another one to apprehend her or his existence from casual sights, television, or demographic statistics if at all.

Two schematic examples would help finally adjudicating the question. The first is the following. It is usually thought of as normal that individuals can make arbitrary choices regarding their marriages, friendships, and even, in many cases, working associations. Thus, if an employer prefers to hire a young employee rather than a mature one, or a young person prefers marrying with an older one, there are no moral issues arising. They make their choice according to their preferences however construed. The rationality of such choices can be debated: yet, they cannot be forced to act otherwise. In many countries, overt ethnic or religious discriminations would be more problematic, even in a private company or workplace: however, when it comes to marriage, choosing friends, or even the place to live in, within certain limits people are free to select on the basis of their own linguistic, ethnics, religious or other preferences, including totally arbitrary parameters such as age, profession, height or eye colors or whatever absurd trait one could decide to be attentive to. Applying a similar reasoning to the state's policy, for instance regarding immigration, but also, say, in selection for public employment, would immediately show how different the case is. Linguistic or cultural or even religious preferences are sometimes encountered in immigration and refugee policies – it would be fortunately different, at least *de iure*, with ethnic features- but this only on the base that the state purports to defend its identity by avoiding mass migration of a foreign kind. It would be unacceptable if a democratic state excluded *all* migrants - tourists, students, sport players- of a certain ethnic or religious or linguistic group, which would correspond to the individual's unproblematic right not to associate with some persons.

Secondly, and most radically, an argument from the subordination of the state to the individuals in the democratic tradition can be advanced. Thus worded, this principle might sound puzzling: we are supposed to “ask not what your country can do for you, but what you can do for your country”. Yet, this is a generally laudable slogan in support of generosity – like putting *others* before yourself, giving rather than receiving, and the like. It encourages selflessness and other character traits which are pleasing to be encountered and, for many people, desirable to acquire, but by *country* it is not meant the *state*. For the state is a complex and abstract object, with its institutional arrangement and its diverse forms of laws disposed in different hierarchical layers.

Some parts of it might – very rarely - be seen as sacred, other as perfectible, other as blatantly flawed. The general presupposition in ethics, contrary to the ideology of authoritarian or totalitarian societies, is that this structure is ordered to the people’s benefit – government “of the people by the people for the people” in Abraham Lincoln’s memorable formula - and not vice versa. To have people’s lives decided “by the government for the government” does not sound as rhetorically persuasive. Thus, imagine to be made to choose between the statements “the state’s choice must be altered according to the persons’ decisions” and “the persons’ decisions must be altered to observe the state’s choice”. This simple test suffices to reestablishing the hierarchy inadvertently and paradoxically reversed by Wellman. Bertold Brecht’s famous *The Solution* reasons somewhat analogously: we all see what is wrong and even bitterly comic in a government wanting “to dissolve the people and elect another”. And yet, upon reflection, something inadvertently similar to this “election of people” seems to be proposed by the freedom of association defenders of closed borders.

III.III.4 Conclusion: The Right to Emigrate and to Open Borders

As a preliminary result of this inquiry, several areas which are crucial to the adjudication of the claims for or against open-borders have been identified. The first is the definition of the very meaning of the phrase, as with the opposite “closed borders”. A second, but related, is the question of practical implementation of conflicting rights in conditions of relative scarcity of resources and high non-compliance rates due to anthropological and psychological inclinations, among other reasons: evidently, this is an issue for non-ideal theory and applied ethics that, if one wants to obtain precise guidelines, can be only solved contextually. Although, in this light, many realist and nationalist objections can simply be rephrased as advancing practical rather than theoretical difficulties for the principle of free movement. But if for realist and liberal-nationalist objections much of the evaluation is depending on empirical and contextual problems which are hardly solved, due to ambiguous evidence, so that what has been proposed is above all a line of arguments and only *prima facie* replies, the self-contradictory claims I have stressed with regard to the value of freedom of association should be sufficient to discard this view as a valid obstacle to the open border ideal. Combined with the first consideration, this would suggest that many problems arise or are rendered more complex by the vagueness and ambiguity of reference of many terms of the

debate: we need to be particularly wary, in this field, of metaphorical and analogical thinking. Another significant amount of ambiguity comes from the confusion between what is intrinsically proper of migration and problems which, despite being associated in practice -say wars, economic difficulties, or cultural incompatibilities- are rather independent issues. In this chapter, I had to hint to such intertwinement and confusion on many occasions, but this would be important matter for other specific researches, once again partly empirical.

When it comes to the substance of my argument, *contra* all the summarized objections, I defend a right to immigration and to open borders. For coherence, and to avoid dangerous consequences, fundamental moral principles cannot be confined within state's borders as the radical realist would require, and the rare, extreme circumstances posing an existential threat to the state, which are the moderate realist's concern, are better understood as reasons to manage migration, or as qualifications, restrictions, and eventually even exceptions to the right to migrate. Thus, advocates of open borders are finally to escape the underserved and yet recurrent caricature of Bakunin-like anarchism, as if they were claiming for a universal free-for-all. Within this picture of a globally valid right to migrate, jointed with careful and prudent migration management, it is sufficient to accept the distinction between entrance and (full) membership to dismiss the liberal nationalist accusation of prejudicing democracy and welfare. If membership, with its entitlements, comes gradually, and after a reasonable period, as in most states' integration policies, fundamental institutions would not be revolutionized, and collective goods, including national culture, would be preserved. The migration flows, and subsequent integration, would also be mitigated by the effective ties – be they economic, familial, affective, cultural or the like – that in most cases would bind the right to migrate to freedom of association. In the few remaining scenarios, short-time touristic and sojourn visas would be a fair implementation of the right to migrate. And what about people who would migrate without having any association, but not as tourists, rather as permanent settlers? This case is the hardest to assess. But since breaking ties with one's own environment, community, and even family, and moving to a completely different country without previous association with anyone there would be a rather unnatural behavior, many of these cases would coincide with those of refugees. And with regard to refugees, I am persuaded that the reasons they have to move, or better escape, and their having no choice, would entitle to a form of “emergency association”. In many cases, the short duration of their stay suggested as a remedy by Wellman would also be the refugees' interest and desire.

This way, the realist's and pessimist's skepticism on open borders is finally answered. Undoubtedly, problems and difficulties in application remain. But as the collapse of the iron curtain opened up the possibilities to emigrate to millions of people virtually overnight, and as the same geopolitical shift allowed for the introduction of a right to internal mobility in an immense region of the world where it was until then denied by deportations, forced resettlements, and other forms of state interference, thus the solution of a handful of world crises – about half of the world's refugee population comes from as few as three states – and the development of the principal sending countries would make a previous utopia sound natural and reasonable within a relatively short time. Once that these objections drawn from political common-sense and deep philosophical reflections are answered, Kukathas's simple and uncontroversial claim that it takes reasons to restrict any liberty, and the strongest reasons to do it forcefully, coupled with the individuation by Carens of the universalist, cosmopolitan, pro-open border core of the main approaches in ethics, are sufficient to reestablish the presumption of favor of free movement. Additional, and perhaps even stronger reasons in favor of the view proposed here, are presented in the conclusions of this work.

Still, I have to address a final objection, raised by the admirer of Bakunin mentioned above, but also by any sympathetic but exigent reader eager for a more impactful argument: do these claims amount to anything substantial at all? Am I not merely proposing a different *understanding* of conventional migration theories and practices? My argument would seem open to Hegelian-like left and right interpretations, as an implausible apology claiming that the right to free movement is already at work, or as an even more implausible anti-borders program. Besides making again reference to the conclusions, I would propose for this very important question a twofold reply.

First, my purpose here is and cannot but be a *theoretical* and *normative* vindication of open borders: the thorough articulation of a revolution in human mobility would require political, economic, historical and other considerations which would be unfitting here and now, and would require a huge amount of hard work by an immense number of various experts and political bodies rather than a single philosopher. Like Miller, I do not think that being “realist” require the proposal of detailed politics. Nonetheless, philosophical reasoning is key to such a relevant social change.

Secondly, relatedly, and, I think, more cogently, I would ask the demanding reader to reflect on the alterations triggered by the crucial introduction of a right to emigration and to refuge in international law. These invaluable moral, political, and legal progresses have led to none of the

catastrophic large-scale effects that in fact would have provided objections, and not an underpinning, for a broader right to mobility. There was no exchange of populations, domestic or international: the revolution was firstly and mostly in the *ethical* and *legal* rather than in the *sociological* and *geographic* universe. In a similar way, accepting a qualified right to immigrate would not necessarily jeopardize affluent liberal democracies' existence, basic political principles and social institutions, or their sovereign freedom. It would rather be consistent with their becoming even more thriving, more powerful, and freer states-communities, as it was the case with the world-wide welcoming frontier guarded by the Statue of Liberty.

Part IV
Appendixes

IV.I Solidarity and Story-Telling: Why Refugees' Stories Matter¹

Abstract

Former UN Secretary-General Ban Ki-Moon has described the so-called “refugee crisis” as a “crisis of solidarity”, more than a crisis of “numbers”. This chapter explores philosophically the sources of solidarity, and why it is so difficult to recognize the moral obligations toward refugees that derive from common humanity. The focus is on a specific aspect of the ethics of immigration: the relevance and appropriateness of “telling stories”. While Chandran Kukathas uses a refugee’s story to open his presentation of the immigration issue, Joseph Carens explains that he has decided to employ such stories systematically throughout his book to render the theory more accessible to the general public. Apparently to the contrary, David Miller has explicitly taken issue with such methodology and has insisted that the misleading and partial features of individual narratives would impede the devising of a just migration policy. I take sides with Kukathas and Carens and I support my claim with two arguments. First, I defend the importance of reflecting on refugee and migrant stories for developing relationship of empathy which would otherwise be impeded by their situation of foreignness and deprivation. Indeed, the classic theory of moral sentiments developed by Adam Smith holds that it is more difficult to enter in a relation of empathic solidarity with those who are suffering. This insight has been developed by Colin Grey to explain the corruption of refugee law, while Alasdair MacIntyre has shown the dramatic change occurring in standards and principles of moral evaluation when one shifts from impersonal and “statistical” considerations to personal and experiential compassion. My second argument would draw from refugees’ stories directly. Basing my claims on an analysis of Enaiyatollah Akbadi’s and Ali Ehsani’s accounts of Afghan refugees’ journeys to Europe, I hold that from refugees’ individual stories it is possible to derive elements for a systematic moral reasoning on migration. To resume, I claim that it is urgent to listen to refugees speaking in the first person to think fairly about migration and refuge: the prerequisite of solidarity is an authentic and personal encounter.

Keywords: Solidarity, Migrant and Refugee Crisis, Philosophy of immigration, Refugee Stories

¹ A previous version of this chapter has been presented at the workshop “Understanding Solidarity Amidst Refugee Crises” in Leeds in September 2017. I thank all the organizers, in particular Kerri Woods and Joshua Hobbs, for offering that remarkable occasion, and all the people intervening for their generous contribution. I also acknowledge the sponsor, the White Rose Consortium, who generously funded the workshops.

Chapter Structure

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IV.I.4 Conclusions: The Living Narrative of the Migrant Crisis

IV.I.1.1 Introduction – “We” and “Them”

Zia had hoped for Sayed until the very last moment: “I know he will be alive, somewhere under there”, he told the rescue team, pointing to the ruins of their house. But in the afternoon of Sunday 5th, 2016, when the 296th and last missing victim of the earthquake in Amatrice, Central Italy, was identified as his brother, the refugees’ and residents’ community endured a last shock. The two Afghans had come to Italy from Austria, and were, as the phrase reads, “well integrated”. All too well: Sayed had been offered to work in a “pizzeria” in Turin, and could have left the region two days earlier, thus accidentally saving his life. He decided instead to stay two more days in the town to which he had become very attached²: these were the days of the “spaghetti all’Amatriciana” festival, an event renowned in Central Italy and beyond for the exceptional food and warm atmosphere. Terribly, and unpredictably, the earth started to tremble exactly then. Sayed’s tragedy was not the first mention of refugees in the aftermath of the August 2016 earthquake. Dozens of refugees had volunteered to aid the local population, other refugees and migrants included. The guests of other centers of temporary stay even offered their pocket-money to support their hard-stricken fellows³. However, an alternative narrative circulated also: on the internet and other media, a polemic exploded about refugees supposedly hosted in starred hotels. The President of the Lombardy Region immediately suggested converting the Expo 2015 site into a center for the displaced persons “instead of giving it to refugees”, this latter being a proposal he and his administration had already refused. The mayor of Milan replied critically and accused the opposite party of politically exploiting both types of crises⁴.

From this brief example, it appears that individual stories can be exceptional and scarcely representative – an earthquake is not an ordinary situation – and they lend themselves to opposite political usages. Also, it seems that there are ethical problems regarding both the choice to recount similar stories, and the way to do it. Is ethics of immigration to be ridden of refugees’ individual cases and the relative storytelling?

² The story is reported by Tom Kington, “Refugee’s body pulled from remains of Amatrice house”, *The Times*, 6 September 2016; Raffaella Cagnazzo, “Terremoto, Sayed non ce l’ha fatta. Individuato cadavere del rifugiato afgano: il fratello attendeva da giorni”, (“Earthquake: Sayed did not make it. Found the corpse of the Afghan refugee: his brother waited for days”) *Corriere della Sera*, 5 September 2016.

³ Pietro Lombardi, “Asylum seekers and refugees donate money, help clearing up after Italian earthquake”, Thomson Reuters (see <http://www.reuters.com/article/us-quake-donation-idUSKCN1102FC> last accessed on 27/08/2017).

⁴ “Terremoto, Maroni dopo il no ai profughi: “Alloggi Expo agli sfollati” E Sala attacca” (“Earthquake, Maroni: “Lodging to displaced” after saying no to refugees. And Sala attacks.”), *La Repubblica*, 25 August 2016.

IV.I.1.2 The Ethics and Narratives of Migration

In this chapter, I enquire from a philosophical perspective into the relationship between telling stories and solidarity in the context of migration and refuge.

In the first section, I present examples from some of the leading scholars in the ethics of immigration, namely Chandran Kukathas, Joseph Carens, and David Miller. They all make use of such migrants' and refugees' stories, and discuss the role of such accounts. I analyze their claims and try to make the underlying rationale more explicit. My overall judgement is qualifiedly in favor of story-telling as a source and valid instrument for the ethics of immigration, and the rest of the paper will be devoted to substantiating my position.

The second section consists in a research on the moral changes which occur when shifting from an abstract evaluation to a personal account or, even more dramatically, to the existential first-hand experience of the subject. From a classic theory about moral sentiments, such as Adam Smith's, and from contemporary science, I draw the argument that in the case of refugees and other akin situations the feeling of sympathy⁵ can be particularly obstructed. I hold that embodied, personalized moral reasoning is important in evaluation and can effectively complement more impersonal and detached reasoning without undermining it. From the theory of Alasdair MacIntyre, I derive a defence of the narrative structure of moral reasoning and of moral practices, and I stress the difference between ethical evaluation in the personal and then in the political dimension when the two are compartmentalized, as it occurs in depersonalized vs personalized reasoning. I infer that constructing a relation of closeness, identification, and approaching from a personal standpoint can significantly alter the judgment on moral issues and the motivation to act accordingly. However, my specific point does not require heavier presuppositions or the endorsement of a specific theory of moral reasoning.

The third section is devoted to two "case studies": an analysis of the book by Ali Ehsani and the one on Enaiatollah Akbadi's journey, two exemplary and similar Afghan refugees' stories. Finally, I summarise and draw conclusions.

⁵ Here I use "sympathy" and "empathy" more or less interchangeably, with just more emphasis on empathy as a neutral sentimental attuning to someone else's feelings, while sympathy is a positive endorsement and sharing of those feelings. "Solidarity", then, despite often implying a sentimental state, is also the condition of identifying with someone and acting upon such feelings and determination: it is usually, but not necessarily, enhanced by sympathy.

A student or a general reader wishing to deepen her or his knowledge of the ethics of immigration would possibly start from Chandran Kukathas's introductory article on the topic⁶. At the very beginning of the piece there is no mention of philosophical categories or theoretical approaches, but rather another refugee story, the shocking narration of Shahrzad Kayani's tragically failed attempt to obtain family reunification as a refugee. Here is Kukathas' explanation:

The Kayani case is a noteworthy one not only because it is a particularly tragic *story* in the larger saga of global population movements in the twentieth and twenty-first century -though tragic it undoubtedly is- but also because *it brings into sharp relief the great range of questions, and moral and political dilemmas, that make up the immigration issue*⁷.

Then, before moving on to more strictly theoretical considerations, Kukathas gives further details on Kayani's case and its context, especially with regard to the applying legal regulations. Kukathas' example is far from unique in the field. Joseph Carens remembers gratefully the advice he was given by Jeff Spinner-Halev: "...when I told the people [...] that I was trying to reach a wider audience than just specialists in the field, Jeff said, "Tell more *stories*." ”⁸. Indeed, the chapters of Carens' book are opened by a series of migrants' and refugees' stories to start and sustain the ethical reasoning. However important Spinner-Halev's advice may have been, Carens is not new to such methodology, having introduced some at least general traits of an individual migrant's story, perhaps fictitious, perhaps altered to the purpose, since the years of his earliest writing on the topic⁹.

A rather different stance seems to be taken by David Miller:

I also want to counsel here against testing an immigration policy by thinking about the way in which it might affect specific individuals who were subject to it. In the literature on immigration, *one frequently comes across case studies of immigrants*

⁶ Kukathas, "Immigration", in Hugh LaFollette (ed.), *The Oxford Handbook of Practical Ethics*, Oxford, Oxford University Press, 2003, pp. 567. My emphasis.

⁷ P. 568, my emphasis.

⁸ Joseph H. Carens, *The Ethics of Immigration*, p. xiv.

⁹ It is the story of Angel, a Mexican immigrant entering illegally the United States which Carens recounts in opening "Immigration and the Welfare State", p. 207.

*who in one way or another have fallen foul of the prevailing immigration regime and whose story then serve to reveal its absurdity or inhumanity. [...] Any morally sensitive person would find these individual stories distressing. But one cannot build a coherent immigration policy or regime on such a foundation, any more than good law can be made out of hard cases*¹⁰.

Miller makes no reference to the authors he is thinking about when mentioning “the literature on immigration”, but I would suppose that examples such as those provided by Carens and Kukathas above could be, in Miller’s perspective, problematic.

The fact that Miller’s critique is not fully explicit, however, makes the picture slightly more complex than it could appear at first blush. Indeed, Miller himself makes use of anecdotes, for instance when he reports the press story according to which migrants would have been preying on the Queen’s swans, in a way that Alexander Sager, in his unfavorable review of Miller’s book, has called “uncritical”¹¹. Therefore, there is at least some place for stories in Miller’s otherwise very impersonal and purely theoretical treatment of the immigration issue.

The argument can thus be summarized as follow. One reason to rely upon individual stories would be that they carry with them, at least sometimes, a great amount of urging moral dilemmas, besides some considerable background details. They act as a synthesis of the problems to be disentangled and adjudicated by the theorist. As a second ground, there would be their capability to interest and attract, especially regarding the general public. *Against* the usage of individual stories, the concern for their misleading character weighs in: they could not be representative of the overall situation, and thus lead readers and thinkers to attribute them more importance than to general trends and less exceptional or impressive cases.

It must be noted firstly that these reasons seem to be compatible to some extent: Miller is not countering the others’ claims by saying that the stories reported are dull and unproblematic, nor that they are not effective in attracting readers and commentators. To the opposite: his caveat

¹⁰ Miller, *Strangers in Our Midst*, p. 159, my emphasis.

¹¹ Sager, “Book Review: Strangers in Our Midst: The Political Philosophy of Immigration by David Miller”, in *The LSE Review of Books* Blog, <http://blogs.lse.ac.uk/lsereviewofbooks/2016/09/06/book-review-strangers-in-our-midst-the-political-philosophy-of-immigration-by-david-miller/> (last accessed on 27/08/2017). Confront with Miller, p. 152. It should be specified that, despite not overtly criticizing the *Daily Mail* report, Miller does not endorse it as well: in that context, he is just presenting two opposite views and, it seems to me, I repeat, at least in that place, some humanitarian reasons for open borders are represented as more serious than the worries voiced by this kind of general press.

about their misleading character would presuppose the shared persuasion that they have a powerful rhetorical efficacy, but that it is often not clear or at least not always sure that they have a corresponding enlightening effect on the rational aspects of the debate, which are generally presupposed to be more properly philosophical. Thus, the decision whether to make resort to such stories would depend on a difficult assessment of these different advantages and drawbacks. The adjudication, it seems, could be potentially exposed to the deciding effects of other factors and circumstances, such as the context and the goals. For instance, the usage of stories might well be less problematic in an introductory essay, but more debatable in the case of a theoretical evaluation of policies. There are obviously some occasions on which telling such stories would be, at least, a waste of time and space: at worst, an attempt at replying to a hardly resistible argument with more vivid images directed at eliciting contrasting emotions. Apparently, there is no need of turning out entirely false for one of the contending views.

However, a general case could be made in favor of the function of feelings and common-sense to draw ethical conclusions, despite the occasional difficulty to distinguish them from common-places and prejudices. Good reasons to act and strong emotions acting as motives are not as easy to disentangle, nor is intuition from overwhelming emotion: it is sufficient to think about ordinary life where, usually, the more condemnable the behavior, the stronger the indignation, and the more selfless the action, the greater the admiration. This is a line of argument I will develop later, by expounding on Smith's view of the sentimental bases of morality, and on the role of sentiments in general. Nonetheless, the reader more concerned with impartiality should not abandon me here, since this recognition of the role of emotions is not *per se* a denial of the possibility of distinguishing an intellectual and rational faculty. Refugee stories might after all contain as many intellectually relevant details as aspects which elicit an emotional response.

Another critical remark I would advance concerns Miller's hasty association of individual stories and "hard cases". In the lines I reported above, he speaks of the ones and the others interchangeably, but individual cases are not necessarily hard cases as such. An individual case consists of a situation or circumstances occurring to one specific individual: these could well be representative of a general trend. Even more: statistically, unless there are specific and, by definition, exceptional reasons to think otherwise, it is a licit way of reasoning to infer general trends from specific occurrences, albeit with some uncertainties and limits: we know from logics and philosophy of sciences that inductive and abductive reasoning, while differing from cogent

deduction, have their own applications. Polls and, e.g., exit polls after elections, are made precisely this way: by selecting a representative, but tiny, set of individuals. Thus, to say that something would amount to a hard case, it must be proved *a priori* that its features are exceptional. For example, in bioethics and applied ethics, the term “hard cases” is usually employed for the kinds of health impairments which occur very rarely among human beings. We cannot judge whether something is a hard case or not from the case itself, without a context made of broader statistics, despite all the problems of selecting under which perspective and for what aspects the case would be hard rather than not. But hard *to adjudicate* and hard *to be found* are surely not the same thing.

Of course, Miller would still be right if migration laws were generally humane and just, to the very contrary of what Kukathas and Carens contend. Surely no law is perfect, as we are reminded by the Latin brocard *summum ius summa iniuria* – “extreme law leads to extreme injustice”. Thus, if the laws were generally reasonable, as Miller seems to presuppose, it should be possible to accommodate some statistically uncommon and peculiarly complex cases with *ad hoc* interpretations and exceptions. In that scenario, it would be truly misleading to begin with such rare cases for a general policy discussion. But if, as those opposing Miller’s views contend, there are general or frequent flaws in immigration laws, then *general* cases would all be *hard*, in the sense of being morally problematic. In other words, Miller seems simply to be begging the question, and to prove him wrong it seems it would suffice to provide an example of a migration regulation which works awfully for a significant number of people. This is, unfortunately for us all, not very difficult to do.

Here are some concrete cases that might help to get a grasp on my point. The first one is the inherent complexity of the procedures surrounding repatriations. Any policy upholding restrictions to migrations would probably imply that some people are to be sent back at some point, since it is almost impossible to gain an unfailingly effective control on the entries in a first place. Among many other practical problems, there is the fact that for such a practice a state’s sovereignty is, by definition, not sufficient: a minimal cooperation by another country is necessary, because the process consists exactly in removing someone from one country to have one relocated back in the place of origin. The problem of the relation between emigration and immigration, which has been so often raised in philosophy of migration, surfaces again here: but if to refugees it is commonly replied that helping them is an “imperfect duty” applying to all the international society, when a state expels someone from its borders it is unavoidable that this affects some other specific

state's sovereignty as well (you do not deport someone into the "international society"). Now, there are some unproblematic cases, of course, but paradoxically enough, states in perfect relations will not face the situation of a mutual repatriation very often. It is more likely that operations of this sort will fall into one of two categories: either the country of origin is sympathetic toward its would-be immigrants, or, in what is often the worst scenario, it restricts emigration, contrarily to international law. It is easy to see that in both cases collaboration will be lacking: on the one hand, the country does not want to interfere in its citizens' will to start a life abroad, while on the other hand an under-regulation of repatriation could be a means to punish the migrants by forcing them into a legal limbo, to deny the existence of significant emigration flows, to keep out what is perceived as an hostile element, or to avoid international cooperation when relations are already deteriorated – as in the case of authoritarian countries. There is also a problem of resources: many countries of massive emigration are not particularly affluent, and countries from which asylum claimants come are often on the brink of being or becoming collapsed states. Now, imagining that these countries could easily manage dozens, if not hundreds or thousands, of relocations a day by several different countries in the world, is not very realistic. Besides all the diplomatic work, including consulates and embassies helping for identifications, many important material resources would be needed. Also, it could be imagined that the states would not be eager to pay any contribution, considering that the failed migration attempts are, after all, not their direct responsibility: and the migrants are probably even less likely to cooperate in covering the operations' costs, even admitting they could dispose of some. What happens in practice, since it is impossible to throw people back somewhere through catapults, is that people simply stay and the only part of the law whose efficiency is granted is the one which is possible to perform unilaterally, that is, the deprivation of any legal status in the country of destination – again, a case of sovereignty exerted through withdrawal. In Italy, persons who found themselves trapped in such "limbo" were counted for as numerous as 50 000 last year¹². Since these people cannot be legally employed, commentators argue they are "a gift" to all kinds of underground activities and mafias – not to mention international smuggling and terrorism – by the immigration control policy itself. Blaming the peculiar inefficiency of this specific immigration system, or presenting these cases as

¹² Gabriele Martini, "Senza asilo ma non rimpatriati. Ecco l'esercito dei migranti fantasma" ("No asylum nor repatriation: here is the army of "phantom migrants"") *La Stampa*, 27/10/2016 <http://www.lastampa.it/2016/10/27/italia/cronache/senza-asilo-ma-non-rimpatriati-ecco-lesercito-dei-migranti-fantasma-SKzqu5Rlu4SCpsf19u3mFM/pagina.html>, last accessed 27/08/2017.

“marginal”, would simply amount to having misunderstood the intricate problem of collective coordination, even before considering international relations and cooperation, these situations derive from, as I have presented them. It is all too easy to find kindred short-circuits of restrictive regulations for other countries¹³. Similar cases are once again *hard* to be solved but not as *hard* to be found, as they derive, sometimes almost “conceptually”, from the very logic of immigration restrictions. Thus, to say that they are, or can be solved through “exceptions” is not a satisfactory response: an exception repeated 50 thousand times is no longer an exception, but a law.

A second example of a massively common “hard case” is the question of the legal complaints that doctors can present, or sometimes are even encouraged if not forced to present, in case they happen to deal with migrants whose permanence in the country is illegal. A similar but different case is used as an example by Carens: a trial for rape is delayed by the detention and deportation procedures against the violated woman, who had an irregular migrant status¹⁴. However, serious problems can arise much more easily, without involving any crime: if the migrants are at risk of being reported by medical staff, they would obviously tend to avoid any interaction with them. Now, for no less obvious reasons, the migrants and refugees are also among the shares of population most exposed to dangerous diseases: in Italy, for instance, when a 24-year-old died of advanced tuberculosis and her mates in the temporary stay center were analyzed, it was discovered that half of them had contracted the illness. She could have been cured very easily, and for cheap: she did not see a doctor only because of her illegal immigration status. This was even more tragic since under the country’s law it has never been possible for doctors to report the irregular immigration status of their patients. However, the confusing proposal of a contrary and legislation, despite being immediately countered and annulled by the regional administrations and national doctors’ associations, was sufficient to stem the numbers of migrants accessing the facilities, regular migrants included, in a very short time¹⁵. These cases, despite scandalous, are

¹³ See for instance the telling narration of the plight of East African Asians claiming British citizenship in 1968, and then *de facto* deprived of the right of residence anywhere in the world and “shuttlecocked”: this and similar instances are reported in Dummett’s exceptionally insightful pamphlet, *On Immigration and Refugees*, pp. 99-102.

¹⁴ See the excellent discussion in Carens 2013, chapter 7 (pp. 129 and following).

¹⁵ Nick Squires, “Italian doctors forced to report illegal immigrants”, *The Telegraph*, 5/02/2009, <http://www.telegraph.co.uk/news/worldnews/europe/italy/4527727/Italian-doctors-forced-to-report-illegal-immigrants.html> (last accessed 28/08/2017); Alessandra Mangiarotti & Simona Ravizza, “I medici che non vogliono denunciare i clandestini” (“Doctors who don’t want to report illegals”), *Corriere della Sera*, 22/04/2009 (http://www.corriere.it/cronache/09_aprile_22/medici-clandestini-denuncia-031aed14-2eff-11de-89c1-00144f02aabc.shtml). In the article it is reported that the rumours on the abolition of the prohibition to report were

not *hard* in the sense of being “exceptions”: we are talking of the global effect of a legislation on potentially every migrant. And yet the Italian situation is in this case also far from being unique, as shown by Carens’ reasonable case in favor of a firewall entrenching undocumented migrants’ fundamental human rights¹⁶.

To conclude, these examples on the grey areas surrounding deportations and on the societal risks of policing undocumented through health officials are sufficient to serve as evidence of practices which, despite concerning masses, are morally objectionable to say the least. Miller’s presupposition that individual stories which no one can but find “distressing” – for these cases, I would rather propose “scandalous” – are not illustrative of general situations posing overall policy problems is not granted in principle. I would believe Miller would accommodate for cases like those I have presented by agreeing at least partially with the intuitions shared also by Carens about the safeguarding of the human rights of the undocumented. Nonetheless, his general ambiguity on the irrelevance of particularly problematic cases and, above all, the accompanying presupposition that immigration restrictions and their enforcement can be easily and almost always reconciled with humaneness partly explain the occurrence of harsh critiques such as Sager’s review. It must be once again specified that Miller gives no specific references regarding what kind of story and corresponding policy would have been irrelevant and unproblematic respectively. Thus, I would not present my claim necessarily as a critique against Miller’s theory, but as a claim on an issue he offered the occasion to elucidate. Also, as I said, I agree with the general caution that an individual story cannot be hastily generalized, let alone universalized. Furthermore, as there can be invalid arguments, absurd thought experiments, and inappropriate examples, there can well be useless or misplaced or rhetorical story-reporting and story-telling. Nonetheless, as a general vindication of the potential value of stories, I would judge the claim that they *must* necessarily lack any theoretical and political interest to be analogous to holding that Anna Frank’s, Etty Hillesum’s, Primo Levi’s and Fred Uhlman’s individual biographies would not cast moral lights on the circumstances and policies they were subjected to: not very persuasive.

sufficient to diminish by 10%-20% the figures of migrants accessing hospitals and the like. The corresponding severe dangers to public health are also exposed in the article.

¹⁶ Carens 2013, pp. 132 and following. Confront with Jeff Sconyers, “How Should Clinicians Treat Patients Who Might Be Undocumented?”, *AMA Journal of Ethics*, March 2016, Volume 18, Number 3: 229-236. doi: 10.1001/journalofethics.2016.18.03.ecas4-1603; James Ball, “Home Office accessing NHS records to help track down illegal immigrants”, *The Guardian*, 13/07/2014, <https://www.theguardian.com/uk-news/2014/jul/13/home-office-nhs-records-illegal-immigrants>, last accessed 28/08/2017.

IV.I.2 Shifting Regimes of Moral Evaluation

In this section, I present an independent argument for the value of refugees' and migrants' story, its basis being the requirements of empathy and the implications for morality of shifting from depersonalized to personal evaluation.

Sentimental cosmopolitanism is a promising and ground-breaking line of research¹⁷: however, the importance of sentiments to moral deliberation has been repeatedly and compellingly articulated by classic philosophers such as David Hume and Adam Smith. It is in particular on reflections advanced by the latter that I rely here, supported by the excellent synthesis and application to refugee law which is being developed by Colin Grey¹⁸.

In his theory of moral sentiments¹⁹, Smith explores the ways a person develops a moral sense and uses it to judge upon herself or himself and others. The fundamental sentiment here is sympathy: it is the capability of assuming another's perspective, to feel as she feels, and to evaluate both sentiments and actions according to an objective frame developed through social interactions. The agent's moral maturity is reached when she becomes able to judge as an impartial spectator, detached from her or his subjective feelings and interests as well as from the concerned parties'.

This sympathy, however, is not exercised equally and indiscriminately. There are, according to Smith, several natural constrains and some frequent corruptions of moral judgment. The natural constrains are very intuitive: the person would tend to feel partiality towards herself, her parents and friends, her fellows. Then there is the difficulty in empathizing during divisive situations: where one party is opposing the other, it would take exceptionally deep reflection before taking sides. Finally, there is the tendency to sympathize with positive feelings and situations: one feels much more attracted by a display of happiness than by miserable sorrowfulness. Correspondingly, four serious vices can arise from these unescapable traits of moral sympathy. The first would be national prejudice: the tendency to support uncritically whatever is desired or presented as good by our compatriots. The second is the tendency to undeservedly despise the

¹⁷ Kerri Woods, "Whither Sentiment? Compassion, Solidarity, and Disgust in Cosmopolitan Thought", *Journal of Social Philosophy* 43 (1):33-49 (2012).

¹⁸ Grey, "Refugee Law and Its Corruption", *forthcoming*. I thank Colin for circulating his draft and for allowing me to refer to one of its many achievements.

¹⁹ Adam Smith, *The Theory of Moral Sentiments*, ed. Knud Haakonssen, Cambridge University Press, Cambridge 2002. As it will appear from the following references, not all the points advanced by Smith are contained in the homonymous book.

weak and poor in favor of the rich and powerful. A third one is the passion for power and, consequently, for any occasion to exert it on someone who is without defense²⁰. Finally, there is retrospective indulgent self-deceit to excuse one's own actions. As Grey notices, all these elements seem to hinder heavily the sympathy one can exert towards refugees. Many of them, I would comment, obviously act against migrants in general.

Recent scientific developments have proved many of Smith's intuitions to be reasonable. The discovery of the neural basis of empathy, and of mirror neurons, have increased the awareness of the neurobiological support of human sociability. When some strong feeling is observed in others, the same brain areas activate²¹, so that it is possible to conjecture a natural tendency to look for empathic relations with happy and prosperous people. The tendency conjectured by Smith might also be the most advantageous behavior on evolutionary grounds. Furthermore, social psychology has observed that unhappiness spreads like an epidemic: if one happy friend increases one's possibility to become happy by 11%, one unhappy friend is sufficient to cause a 50% growth in the likeliness of being unhappy²². It would be plainly hazardous to infer indirect conclusions from these data, but they are useful to reinforce Smith's suspicion that there might be a human tendency to avoid unhappiness and misfortune as one avoids epidemic contagion. If this is thus, the common "xenophobic" reactions toward worse-off foreigners, which are usually not matched by similar aversions to, say, affluent tourists²³, would not be depending on apparent material interests only. Corresponding to those interests, there would be ingrained patterns of preventing empathic connections with people in distress, and moral judgement, as Smith foresaw, would be accordingly affected.

Before expanding on the implications for story-telling and solidarity, let me introduce one last reflection on the cognitive and psychological frameworks affecting moral judgment. I would

²⁰ This is not to be found in the *Theory of Moral Sentiments*, but rather in the *Lectures on Jurisprudence*, Liberty Fund, Indianapolis 1982, pp. 186, 192. See also *The Wealth of Nations*, Books I-III, Penguin Books, New York 1986, p. 489.

²¹ Bruno Wicker, Christian Keysers, Jane Plailly, Jean-Pierre Royet, Vittorio Gallese, and Giacomo Rizzolatti "Both of Us Disgusted in My Insula: The Common Neural Basis of Seeing and Feeling Disgust", in *Neuron*, Vol. 40, 655–664, October 30, 2003, Cell Press.

²² Alison L. Hill, David G. Rand, Martin A. Nowak, Nicholas A. Christakis "Emotions as infectious diseases in a large social network: the SISa model" *Proceedings of the Royal Society B* 2010 -; DOI: 10.1098/rspb.2010.1217. Published 7 July 2010.

²³ As Kerri Woods pointed out, there frequently is strong aversion against wealthy tourists, especially in places where tourism is overwhelming. However, it does not reach the point of sustaining anti-touristic political parties and agenda, and I would suspect economic self-interest and easier sympathetic identification would play a role in this differential treatment.

suggest that, to explain the obstruction of solidarity towards migrants and refugees, the distinction between personal and impersonal procedures of moral evaluation comes in handy and resonates with the difference between empathic and non-empathic judgements.

In order to appreciate that, consider Alasdair MacIntyre's point concerning the more general moral problem of compartmentalization. One of the example he advances regards the value of human life compared to other kinds of goods. MacIntyre suggests thinking about one exceptionally grievous kind of death conceivable of, and yet unfortunately very frequent, in our society: the sudden death of a young adult in a car accident. The death is to be dealt with in at least two very different contexts. First, there is the intimate, personal circle, wherein people offer condolences to family and friends, and these latter make comments on the death. One recurrent phrase would be that this is an invaluable loss, that nothing can compensate or rectify for it. However, when the same event is dealt with by the car industry, calculations are made. The driver's and passenger's security, including precise statistics on how many deaths could be avoided and how, are weighted against other values: the cost of the car, the possibility of selling it on the market, the attractiveness of its bodywork and the like. It is not that the car industry is particularly inhumane: human security and other values such as environment pollution are absorbed in such statistical costs and benefits calculations on innumerable other occasions. But what if on January first a list of names could be published, reading "This year the following people will die in order to make sure that the economy flourishes?"²⁴. MacIntyre believes that such a reasoning would be perceived as monstrous. And that is because in the context of economic statistics, and in the context of personal kin and acquaintances, the way we reason morally changes completely. This is not tantamount to the trivial point that moral egoism inclines us to value our own and our loved persons' lives over some foreigners' or unknown's. In fact, by resorting to the example of the compensation to death offered by insurances according to the victim's socioeconomic status, MacIntyre shows that the regime of moral evaluation can shift even while judging upon one's most intimate losses: from an invaluable event to which figures are not appropriate, to a precisely

²⁴ MacIntyre has developed this example on several occasions: however, in none of the printed occurrences the thought-experiment of the "list" is presented. This is to date still readable in an online transcript of the lecture "A culture of choices and compartmentalization", held at the Notre Dame Center for Ethics and Culture on 13/10/2000 (<http://brandon.multics.org/library/macintyre/macintyre2000choices.html>, last accessed 28/08/2017). The same example and reasoning is developed in the essays "Some Enlightenment projects reconsidered" and "Social structures and their threats to moral agency", both reprinted in Alasdair MacIntyre, *Ethics and Politics. Selected Essays*, volume II, Cambridge University Press, Cambridge 2006, pp. 184-5; 198-9.

measurable case for which a sum is to be fixed and agreed upon. It appears that there are, so I would say, regimes of “cold” and “warm” moral moralities where different dynamics hold, the former being a depersonalized and the latter a personal scenario.

I hope that the implications of these points for the issues of solidarity and story-telling in the context of migration are evident. I have already hinted to the fact that refugees in particular would display all the characteristics making them particularly difficult to sympathize for, depending on both the natural functioning of moral empathy and its vicious degenerations as analyzed by Smith and Grey. Neuroscience and social psychology offer some evidence in favor of what would otherwise be just common-sense or philosophical intuitions. Relating psychologically to stress might be itself difficult and distressful, and there could be a natural tendency to avoid such sympathetic relation with the associated contagion of negative emotions and psychological states. How can refugees stories help in this case? It is on the one hand evident that the repetition of distressing cases could generate a form of empathic atrophy, as a way of self-shielding from overwhelming negative emotions, and the ensuing biasing of moral judgements would be detrimental to solidarity. On the other hand, it is nonetheless reasonable to expect that the exposition to refugees’ reasons and voices could make these feel less distant, thusly compensating for the nationalistic and parochialistic biases. Also, the stories need not always be shaped in the form of a narration of the misfortunes that afflicted refugees, but they can also show their strength and resilience, and collect their gratitude and their hopes, as I will show further on. To summarize, through reading an account or listening to a narration, one is exposed to someone else’s thoughts directly, and barriers to empathy could be overcome: more positive and less stereotypical elements might also surface.

The relevance of such stories is even clearer in the light of the problem I considered second after the difficulty of generating empathy: the impersonal and compartmentalized evaluation of the situation of migrants. Since they are distant others, and they are represented as a societal and political problem, a natural tendency seems likely to arise not to apply to them the kind of reasoning which would instead be elicited when facing similar issues in one’s own life. That is why many political and moral leaders insist on turning the attention from the statistics to the human aspect of migration, as for example the UN former Secretary General Ban-Ki-Moon when claiming that “The migrant crisis is not a crisis of numbers: it is a crisis of solidarity”. Others have emphasized that migrants are *persons*, not *numbers*: the aim is that of avoiding the absorption of

personal stories into statistics and their consequent disappearing from moral concern. Indeed, the continuous repetition by the press of announces in the form of “300 die in the Mediterranean” apparently pays attention to the counting more than to the personal aspects of the catastrophe – or, as it is now time to see, the successful ventures of other refugees²⁵.

IV.I.3 Through the Other’s Eyes: The Insights of Refugees’ Stories

In this section, I present two exemplary refugees’ stories: they are both of literary value, but this aspect would be of secondary relevance here. Coherently with the questions raised in the first two sections of the paper, I rather focus on how these stories synthesize many of the problems dealt with by ethicists of migration, and possibly offer new ones to consideration. I also emphasize how these stories are useful to popularize the topic and catch readers’ attention: an aspect interrelated with that, is to see how such stories can overcome both the natural constraints to empathy and the corruption into moral partiality, as diagnosed by Smith. An aspect relevant for that purpose is to keep track of the emerging of negative and distressing, but also of positive and encouraging feelings throughout the story. I then explain how such stories can be used to complement the “cold” narrative and reflection on policies affecting refugees with the “warm” human solidarity necessary to motivate and sustain acceptance and welcoming.

Refugees’ stories would deserve the rank of a genre. According to the figures characterizing the MC, the saga of refugees could be wider than some national literatures. Despite having direct relations, both in causation and in effects, with many affluent Western countries, however, I would suspect these stories not to be generally known besides the world of schools, universities, specific associations and circles, and the like.

General reviews of refugees’ stories legitimately pride themselves of sources such as the classics and the Bible²⁶, as I have also shown in the introduction to this work. I cannot but admit my criterion of selection to be extremely personal and arbitrary. However, given the immense

²⁵ There might be even some social psychological evidence of the saying “One dead is a tragedy, one million is statistics: see Paul Slovic, “If I look at the mass, I will never act” (the title is taken from a saying by Mother Theresa explaining that while acting she always had focused on the individual), *Judgment and Decision Making*, vol. 2, no. 2, April 2007, pp. 79-95. Slovic advances the concept of a “collapse of compassion” to explain why people seem sometimes more eager to be moved by individuals’ than by groups’ suffering. This social psychological dynamic seems complementary to the famous and established “diffusion of responsibility”.

²⁶ Patrick Kingsley, “Top 10 refugees’ stories”, *The Guardian*, 18/05/2017. <https://www.theguardian.com/books/2016/may/18/top-10-refugees-stories>, last accessed 29/08/2017.

potential and effective extent of the literature by and on refugees, I think that results corresponding to those I want to show can be obtained with a great variation of perspectives and circumstances. Be that as it may, the two stories belong to young Afghan boys who left their country as children and have found refuge in Italy.

The first book is *In the Sea There are Crocodiles: A Novel Based on the True Story of Enaiatollah Akbari*²⁷. The author is the writer Fabio Geda: in an author's note he gives the following explanation:

This book is [...] based on a true story. But, of course, Enaiatollah didn't remember it all perfectly. Together we painstakingly reconstructed his journey, looking at maps, consulting Google, trying to create a chronology for his fragmented memories. I have tried to be as true to his voice as possible, retelling the story exactly as he told it. But for all that, this book must be considered to be a work of fiction, since it is the re-creation of Enaiatollah's experience—a re-creation that has allowed him to take possession of his own story.²⁸

I have to confess that I do not find this conclusion unproblematic with respect to the authorship, which officially still belongs to the journalist, and I would stress that Akbari obviously had a very active and creative role – in the same note Geda recounts that Akbari asked him to write his story after listening to Geda's presentation of another book on the story of a Romanian immigrant. I would also note that, in the second case I am presenting, the writer Francesco Casolo published as a co-author with the Afghan refugee. But besides these remarks, I cannot expand on this delicate question here. I would rather report the two motivations to make his story known Akbari gave Geda: “so that people who had suffered similar things could know they were not alone, *and so that others might understand them better*”²⁹. Thus, the story is principally addressed to refugees themselves and to “others”, whom we can interpret to be first and foremost the hosting

²⁷ Fabio Geda, Doubleday, New York 2011. Page numbers refer to the electronic edition of the book. *In the Sea There Are Crocodiles* has been translated in many languages and reviewed by *The Times*, *The Guardian*, and *The Washington Post* among others.

²⁸ Pp. 6-7.

²⁹ *Ibid.*, my emphasis.

society. Akbari is persuaded that his story can both encourage people of his own condition and reduce the misunderstanding on the part of all who are different.

Another note could be made regarding the truthfulness of the account. Geda, as we have seen, presents the book as a novel, and thus the story is not meant to be necessarily realistic. In the debate we have been resuming thus far, though, it has never emerged as a necessary requirement that a story be true or completely accurate³⁰. Novels, like mental experiments, examples, myths and parables, can well perform an important function independently of their being real. Nonetheless, I would think that the truthfulness of a refugee account is an added value, and sometimes a significant one: the story would then offer some knowledge of facts, together with emotions and, possibly, reasoning³¹. Indeed, a good part of Akbari's story can be trusted: even if Geda does not take full responsibility for all the details, it presents the book as "based on a true story", and the information provided is perfectly compatible with a general knowledge of the Afghans' refuge route, as I shall show. Furthermore, there are impressive overlaps with the second book I report on, which is again written on the experience of an Afghan and set in the same places and times. The convergence of the witnesses would make both of them more credible and, therefore, even more interesting.

Akbari's story begins with his mother abandoning him in Pakistan: from the memories he later recalls, we know that he belonged to the Hazara ethnic minority. Because of that, the Taliban force his father to travel to Iran to buy some goods from his Shia co-religionists: his convoy is assaulted and he dies when Akbari is about six. Then the Taliban also close his school: they repeatedly warn the staff against educating the children because, according to the armed men interrupting classes, every knowledge but religion – in their own fundamentalist fashion - is useless. Since a particularly committed math teacher defies their prohibition, the Taliban shoot him in front of all the students. These are the reasons why, he realizes, his mother has pushed him forcefully towards a new life. But even in Pakistan he is continuously harassed for his ethnicity, religion, and irregular migration status³². He then makes his journey through dangers and

³⁰ A more detailed analysis regarding the moral categories and constrains of story-telling in ethics of migration is advanced by Kerri Woods in her *forthcoming* contribution. Here my point regards why it is legitimate and fitting to reflect on such stories, and not the ways and constrains to do it. However, those are obviously related.

³¹ Violeta Moreno-Lax, whom I thank, has pointed out that in a juridical context such as the one I will quote below the juridical truth – whether a person is a genuine refugee or not – does not necessarily correspond with the factual truth of the account. A story replete with inaccuracies and lies could still be sound evidence to one person's deserving asylum.

³² P. 36.

adventures: he works in the construction industry in Qom, Iran, where, he estimates, about half of the population is composed by illegal immigrants working at new buildings³³. He is deported back to Afghanistan, but manages to sneak into Iran again³⁴, without ever being brought to the infamous detention camps whose violence has led some of the survivors into mental instability³⁵. It is not the heavy work or the wounds suffered at the workplace³⁶ that persuade him to move on: he takes his decision only when the police fire at him with Kalashnikov rifles³⁷. But in Turkey, despite his insistence, he cannot find any job: his Afghan friends finally persuade him to continue to Greece³⁸. He manages to cross the Aegean Sea on a dinghy, even if one of the four kids accompanying him falls out and disappears amid the waves³⁹, while the others are arrested shortly after their arrival on the island of Mytilene⁴⁰. He reaches Athens and there he gets a short employment during the final rush to have infrastructures ready for the 2004 Olympics⁴¹. But when the job is done, and he finds himself again lost in an idle life, the only solution he sees is to migrate again. He reaches Italy, where through an Afghan friend he is introduced to a family hosting and supporting him. While having his asylum claim evaluated, he spends time studying some Italian. Finally, the day of the hearing arrives. Another Afghan friend's claim, notwithstanding his very similar story, has just been rejected:

I remember that he put his head in his hands, this friend of mine, and wept, but without tears, wept with his voice and his shoulders, and said, Now where can I go?⁴²

Akbari fears having his own application rejected: he then does his best to defend his case:

This is your interpreter, they said, indicating a boy next to the door. I said I preferred to do without. Thank you. So you speak Italian well, they said. I replied that yes, I spoke it quite well. But that wasn't the only reason I didn't want an interpreter.

³³ P. 56.

³⁴ Pp. 52-54.

³⁵ Pp. 37;46.

³⁶ Pp. 57-8.

³⁷ P. 62.

³⁸ P. 76.

³⁹ Pp. 85-6.

⁴⁰ Pp. 88-91.

⁴¹ Pp. 94-5.

⁴² P. 111.

If you speak directly to people you convey emotions more intensely. Even if you stumble over your words and don't get the intonation right, the message you get across is closer to what you have in your head, compared with what an interpreter could repeat — don't you think so? — because *emotions can't come from the mouth of an interpreter*, only words, and words are just a shell⁴³.

Akbari recalls all the violence and fear, all the passed ordeals and their present consequences – the nightmares, the sleepwalking that causes him to throw his clothes aside and go out of the bed unconsciously to sleep in the car or in corners. The commissioner is neither impressed nor persuaded. He replies that he cannot understand on which bases he could be granted asylum: Afghanistan is safe *now*, Akbari would be much better at his home.

Then I took out a newspaper. It was a daily paper from a few days earlier. I pointed to an article. The headline was *Afghanistan: Taliban boy cuts spy's throat*. The article was about a young boy without a name who'd been filmed cutting the throat of a prisoner and crying *Allah Akbar*. The sequence had been broadcast by the Taliban as propaganda in the border areas of Pakistan. In the video you saw the prisoner, an Afghan man, confess his guilt in front of a group of militants, many of them teenagers. Then they showed the executioner, a very young boy wearing a combat jacket a few sizes too big for him. He's an American spy, the boy said straight to the camera. He was carrying a large knife. People like him deserve to die, he said. At that point a Taliban lifted the condemned man's beard and they all cried *Allah Akbar, Allah Akbar*, God is great, and the little boy sank the knife into the man's throat. I pointed at the article and said, I could have ended up like that.

A few days later, I heard I'd been granted asylum⁴⁴

⁴³ P. 112, my emphasis.

⁴⁴ Pp. 112-113.

The book ends with Akbari finally living a quiet and secure life and even being able to make searches and find his mother's phone number: "That was when I knew she was still alive, and maybe it was also then that I realized, for the first time, that I was, too"⁴⁵.

The second story I will summarize more shortly since, unfortunately, there is no available English translation. Moreover, the general plot is extremely similar to Akbari's life. The story is recounted in the book *Stanotte guardiamo le stelle* ("Tonight We Watch the Stars")⁴⁶, an allusion to the happy childhood nights that the protagonist, Ali Ehsani, who is also co-author with writer Francesco Casolo, spent with his family in Afghanistan. The memories are mostly happy and fond of his motherland. The only bad moments are when Ehsani's father suddenly disappears, and is released by the Taliban thanks to his mother's insistence. His father mood is depressed for some days, then little Ehsani peeps at his naked back covered by wounds. Another moment of tension is when Ehsani is slapped on the cheek after being discovered playing with a gun he found on the ground. Everyone is armed: Ehsani remembers teachers keeping their Kalashnikov at hands, since many children come to school with their own weapons. But the majority of stories he retains in minds are about playing with his friends and Afghan hospitality and a sense of pride – above all, the value and sweetness of family-life. Until, one day, he comes back and finds a heap of ruins in the place of his house: he is 8 years old and thinks he has inexplicably forgotten the way. The reality is, his older brother Mohammed explains to him, a missile has accidentally hit their home. Their parents are dead, their other relatives are not wealthy enough to provide for them: they have to leave. The couple travels through Pakistan, Iran, and Turkey: the spur forcing them forward are the continuous dangers and humiliations they are exposed to as undocumented, similarly to Akbari's vicissitudes. Once, being caught, they also spend some time in a detention camp: their narration confirms the witnesses of violence met by Akbari. In the end, the brother entrusts him to the care of friends in Turkey, while making his way on to Greece. He later discovers from the news that Mohammed and the other passengers of the dinghy, bought in a toy shop a few days before, have sunk in deep waters. Ali is now a child of about 11, alone, in a foreign country: the only future he can imagine for himself is to continue the trip on his brother's route. The whole book is indeed written in the form of a dialogue between Ali and Muhammed. Ehsani finally reaches Greece and, from there, hidden under a truck, he crosses the Balkans and then beyond the Italian

⁴⁵ Pp. 114.

⁴⁶ Feltrinelli, Milano 2016.

borders. His asylum application is accepted: he studies, wins a scholarship, obtains a Bachelor, and goes on studying European Law at a Master level.

Before turning to the analysis of these accounts, it must be stressed that Ehsani's story is full of courage and hope. In a passage of the book he recalls an Afghan poem telling an analogy between man and a hungry lion: "I am that lion", says Ehsani to himself, eager to overcome. All the narration, and the extraordinary academic results of the authors – during the 5-year-long trip, of course, he could not attend a day of school – is frequently offered to the benefit of the dead brother, of the Ehsani family, of all those left behind, together with the other migrants striving for a better life, and the hosting societies for which Ehsani repeatedly expresses heartfelt gratitude. However, he is capable of recognizing and denouncing corruption, during the stages of his journey as well as in his Italian experience. He also offers extraordinarily precise insights on common dynamics in the refugees' odyssey: the violence of the smugglers, hardly isolated from the others by the Greek police, the ethnic rivalries, the more desperate migrants selling themselves out to any kind of exploitation in exchange of trivial help from outsiders, some undocumented pretending to be Afghans in order to be granted refuge, the staff in his university dormitory stealing from his scholarships. And yet, his general perspective, besides being a fresh, deep, and sober regard on an extraordinarily long migrant journey, is still a regard of hope, for himself and for the world.

How do these examples answer the many practical, theoretical and methodological questions I have accumulated thus far? To provide a complete and fulfilling clarification, I shall proceed with order.

First, I have reported Kukathas' claim that at least some individual stories would summarize and bring to the fore important ethical questions. I would believe that both the cases I presented evidently serve the purpose. Even if it must be conceded that through them we encounter one of the supposedly most uncontroversially deserving category of migrants, refugees, still we see that in Akbari's case the grounds for asylum were questioned. And yet, both show more general problems relating to the consequences of being forced into illegality, and the vast areas of exploitations, crime, and racist hatred associated with the irregular status they have no way to escape. They elicit utilitarian and deontological concerns for such discriminatory practices by showing their human, moral, and material toll. They also bring to light many underestimated aspects of migration, for instance the fundamental role undocumented migrants play in some economic contexts such as Qom, even nowadays, or Athens during the preparation of the

Olympics⁴⁷. Here it is no place to advance substantial normative claims on these other topics: but for my methodological take on the relevance of refugees' stories, surely these ones appear to be rich in matter to be discussed, as with the one presented by Kukathas. For what regards Carens' and Spinner-Halev's idea that stories would be useful to reach out to the overall public, since these books are works of literature which have been published and sold, and in one case even translated, I would take that they uncontroversially confirm it. They have undoubtedly attracted readers to the events and problems narrated, or at least enriched the knowledge of those already interested. Regarding Miller's claim, there is again no reason to think that these individual stories would belong to the category of those he finds misleading in principle. Distressing they surely are: even if the overall message of both is reassuring and constructive, many passages are nightmarish. But these two individuals are surely representative of the collective odyssey they both present themselves as a part to: according to a report written for UNICEF by Michelle May 51% of all unaccompanied minors to Europe are Afghans, "most of them [...] ethnic Hazaras"⁴⁸. An educational psychologist, May enlists among the kind of disturbances suffered by these migrants PTSD and other conditions which are well compatible with the symptoms described by Akbari to the commission in charge of adjudicating his asylum request: she also explains that the number of these refugees in Europe has increased because of the harshening of their conditions in countries of first settlement such as Pakistan and Iran. It would be hard to find more informative and representative stories: Akbari's and Ehsani's lives are exemplary of the Afghan refugee flow to Europe, itself one of the most consistent⁴⁹.

How do these stories fit with the problems I raised in the second section of this chapter, namely the sympathy and depersonalization issues? The anecdote reported by Akbari somehow

⁴⁷ Even if Geda has been cautious in his opening note, it is all too easy to find independent documentation of Akbari's witness: on the Afghans working in Qom see "Afghan refugee in Iran feels lucky to have done training course", published on the UNHCR website the 17/06/2017: <http://www.unhcr.org/news/latest/2016/6/57641f414/afghan-refugee-iran-feels-lucky-training-course.html> (last accessed 29/08/2017). The figure given there is of "only" 60 000 Afghans, but since Akbari was inside the network of the illegal, I would not quickly discard his claim of there being a much greater population of undocumented bricklayers. As for the Greek Olympics, the fact is so established to have appeared repeatedly on the international press: Andrew Alderson & June Field, "Greece calls up army of illegal workers to get Olympic venues completed on time", 01/08/2004, *The Telegraph*, <http://www.telegraph.co.uk/news/worldnews/europe/greece/1468397/Greece-calls-up-army-of-illegal-workers-to-get-Olympic-venues-completed-on-time.html> (last accessed on 29/08/2017).

⁴⁸ Michelle May, "Unaccompanied minors from Afghanistan: Problems and protection in the European Union", report published on the UNICEF website, <https://www.unicef-irc.org/article/1389/> (last accessed 29/08/2017).

⁴⁹ See Christine Mougne, "Trees only move in the wind. A study of unaccompanied Afghan children in Europe", UNHCR, PDES - Policy Development and Evaluation Service, 5, June 2010. (<http://www.unhcr.org/4c1229669.pdf>, last accessed the 29/08/2017).

provides an answer to both. By exposing the commissioner to the newspaper story, he is capable of triggering an “evaluative shift”, if not a shift in the *regime* of moral evaluation proper. The commissioner’s abstract knowledge of the situation in Afghanistan as secure, being the war terminated long ago, is suddenly shaken by being precipitated in the reality of the bloody execution perpetrated by the child. Through Akabari’s words, “this child could have been *myself*”, the commissioner is also called to a personal and direct responsibility on the fate of the person standing before him. Thus, contrarily to Akbari’s friend, who was not as prepared and did probably rely on the interpreter – a dangerous choice since, as the word suggests, translation is often interpretation- his decision is not based on impersonal and general “knowledge” but on the kind of feelings and principles, on the kind of responsibility we feel while looking at other human beings in their eyes while deciding on their fate. Of course, nothing in this analysis excuses the presumably objectionable decision to exclude the other Afghan from protection: it only shows and explains the providential corrective function of story-telling in Akbari’s case. An act of bureaucracy is turned into the decision of a man who does not want to be the indirect cause of other blood being shed. And this change of perspective allows for a change in the result of the moral deliberation: while his friend, despite his similar situation, is just one other speechless Afghan without items to fulfil the asylum formulary, Akbari “himself”, could have been “that child”, and he is finally allowed to stay.

IV.I.4 Conclusions: The Living Narrative of the Migrant Crisis

It is now time to resume this brief journey and arrive at conclusions regarding story-telling and the establishment of solidarity.

Far from claiming that philosophers have to turn into story-tellers, my overall point was to show the significance of refugees’ first-person stories to the ethics of migration and to moral deliberation with and upon migrants and refugees.

I started from resuming how the problem, even if passingly, emerges from the literature. I reviewed and assumed Carens’ and Kukathas’ points, and I have discussed Miller’s caveat with respect to at least some kinds of individual stories, the purposes they can serve and how.

In a second step, I have shown that the methodology of story-telling and its effects are deeply related to the crucial aspects of the role of sympathy in moral judgement, and to the different standards applied on a personalized as contrasted to a depersonalized standpoint.

I have finally presented two case studies to illustrate how they answer the problems previously recalled and analyzed.

The conclusion is: refugees' stories matter. They matter to the establishment of a solidary connection with refugees, they matter to the information of the public and the philosopher her or himself on the most real, urgent and crucial questions regarding refuge and immigration, and they matter for a myriad of precious details and dimensions that cannot but be lost in general, depersonalized, and abstract accounts.

It is no surprise that, even if in a way that may sometimes be distorted by the media of one persuasion or the other, the policy regarding the migrant crisis has sometimes been decided or affected by very specific individual cases and stories: here I am thinking especially about the German extraordinary decision of suspending the Dublin regulation and allowing in an unprecedented number of refugees.

All throughout history stories, and even individual stories, have mattered immensely for policy changes, from Alfred Dreyfus to Rosa Parks. Stories, legends, myths, sometimes propaganda lies: they all deserved and attracted critical attention and discussion by intellectuals and philosophers.

In the history of ethics, stories and even individual stories have been once again protagonist, from Hesiod to epics, from the Bible to hagiography and on to the biographies of exceptional persons.

But in the history of philosophy, the evidence of the usage and of the value of stories and myths is overabundant: the stories which Plato puts on the mouth of his master Socrates are often considered to open the classic period of philosophy or even philosophy properly understood. These myths, dialogues, and short novels were interwoven in the narrative of the itself very significant and exemplary, but much more real, story of the life and death of Socrates. The fact that it is again Plato who formulated critical arguments regarding the possibly misleading and rationally impairing character of myths and poetry especially, is just another proof of the complexity which I have at least the hope of having illustrated. For the good or for the worse, be they true or false,

individual stories, and migrant stories, certainly matter: here I could not detail a complete ethic of telling stories, but I could, vindicate, I hope, this simple and specific point

To finally conclude on the theme of solidarity towards refugees, I would take a look back at the disharmony of views and opposing narratives I have sketched in the opening: in the aftermath of the Italian 2016 earthquake, we have a display of refugee life-saver heroes on the one front, and the accusations of parasites kicking needy Italians out of shelters from the opposite political field.

Of course, this is a never-ending debate. But both parties were suddenly brought to thoughtful pause when Francesca Spada, published on her Facebook profile a post soon to gain attention by the national press:

My house in #Amatrice is condemned. It is not my home so I have a place to stay.

But I can guarantee you that from NO ONE in Amatrice you would hear that immigrants are to be expelled from hotels to put the earthquake-stricken there.

First because for those affected by such a drama *solidarity* is a very strong feeling – especially if you’re alive thanks to helpers only. And someone fleeing war, you feel a bit like your mate.

Second, because in Amatrice was hosted a group of refugees also, to whom all had become attached – yes, migrants can be perceived as being part of the community. And because the other nights they were also shoveling, and because some of them also are under the rubble.

So, thank you anyway, and welcome to ALL those in need, without “we” and without “them”.⁵⁰

We obviously cannot rely on calamities equally affecting everybody to elicit such authentic solidarity. But we can somehow live ourselves the odyssey of migration, and be offered a possibility of moral empathy for a much lower price, through refugees’ stories.

⁵⁰ My translation and emphasis. The post was reproduced in newspapers, blogs, and news agencies: the original is available through ADN Kronos, “Abbiamo perso casa ma nessuno vuole cacciare gli immigrati dagli hotel” (“We have lost home but no one wants to kick migrants out of hotel”), 26/08/2016 h. 08.08, available online at http://www.adnkronos.com/fatti/cronaca/2016/08/26/abbiamo-perso-casa-nessuno-vuole-cacciare-gli-immigrati-dagli-hotel_NX3LVnXebmdnvLRqUFZscL.html?refresh_ce (last accessed on 29/08/2017).

IV.II Is Free Movement a Natural Right? Between Modern State and Aristotelian-Thomist Utopias¹

Abstract

It has been shown in chapter I.I that, in these times of walls and razor-wires, open borders appear to be more utopian than ever. And yet, Chapter III.II has recalled the view that major philosophical perspectives in the Western world – libertarian, egalitarian, and utilitarian – would support a right to freedom of international movement of people.

What about natural law theory? In this chapter, I present a general introduction on natural law theory and its role in and outside philosophy, before presenting claims specific to the migration debate. I show that Ann and Michael Dummett develop a defense of a right to free movement which is grounded in principles of fairness and reciprocity and coheres with international law.

I also outline John Finnis' more critical and nuanced position: Finnis is eager to legitimize state authority and "special relations" binding fellow countrymen: nonetheless, I claim that the classic Thomist perspective in which he situates these claims ensure his respect for a right to international movement which would be adequately characterized as "open borders", with the restrictions and qualifications I have already put forward.

Finally, I deal with the theory of Alasdair MacIntyre. Trying to infer MacIntyre's attitude toward migration from the classic but short article on patriotism might turn out to be no less difficult than potentially misleading, especially if that article is not read in detail. Complementary elements are offered in MacIntyre's account of natural law "as subversive". On these grounds, I claim that, contrarily to prejudices and misunderstandings about MacIntyre's alleged "communitarianism", MacIntyrean Aristotelian Thomism would endorse a theory of migration which is compatible with reasonably conceived open borders.

I conclude my chapter with a presentation of Aquinas' concise intervention on the subject, and hold that it further supports my reading of the natural law tradition.

Keywords: Natural Law, Open Borders, Natural Right, Aquinas, Aristotle, MacIntyre

¹ A previous version of this chapter was presented at the 11th meeting of the International Society for MacIntyrean Enquiry (ISME) in Paris, 3-5 July 2017: I wish to thank the organizers and the audience for their huge contribution.

Chapter Structure

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IV.II.1.1 Introduction: The Elusive Definition of Political Society

Supporters of cultural homogeneity and immigration restrictions are sometimes accused of wishing to “go back to the Middle-Ages”. Pre-modern societies are often considered hostile to foreigners and closed to an extent that is unacceptable to contemporary standards. Yet, if one considers the comparison more attentively, some complications appear.

The first is that differences between contemporary and ancient societies are not limited to morality or philosophy, but reach so deep into institutional and social structures that the terms “state” and, more importantly, “immigration” can hardly have unchanged meanings. The nation-state is a recent invention, and the effective administrative, legal, technological and bureaucratic apparatuses necessary to contemporary migration control simply did not exist. Even the uncontested point that technological and economic improvements have widened the possibility to move is to be qualified, since the same improvements help constraining and controlling movement as well – for instance by introducing scanning of ID codes and easily verifiable national currencies. Without drones and cars, borders were not as “easy” to guard, nor was Hadrian’s Wall, despite among the best guarded fortifications in history, as impregnable as Ceuta and Melilla.

This outline of the historical and social background leads to a second consideration: the philosophers of ancient and medieval “communities” were not necessarily more hostile to migration than present-day ethicists. Both Aristotle, who, it is to be remembered, was himself for a long time an “immigrant” from Macedonia to ancient Athens – that is, to the eyes of many Athenians, a “barbarian” – and Aquinas, who spent his life travelling and working in a diversity of kingdoms and territories and during one such “international” trip died in 1274, make references to immigration which do not sound especially restrictive. If they do not treat more extendedly the issue, it seems possible to doubt that it was because at the time, in the absence of a strong legal presupposition in favor of national sovereignty - it was even *less* problematic than nowadays.

Be that as it may, from Aristotle’s explicit attempt at defining a political community by reference to its constitution, rather than to ethnicity², the natural law tradition has developed a host of relevant and surprising insights over migration.

² John Finnis, “Nationality and Alienage”, in *Human Rights and Common Good*, Oxford University Press, Oxford 2011, pp. 146. Finnis claims that Aristotle fails in that respect.

IV.II.1.2 Natural Law, Immigration, and General Culture

Claims such as “All nations include a portion of immigrants”, “All societies restricted membership”, “It is natural to associate with people of one’s own kind”, and all the more claims on the importance of ethnicity and blood-ties, often presuppose or even expose a reference to questions of nature and of its normativity. Ann Dummett recalls a very concise definition of natural law, called by Edmund Burke “That law that governs all laws”, and stresses its universal and egalitarian character: every human being can apprehend its precepts in conscience, and yet this objective, pre-political legislation would surpass all statutes in authority³. The natural-law standpoint is often proposed as one among the most favorable to open borders, but as it will be shown, the generality of Burke’s and Dummett’s definition embraces a variety of standpoints, sometimes significantly different, that have impacted Western thought along centuries: thus, before turning to a more specifically philosophical characterization, I would rather stress its importance to general culture and especially to legal reasoning and practice.

An appeal to natural law is frequently found in legal theory and jurisprudence, especially in the Anglophone world: many of the “Founding Fathers” of modern states, most evidently in the United States⁴ but also elsewhere, professed their creed that “the Laws of Nature and of Nature’s God”, as written in the introduction to the *Declaration of Independence*, were the fundamental ideal on which to build a society. Natural law is thus presented as the touchstone with which the overall political constitution and the individual statutes stemming from it are to be confronted and evaluated. An appeal to natural law, in judicial review, has commonly the purpose to qualify, restrict, or contest an act of legislative power. Justice Andrew P. Napolitano is doing precisely that when he writes about immigration restrictions:

[T]he freedom to travel is a fundamental natural right. This is not a novel view.

In addition to Aquinas and Jefferson, it has been embraced by St. Augustine, John Locke, Thomas Paine, Martin Luther King Jr., Pope John Paul II and Justice Clarence

³ “The transnational migration of people seen from within a natural law tradition”, in *Free Movement*, p. 169.

⁴ For a synthesis of the influence of natural law see for instance Robert S. Barker “Natural Law and the United States Constitution”, in *The Review of Metaphysics* 66 (September 2012): 105-130. Barker synthetically characterizes the natural law as “the idea that God, in creating the universe, implanted in the nature of man a body of Law to which all human beings are subject, which is superior to all manmade law, and which is knowable by human reason”.

Thomas. Our fundamental human rights are not conditioned or even conditionable on the laws or traditions of the place where our mothers were physically located when we were born. Stated differently, we all possess natural rights, no more and no less than any others. All humans have the full panoply of freedom of choice in areas of personal behavior protected from governmental interference by the natural law, no matter where they were born.⁵

This “subversive” ideal of natural law as not only founding state legitimacy and even secession – as in the *Declaration of Independence* – but also as enshrining areas of individual immunity from state’s intervention, is deeply seated in the history of political thought. Napolitano is not the only one defendant of a right to free movement who advance for it a long historical record: Chandran Kukathas adds that:

The moral world of ancient Greece described in Homer’s poetry is undoubtedly a long way away from our own. Yet there is something important, nonetheless, about the idea that hospitality and the treatment of strangers is fundamental to civilized life, and the key to the possibility of a well-ordered society. It does not seem out of place in Sa’di’s thirteenth century Persia; or, for that matter, in our own time. It seems right to say that we owe a duty of hospitality to strangers, particularly when they come to us in distress: and we owe the most when they can offer us the least. “For I was an hungred, and ye gave me meat: I was thirsty and ye gave me drink: I was a stranger, and ye took me in.”⁶

Kukathas’ and Napolitano’s lists share no less than two peculiarities. The first one is the intentional and emphasized diversity of the cultural contexts the sources they quote are derived from. Ancient Greece, Medieval Persia, Modern Britain are only some of the places supporters of

⁵ “Immigration as a natural human right”, by Andrew P. Napolitano, published on The Washington Times, Thursday, 31 January 2013. A similar view by Joseph Klesney is reported on the website of the conservative-libertarian think tank Acton Institute: “Migration rights, natural law, and the free society”: <https://acton.org/pub/commentary/2000/11/27/migration-rights-natural-law-and-free-society>, last accessed on June 21 2017.

⁶ “Are Refugees Special?”, in Ypi and Fine, *Migration in Political Theory*, p. 250. The final quote is from *Matthew*, 35,25.

a right to move have inhabited over some two to three thousand years. This is consistent with Ann Dummett's, and in general natural law thinkers', claim that:

In medieval Europe, the primacy of natural law was taken for granted, and no authority was entitled to obedience which was not assumed to derive its power therefrom. But the concept was not a Christian creation: Cicero and later Roman Jurists based their arguments upon a universal, natural law. Outside Europe, similar concepts are found in Hindu and Taoist systems of thought.⁷

The variety of historical examples is also indispensable to satisfy another requirement proposed by Dummett: "When discussing rights, it is important to stand back from the situations particular to certain times and places, and test one's theory against a variety of circumstances"⁸.

A second noticeable feature, restated in this last quote, is the mixture between religious and non-religious thinkers. Besides its influence on law, the natural law tradition has had a longstanding impact on religious ethics and on Christian and Catholic teachings in particular. In its reworking by Aquinas and other similar versions on to people writing in these very days, natural law is not a fruit of the sole Judeo-Christian tradition: Aquinas's sources are, for instance, classics such as Plato and Aristotle. Thus, natural law is presented, even from within these religious tradition, as a coherent body of laws and precepts which can be attained by reason alone, and these norms are proposed as valid for humanity at large. This was indispensable in Aquinas's diverse social and religious setting. The contemporary Catholic view is similar: in the *Catechism* (2241) there is the mention of a qualified right to immigration, not on grounds of Christian charity, but of political justice. Even before the II Vatican Council, Pius XII publicly defended "the *natural right* of the person not to be impeded while *immigrating* or emigrating, under the pretext of a common good falsely understood or applied"⁹. Since the Jewish, and Muslim religions too originated in a context, the Arabian Peninsula, where hospitality is a practice as sacred as vital, it is no surprise they all vocally defend the rights of migrants¹⁰.

⁷ "The transnational migration of people", p. 169.

⁸ P. 178.

⁹ Pius XII, Christmas message 1952.

¹⁰ See *Religious and Ethical Perspectives on Global Migration*, Elizabeth W. Collier, Charles R. Strain eds., Lexington Books, New York 2014.

IV.II.1.3 Two Rival Versions of Natural Law

The very vast and diverse outline of natural law views which can be derived from general culture must become more complicated when analyzed philosophically and historically. For, if on the one hand it is apparent that modern thinkers relied on the idea of natural law most willingly, it is on the other hand indisputable that they did so in a manner very different from the classics, sometimes by changing, reducing, omitting or suppressing its metaphysical and theological presuppositions.

A telling example comes from a modern intervention on the theme of naturalization: David Resnick characterizes the political conception on which John Locke justifies the absorption of foreigners as reflecting a “new concept of individualistic voluntaristic citizenship which provides an alternative to the common law notions of natural allegiance of Locke’s day”¹¹. The argument for massive naturalization in that case would be that “People are the strength of any country or governm[en]t this is too visible need proof”¹². In this modern conception, that is, the one to be found in accounts of natural law developed from Hobbes through Locke to Kant, “individualistic voluntaristic” and humanistic aspects differentiate clearly from Aristotelian “immediately” natural political theory. Naturality is now mediated by the artificiality of the state. And, as the term “humanistic” is meant to emphasize, the accent is now more on natural law as constituted by sovereign human reason, with a much greater subjective element than in Aquinas’s realism¹³. John Finnis even proposes the symbolic breakthrough of 1660, when Samuel Pufendorf published his *Elements of Universal Jurisprudence*, and claims that the core distinction between modern and classical natural law theorists would be the abandonment of the attempt at knowing the final ends to derive norms from them¹⁴. The authors I am now to turn to are mostly relying on the classical natural law tradition: and yet, I would claim that mutual influences are detectable, for instance in Finnis’ statism or Ann Dummett’s consideration of international law.

¹¹ David Resnick, “John Locke and the Problem of Naturalization”, in *The Review of Politics*, 49, 3, summer 1987, p. 368.

¹² John Locke, “For a General Naturalization”, 1693, unpublished appendix, reported *ibid.* p. 385.

¹³ Aquinas’s realism is discussed in Alasdair MacIntyre, *The Tasks of Philosophy: Selected Essays Volume 1*, Cambridge University Press, Cambridge 2006, especially in chapter 9: “Philosophy recalled to its tasks: a Thomistic reading of Fides and Ratio”, pp. 179 and the following.

¹⁴ John Finnis, “Natural Law: The Classical Tradition”, in *The Oxford Handbook of Jurisprudence and Philosophy of Law* Edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro. Online Publication Date: Sep 2012 DOI:10.1093/oxfordhb/9780199270972.013.0001 see in particular pp. 5-7.

II.II.2.1 Natural Law Philosophical Perspectives on Migration

If the research is then restricted to the classical understanding of natural law tradition, the number of sources, in contemporary philosophy especially, is much reduced. Ann Dummett takes up the task of offering a natural law point of view on migration in her already quoted essay, while Paul J. Weithman inquires into the implications of natural law theory for global justice and redistribution and Finnis advances related critical comments on both¹⁵.

In reality, neither Ann Dummett nor Weithman make organic references to the natural law tradition and arguments, and this is part of the grounds for Finnis' criticism. Ann Dummett seems to argue mainly on two bases: history and international law. Her claims are that, historically, the general presupposition was that every person was entitled to migrate unless there were specific reasons on the state's side to restrict movement. She does not dispute the validity of the principle of international sovereignty, even if, she holds, when considering the international community, it would be more fitting to speak of independent and equal states: sovereignty is exercised over citizens. Sovereignty -or independency – are not excuses to an arbitrary exercise of power, especially if it is done to restrict some individual's choices. Thus, the modern presumption in favor of the state's selection of potential immigrants is not granted unless there is evidence of the risk of their entrance infringing on other individuals' human rights, which is rarely the case. We should, Ann Dummett argues, return to the more open conception of state borders that was in place until about the end of the XIX century.

A similar conception is also implied by the international law guarantees of rights to move freely within and out from one's country: rights which are similar to, or complementary with, the right to international emigration. According to Ann Dummett, such rights' implications are not spelled out in international law only because of the West's hypocritical interest in using it as a means to fight the Cold War: she successfully foresees – the essay was written during the collapse of the Soviet Union – that the liberal states' attitudes would have been proved insincere when the number of migrants would have skyrocketed. Paradoxically enough, the West's insistence on freedom of movement was conditional on its restriction by the East. Ann Dummett finally invokes the acceptance of a right to migrate as a first step towards its implementation.

¹⁵ *Free Movement*, chapters 12-14, "Natural Law Perspectives".

Ann Dummett's methodology and substantial points are very similar to those employed by her husband Michael Dummett in his pamphlet *On Immigration and Refugees*¹⁶. Michael Dummett advances arguments that seem to me entirely compatible with a presumably underlying natural law ethical conception, but he claims to be searching for a "rigorous" argument, not a technical one¹⁷. Indeed, he does not make reference to the natural law tradition and theoretical presuppositions either, with some notable exceptions. Besides, once again, human rights and international law, Michael Dummett relies on empathy and on reciprocity arguments based on the "golden rule". In this sense, both accounts seem to be compatible with Carens', as explicitly claimed by Ann Dummett with reference to "Aliens and Citizens: A Case for Open Borders".¹⁸ Michael Dummett's argument is divided into two parts: first, he derives principles from common-sense "natural" morality applied to migration, and then presents a critical history of the British immigration laws and practices, with short reviews of the international situation also. The Dummetts were both life-long campaigners and activists and the philosophical, moral, and legal claims they advance are often not easily distinguishable from their militant standpoints. Yet the overall account's objectivity is difficult to resist: Michael Dummett proposes to adopt the principle of a qualified, non-fundamental right to free movement, as such subordinated to other vital human rights and to the ordinary qualifications, such as public order and even the right "not to be overwhelmed"¹⁹. Michael Dummett, however, is keener to apply such restraints to small countries in actual danger of being "swamped" rather than to bigger ones which in reality display a 2 to 5% immigrant population: these and other realist(ic) concerns are scattered throughout the book. Even more realistic, the historical part of his argument casts light on how migration is intertwined with colonialism, and immigration restrictions to racism. The complex legal reformation and reformulation of British citizenship and nationality would oftentimes include, according to him, an ideological mask which through geographical and jurisdictional distinctions is meant to exclude from the right to free movement within the Commonwealth all the people of an undesired race. Therefore, he claims that to resist such egoistic and immoral nationalism, migration and refuge should be governed by reformed UN bodies. His and Ann's accounts seem thus perfectly compatible not only with Carens's, but with the emerging global governance of migration as well.

¹⁶ Michael Dummett, *On Immigration and Refugees*.

¹⁷ *Ibid.*, Introduction, p. XII.

¹⁸ "I think Carens' view can be justified in the terms of natural law principles": "The transnational migration", p. 177.

¹⁹ *On Immigration and Refugees*, p. 52.

A rather different view seems to be offered by Finnis. In his comment on Ann Dummett's contribution, Finnis does not take position over "what is just and what unjust in the international movement of people". And yet, he accuses Ann Dummett and Weithman of oversimplifying the theory. However, and here most importantly, he specifies that it would be wrong to infer that the policies he favors "require less far-reaching reforms than theirs".²⁰ What can then these policies be? We are unfortunately left with no definite answer. Finnis does not present his claims in terms of rights, in the context of the debate over free movement and elsewhere, and does not assume the label of the "open borders" advocate. His overall standpoint remains, as I said, quite "statist": "The principles of public reason that since Plato have been called natural law, natural justice, or natural right suggest and justify a territorial division and assumption of political/state jurisdiction for reasons closely analogous to those that suggest and justify the appropriation of land and other natural and artificial resources to private owners, individual or corporate".²¹ And yet, this assumption is not as radically alternative to the open borders position I am here presenting as it might seem at first sight. This can be observed by considering three other claims advanced by Finnis.

The first is, once again with respect to the issue of "boundaries", that a Thomist such as Francisco De Vitoria, while attributing to indigenous people the status of legitimate state authorities, also held that "they nonetheless are bound by natural justice and the quasi- positive law common to all peoples (the *ius gentium*) to allow well-intentioned travellers into their territories as tourists, missionaries, and traders, and as miners, pearl fishers, and collectors of other kinds of *communia* or *res nullius*".²² Since Finnis applies the discussion to contemporary issues, it seems safe to infer that this can be translated into a right to access to the territory, at least temporarily, as "tourists and traders" usually do.

The second claim is quoted from Emer de Vattel: "no nation may, without good reason, refuse even a perpetual residence to one who has been driven from his country', or to a body of fugitives or exiles unless its own territory 'could scarcely supply the needs of its own citizens'"²³.

²⁰ "Comment on Dummett and Weithman", p. 203.

²¹ John Finnis, "Boundaries", in *Human Rights and Common Good*, pp. 127-8.

²² *Ibid.* p. 131.

²³ Finnis, "On Nationality and Alienage", in *Human Rights and Common Good*, pp. 139-40: quotes from de Vattel are taken from *Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains* (trans. C. G. Fenwick), Carnegie Institution, Washington 1916. Introduction (section 13), and Book I, 231

And this seems to secure a right to asylum with, it must be noted, a concession of a “perpetual residence” that seems even more demanding than some contemporary interpretations and applications of refugee law.

Even more demanding, I would claim, is the third and more general point: the traditional natural law doctrine of the “original commonality of the earth”. This is an outline of the overall rationale that would comprehend the rights of states and migrants. Once again, the right of the state is presented as analogous to the right to private property, but with the specification of the Thomist qualification for both rights, a qualification that seems to safeguard the right of free movement for “economic migrant” (surely for the more dispossessed) and the imperative of justice to establish a migration regime and other institutional arrangements conducive to the common good of all human beings:

The original commonality of all the earth’s resources, as available in justice for all and each of earth’s human inhabitants, is abrogated neither by the instituting of private property [...] nor by the appropriation of territories to states; and just as property rights are subject to a kind of moral trust or ‘social mortgage’ (a requirement of justice not merely of charity) for the benefit of the poor in their necessity [...] so the right of states to exclude aliens from their territory is subject in principle to an analogous qualification or burden.²⁴

II.II.2.3 MacIntyre on Patriotism and Natural Law

I would now conclude this review of natural law theorist by presenting some aspects of MacIntyre’s interpretation of the natural law theory also. Strictly speaking, I would not classify MacIntyre as a “natural law theorist”, and I would also believe that it would be reductive to force him into the category of “virtue ethics”, but since he presents himself as an Aristotelian Thomist, and that is the tradition whereto he contributes, both elements are undoubtedly present in his philosophy. The addition here could seem misplaced since MacIntyre does not treat the issue of migration directly too. However, as it will be recalled below, he does intervene on the nature, purpose and limits of state jurisdiction, and advances considerations with regard to closure and

²⁴ Ibid. note 35.

ethno-cultural identity and prejudices, in a way that seems to imply obvious and relevant, even if not precise, implications for migration. A second and stronger reason is the necessity to correct some widespread misreading of MacIntyre's account of patriotism, which is often quoted, including in the literature on migration, as an outright if not extreme defense of the claims of community.

If interrogated on the implications of MacIntyre's philosophy in the field of immigration, many people would probably claim that these would favor strict immigration restrictions. The name of MacIntyre is often associated with conservatism and, more specifically, "communitarianism"²⁵. Now, what is more disruptive to communal identity than opening up a society to free migration?

To take but a single example, the *Stanford Encyclopedia of Philosophy* treats MacIntyre's political view as part of the entry on "Patriotism". There, it is attributed to MacIntyre, coherently with his common reputation of being a relativist, the claim that "There is no morality as such; morality is always the morality of a particular community". Even more: according to MacIntyre the true patriot, however disagreeing on this or that specific issue within the project of patriotic nationality, would be compelled to adhere to the "large interests" of its country in any case, so that "when it comes to those "large interests" [...] *that are beyond criticism and must be supported in an irrational way*, his concern will inevitably become exclusive, and most likely aggressive too."²⁶ On a scale that goes from one to five, MacIntyre comes immediately after Machiavelli's allegedly "extreme" patriotism²⁷ and is the prominent example of "robust" patriotism. The fifth grade of the scale is tellingly named "ethical patriotism", implicitly disclosing, it would seem, the general moral evaluation of the preceding categories.

Is this an adequate description of MacIntyre's ideal of allegiance to one's country? Does it follow from that that MacIntyre would oppose or restrict migration, or indeed any other action,

²⁵ This is, in reality, a political and philosophical school that MacIntyre strongly disavows: "Let me turn now to a very different criticism, that of those defenders of liberal and individualist modernity who frame their objections in terms of the liberalism versus communitarian debate, supposing me to be a communitarian, something that I have never been. I see no value in community as such - many types of community are nastily oppressive - and the values of community, as understood by the American spokespersons of contemporary communitarianism, such as Amitai Etzioni, are compatible with and supportive of the values of the liberalism that I reject": Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, Third Edition, Notre Dame University Press, Notre Dame 2007, Prologue, p. XV.

²⁶ Primoratz, Igor, "Patriotism", *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition. My emphasis.

²⁷ I am not sure the representation of Machiavelli is objective either, but here I am concerned with the interaction of natural law theory and cosmopolitan ideals, such as open borders, or with the opposite principles of nationalism.

whenever this conflicts with the “large interests” of a community, that thus appears as the primary political good?

I would hold that it is to be answered in the negative to both. Even without considering that “interest” is not a very pertinent term for a MacIntyrean morality – the central argument of *After Virtue* efficiency is construed in opposition to a morality of arbitrarily conceived interests and bureaucratic -, I would think it important to situate MacIntyre’s controversial intervention on patriotism²⁸ in its theoretical context and in its proper and defining place in the philosophical itinerary of the author. For it is evident from a careful reading of the essay, in which it is made explicit that patriotism is “a permanent source of moral danger”²⁹, that in it MacIntyre is still building on its critique of the abstract and impersonal ethics “in the third person” characterizing modernity.

Thus, the issue is not the difficulty of modern versions of morality in defending an account of patriotism itself but their more general shortcoming in explaining, for instance, the particular status, for one, of one’s children or one’s history or even of oneself. It is this ethics abstracted from the narrative of life and, consequently, from social relations such as those established in the country one inhabits that MacIntyre decries as the morality of a “citizen of nowhere”³⁰. But for what regards allegiance to modern nation-state, often qualified in MacIntyre’s work as “bureaucratic”, shall we expect anything different than the critical attitude we can generally suppose in an adherent of supranational political theories such as Marxism and the Thomistic version of natural law³¹?

If posing the question this way is not sufficient to conjecture an answer, I would hold that a quote and attention to two other MacIntyrean sources would dispel any remaining doubts.

The quote is MacIntyre’s direct intervention on the topic that we have seen is considered by Miller exemplary of the importance of nationality: readiness to die for one’s country.³² The

²⁸ Alasdair MacIntyre “Is Patriotism a Virtue?” (The Lindley Lecture), Lawrence, University of Kansas 1984. Reprinted in Primoratz (ed.), *Patriotism*, Humanity Books, Amherst 2002.

²⁹ P. 15.

³⁰ MacIntyre, “Is Patriotism a Virtue?”, p. 12.

³¹ MacIntyre seems to hint precisely to that wider and superior allegiance when claiming that from the inadequacy of the liberal attachment to one’s homeland “it does not follow that some version of traditional patriotism may not be compatible with some other morality of universal moral law, which sets limits to and provides both sanction for and correction of the particularist morality of the patriot. Whether this is so or not is too large and too distinct a question to pursue in this present paper.” One of the three relevant examples he provides is that of “patriots and believers in Thomistic natural law”, a category to which MacIntyre himself could be safely included considered his repeated and, after that essay, deepened allegiance to Thomist philosophy. See *ibid.* p. 15.

³² Chapter III.I

Scottish philosopher seems to offer further excuses to the apparently unpatriotic responses by Italians:

The modern nation-state, in whatever guise, is a dangerous and unmanageable institution, presenting itself on the one hand as a bureaucratic supplier of goods and services, which is always about to, but never actually does, give its clients value for money, and on the other as a repository of sacred values, which from time to time invites one to lay down one's life on its behalf. As I have remarked elsewhere, it is like being asked to die for the telephone company³³.

Then we have two sources that point in directions rather far from the supposed “robust patriotism” projected on the relative MacIntyre's essay. The first is *Dependent Rational Animals*, in which MacIntyre develops a biologically grounded version of Thomist Aristotelianism according to which the ideological centrality of the artificially self-sufficient healthy and wealthy middle-aged male (but perhaps other qualifications, including of an ethnic kinds, could be appropriately introduced) is refused in favor of the recognition of interdependence and the vindication of the equal moral exemplariness of the weak and needy: the child, the ill, and, we could legitimately add, the migrant. But an even more revelatory source is the essay entitled *Natural Law as Subversive*, in which MacIntyre details the position of Aquinas with respect to the emerging centralized nation-state, and holds that natural law theory would be incompatible with both the earliest statist positivist claims, pretending that morality and national law are one and the same thing *and* to the irrational and intolerant ideas and practices of a closed subgroups, whom he sees as deprived of the social and intellectual structure necessary to recognize moral precepts that go beyond the most immediate instruction provided by natural law. In this, MacIntyre is not only Thomist, but distinctively Aristotelian, is so far as, *contra* Finnis, he seems to vindicate the possible success of the Aristotelian attempt at locating the definition and essence of a community in its *politeia* (constitution), and not in any other pre-political or extra-political identity. That is, “local prejudice” would find no more place in a MacIntyrean theory than the absolutist authority

³³ Alasdair MacIntyre, “A Partial Response to My Critics,” in *After MacIntyre*, University of Notre Dame Press, Notre Dame 1994, p. 303

of the sovereign, and so would a populist combination of the two which does not leave a place for the rationally binding enterprise of philosophical discovery.

At the same time, a MacIntyrean theory must be attentive to preserving the social bonds from disruptive external events, so that the same requirement usually advanced by anti-immigrationists – that a people has a right not to be “swamped” – and which is easily accommodated in a common-sense based argument such as that advanced by Michale Dummett, seems also completely compatible with MacIntyre’s view of the political good of society. And to those who would argue that this is a contradiction, since openness to strangers and that cultivation of a community’s culture cannot be accommodated at the same time, it must be replied that it would be so only if one of these two complementary rights would be made into an absolute, and that this would not be a necessity but only a question of “excess”. Now, moderation and *aurea mediocritas* (“golden mean”) are among the maxims of natural law morality since the time of the Delphic inscription μηδὲν ἄγαν (“nothing in excess”).

This way, we are back to something close to the moderate ideal advanced by Aquinas in the *Summa Theologiae*³⁴, where, by explicitly quoting the Aristotelian *Politics*, he expounds a concise theory of migration. Excluding hostile relations, which shall be treated according to the doctrine of just war, foreigners are divided into three groups. The first category would be that of people simply crossing the borders as travelers (*peregrini*). The second is the group of people settling among foreigners to work and live there temporarily (*advenae*). The third case is that of those who want to integrate completely and, to speak with modern terms, “naturalize” (*quando aliqui extranei totaliter in eorum consortium et ritum admitti volebant*)³⁵.

Dealing with the first and the second category is reduced to a negative duty of non-interference: travelers and temporary settlers shall not be “molested”: impeding passage is not mentioned as a possibility. To me, after restating the immense differences in the background conditions – the incommensurably higher level of societal regulations and controls over any population, native or foreign, on health, residence and the like – it seems not to be outstretching the argument to translate it in terms of peaceable hospitality and a general presumption for “open borders” (and refuge). Finally, for the would-be naturalized citizens, Aquinas recommends,

³⁴ The second part of the first part, question 105, article 3 (I-II, 105, 3). I quote from the Benzinger Bros. edition, published in New York in 1947, and also available online.

³⁵ The three Latin terms are roughly translatable as “visitors”, “migrants/foreigners”, and “those whom they [Aquinas is speaking of the Jewish people] wanted to integrate completely in their community”.

referring to Aristotle, that it is possible to wait a certain time to avoid dangers: “if foreigners were allowed to meddle with the affairs of a nation as soon as they settled down in its midst, many dangers might occur, since the foreigners not yet having the common good firmly at heart might attempt something hurtful to the people”³⁶. Populations which are culturally nearer are thus naturalized earlier: Aquinas allows for exceptions in case of heroic and extraordinary civil service. But these precepts, as other obligations of justice, extend even “to Ethiopia and to India”, since “We ought to treat every human being as, so to speak, neighbour and brother”³⁷ (*omnem hominem habere quasi proximum et fratrem*). On a natural law Thomist perspective, the human and political community is thus the only fundamental bond.

Since, according to MacIntyre, the only condition defining communities is adherence to the common good, I would claim that his position on migration could be translated into a sort of Habermasian “constitutional patriotism”, with the obvious difference that the principles would be those of Thomist ethics, and not those of liberalism. However great this difference might be, it does not amount to saying that MacIntyre’s requirements for cultural homogeneity and relative immigration control would be any more restrictive, since his anthropology, in this differing from the Aristotelian, would concede to every “dependent rational animal”, or “plain person”, at least the potentiality to recognize the common good. But that would also mean that, under the same prudential temporal and quantitative constraints dictated by Aquinas, immigration would not be problematic. We have thus transitioned from reality through realism beyond ethics to reach utopia:

The rationality of plain persons is to be elicited by and exhibited in their participation in communal practices, practices that require a shared recognition of their common good as a political bond, a type of bond very different from that provided in local societies by ethnic or religious or other prejudice. So Aquinas’s theory is as much at odds with local prejudice – as contrasted with local custom – as it is with centralizing power. But this may seem to say that it is [...] even deserving to be stigmatized as utopian. I have suggested elsewhere that Utopianism rightly understood is no bad thing.³⁸

³⁶ Ibid.

³⁷ II–II 78, 1-2, quoted in Finnis, “Boundaries”, in *Human Rights and Common Good*, pp. 129-30 note 4.

³⁸ Alasdair MacIntyre, “Natural Law as Subversive: The Case of Aquinas”, in *The Tasks of Philosophy*, p. 63.

IV.II.3 Conclusions

As Ann Dummett and Napolitano show, natural law theory is more than two thousand years old and spreads as wide as the Western political thought – possibly even beyond. No less extended is the debate on the naturalness of the right to move. In this chapter, after brief characterizations and specifications, I have resumed a variety of views which are offered as contributions within the natural law tradition on the topic of migration. Despite recognizing that this is a terminology originally extraneous to natural law vocabulary, I hold that all of them seem compatible with a claim in favor of an open border position, to wit, in defense of a right to international movement. Some of the thinkers I have recalled, such as once again the Dummetts and Napolitano, make that claim explicitly, as does the doctrine of the Catholic Church; others, like Finnis and MacIntyre, simply offer a theoretical outline in which, I believe, an equivalent to a right to free movement can be identified and translated. In particular, Finnis recalls Vitoria’s classical claim – at the time applied to European colonizers– that friendly passengers cannot be impeded travelling, even if they are crossing international boundaries. More importantly and more radically, he defends the traditional idea of the common possession of the earth and the limitation of the usage of private property to the common good, an idea that can hardly be opposed to the right of innocuous foreign workers to enter any country to find employment there, especially if they come from a poor place. The fact that Finnis is especially attentive to the qualifications of this and indeed of other rights, and his vindication of the sovereign authority of the state, an authority which is meant to serve purposes *other* than global justice *also*, does not mean that the attribution to him of a defense of free movement is inappropriate, since, as I have shown in chapter III.III, such right cannot but be thus qualified, mainly with an eye to practical implementations, as any other right of global application. Finally, I took up the occasion of a clarification on MacIntyre’s stance on patriotism and communitarian values to show that every coherent Thomist thinker must be concerned with the *political*³⁹ character of a community and with the *supranational* obligations of natural law, including the humane acknowledgment, already explicit in Aquinas, of negative rights of foreigners, and of reasonable practices of naturalization. In conclusion, Ugur’s and Hudson’s that natural law theory is supportive of open borders appear theoretically sound.

³⁹ This particular view is contentious for Finnis: see note 1.

Conclusions

As when climbing up a mountain and finally appreciating the contours of the peak, the tortuous road left behind is usually discernible with a new clarity also, and the enlightened view through purer air is a proportionate reward to the strenuous endurance, thus upon completing the present theoretical “migration” and reaching its conclusions, both the meaning of the former and the import of the latter should become more intelligible to the reader’s mind and, honestly, also to the author’s, since this latter is rightly expected to be a guide and a companion and not a lazy loafer comfortably waiting at the end of the path.

The overall aim of this work was to conciliate the two apparently opposite poles of the migrant crisis as a situation we find ourselves projected in and the right to move as the normative ideal we are supposed to realize.

Therefore, in the first chapter, I presented the crisis as riddle to be solved, as a set of contradictions and paradoxes which jeopardize not only the right to migration but also security, stability, peace, and many other human values such as those the chapter IV.I on solidarity exemplifies.

On Methodology

As a presupposition whose soundness should in turn be proved by the very matter it applies to, I first of all assumed that philosophy of migration, at least when it aims at achieving results of a practical import on some issue, cannot set out by abstracting from the context and the concrete circumstances it is then meant to contribute to. To some thinkers, this might seem a very dissatisfying and hybrid way of doing philosophy: never during this research I did prove that the purpose and the methods here adopted are the unique or the best in the field of political philosophy at large, or of that of migration ethics, nor I meant to give a try to this useless and arrogant claim. However, I remain persuaded that *these* results would hardly be reachable with different means: that is, I am unsure that an abstract and idealized theoretical reflection could recognizably be applied to a harsh and dramatic situation such as the migrant crisis, wherein even scientific evidence, not to speak of “factual truth”, is difficult to obtain. In chapter II.II I replied to those

who think that to try to attain *some* action-guiding principles are doing more than political philosophy, or something altogether different. The many examples that I recalled in that same chapter, with the relative arguments they supported, should show that my approach is not only defensible, but also almost “orthodox” in the field. Yet, together with David Miller and other, I do not think that my duty here is the opposite extreme, that is to say, to advance a detailed policy proposal.

Such prominent philosophers of migration as Sarah Fine and Phillip Cole have variously defended the view that, for instance, without tackling the issue of colonization it is impossible to deal with migration issues satisfactorily, and I would depart from their view only to the extent to be able to add that there is a corresponding need to bring into consideration whatever real-world issue impacts on a certain migration-and-refugee-theory related problem, as prominently exemplified by the Cold War rationale of the very definition of “refugee”. A claim to the contrary would seem to me to avoid the uncomfortable risk of mingling with divisive and hardly cognizable issues: but the philosopher’s scientific status, and her or his commitment to accept the restraints posed by truth and to follow the logic wherever it leads, should be sufficient insurances for running such risks and greater.

Thus, through this realist(ic) methodology, indebted to the way Miller and Joseph Carens have shaped the debate, but also to the realist tradition in political philosophy and international relations, I wanted to be able to recognize the hard lessons of the migrant crisis, while at the same time defending the humane principle of freedom of movement which I see as endorsed by all the main normative standpoint we are offered in Western thought.

On the Migrant Crisis

What is the migrant crisis? As chapter I.I has explained, it is the enormous increase in the number of refugees’ and migrants’ non-organized arrivals to Western states unwilling to accept them. But under the curtain of this migration-centered picture, the migrant crisis is also the dramatic political instability and the international and civil wars in Libya, Syria, Iraq, Afghanistan, Yemen, Somalia, Ukraine among other conflicts. It is also the steady political, economic, technological, military domination of the global West on the South and the East, coupled with the mounting inequality between the world regions. But it is also the reaction and the opposite to this:

a phase in the gaining of importance by “the rest of world”, of course said from a Western perspective. It is the demographic collapse of many of these very prosperous Western state; it is the loss of their national capability of governance, of their national culture, of social security and social trust, not causally due to immigration “from below”, but associated to it, and to pushes “from above” to turn the self-governing *demoi* (political communities) into docile and disposable masses of cheap workers and, paradoxically enough, hungry consumers at the same time. The migrant crisis is also the fear caused by a globally omnipresent terrorist threat and a corresponding and no less menacing state and international power permanently and reciprocally on the verge of a devastating attack. Thus, the migrant crisis implies and involves specific legal and cultural practices, with a new universe of “centers of temporary residence” and “hotspots”. It is all these very diverse factors and possibly many more, because epistemologically the migrant crisis is also the loss of evidence and trust, to the point that in migration theory we admit that even the most rigorous empirical research often gives ambiguous and non-generalizable results, strongly affected by ideological presuppositions and persuasion notwithstanding methodological control.

On the Right to Free Movement

What is the right to free movement? It is the general normative presupposition, in this very similar to other presuppositions such as the right to food or shelter, that people should be able to go wherever they want or need or are interested in, including the crossing of state boundaries, *except when there are specific reasons or other theoretically compatible but practically contrasting rights which make it impossible or unreasonable*. It is a moral right common to all human beings and which should and could be expressed in corresponding international legislation. It is by no means hierarchically superior to all other rights – for instance it is obviously subordinate to the right to life or security. Nonetheless it is an important right which accidentally – as in the case of refugees – is vested with additional importance by its utility to secure other rights, choices, and interests. It is a right which is possible to ground in several different and prominent ethical traditions, but which relies mostly on principles of mutual help, non-interference, illegitimacy of arbitrary discrimination, and reciprocity, which lie at the heart of Western and possibly of worldwide moral and political principles.

On Realist(ic), Nationalistic, and Other Qualifications and Practical Restrictions

The combination of these two definitions, on the background of the preceding research, should be sufficient to derive conclusions. But for them to be more persuasive and specific, it must be once again stressed that my understanding of the open border claim as a normative and theoretical claim in favor of free movement, contrary to, say, a rough policy recipe, is compatible with the main claims of nationalism and realism of any reasonable kind, liberal or otherwise, understood as practical limitations to be tested and verified in any specific case.

So that it might be true that on a specific occasion massive immigration disrupts the social fabric and jeopardizes the citizens' security: but before resorting to migration control it should be relatively certain – as in all social scientific and moral matters, which differ from mathematics, *absolute* certainty is unachievable – that it is so in that specific case. Thus a universal case for the increasing or the decreasing of migration seems to me absurd: I would well understand that Lebanon exerted some limitations in order to survive as a country, while I would struggle to justify the US recent ban on refugees given the country's enormous population and resources, world power, and responsibility, and other factor such as its relative economic prosperity, its specific demographic and national identity, its relatively secure geographical position – with Canada as a Northern neighbor and Mexico in the South, but mostly with a barrier guarded by desert that can prevent any sudden “invasion”.

But to insist on the necessity to contextualize: take the claim, frequent in social researches on migration, that immigrations raises the crime rates of society. It is so often repeated that, while looking for a general answer, I did not immediately realize the reasons why different serious reports could offer contrasting results. But at least one reason is obvious, since the societies have different crime rates in and of themselves, and a kind of migration which raises crime rates in Finland can abate it in Nicaragua, a decrease of the crime rates in Milan could well have been an increase in Venice and so on. Furthermore, different migrant groups display different integration and correlated crime rates, so that the issue is even more context and time-dependent, and the same applies to many other aspects.

As I have repeatedly shown, there are moments and places in history and geography, as the New World countries at the beginning of the twentieth century, where massive immigration was not only welcomed but even searched for, and other context like present-day European Union

wherein an (internal) unrestricted right to free movement is reality. It comes with costs, order, and restrictions, but this does not make it any different from other rights and especially from the cognate right to freedom of emigration or internal movement. Surely, I have a right to move from Bergamo to Naples or from Italy to Sweden, but the train or plane tickets might be expensive, the van transporting my belonging might be even more costly, change of residence is time-consuming and rightly controlled by the relative norms and authorities, and so is the acquisition of documents and obtaining utilities, and there might be a moment when the highway is shut due to exceptional traffic or the airplane is cancelled for a snow storm. Do these and other restrictions deny that I have those rights in a first place? I doubt it.

However, to grant further ground in general to the nationalist and the realist, I think I have criticized Miller's conception long-enough to agree with him plainly and forcefully that his critique of naïve and posh cosmopolitanism, the ideology of a "global supermarket", is also indisputably sound, and that until we admit the dangers of neoliberal "McWorld", to use the brilliant word coined by Benjamin Barber, and react to them accordingly, Marine Le Pen's sweeping definition of globalization as "the production of goods by some slaves to sell them to our unemployed" will always sound more convincing and realistic than any lofty open border and global justice ideal.

On the Value of a Right to Free Movement

But then the dissatisfied or suspicious reader could go asking, on the line suggested in the conclusions of chapter III.III: so why bothering? Why introducing such a normatively expensive and practically irrelevant rights? All the restrictions that are presently endorsed under the rationale of state sovereignty could be easily rephrased as practical limitations, actually they *already are*, since, as Michael Dummett¹ has exemplarily shown through his analysis of migration policies in the UK and Europewide, public order and social security are good alibis for racial targeting among other immoral state objectives.

Well, with a right to free movement this would become at least a bit more difficult since there would be at least a general presupposition – which increasingly seems to me fair and correct

¹ I would present my own thesis as an overlap between Dummett's and David C. Hendrickson independent endorsement of the right to move.

– in favor of the liberty of the individual. But if one assumes that it would not make any change, then the case in favor of a right to free movement becomes paradoxically even stronger.

For, to assume a right, is generally to declare a value: this is not obviously true in all cases, as in the debated issue of a right to do evil or trivial things, but it undoubtedly is in other, for instance in the case of the right to education or to health. Thus, to declare a right to free movement and recognizing that present world conditions would not allow for it to be immediately brought about – the world is not like the European Union – *would denounce these very conditions as unjust or at least non-optimal*. If the enforcement of the right to free movement is, as I believe, conditional on relative equality and peace – as is the right to international security-, so that masses of people are not forced to fly disorderly to find a decent work even if their unjustly inadequate level of education make them unfit to it, or to find a safe haven at the cost of disrupting another country’s quiet lifestyle, then it means that *we have an additional good reason to address these background problems*, independently from their inherent injustice: a reason, in the examples, to ameliorate global living conditions or to strive for peace. And a reason to do good is itself *a good reason*. The right to free movement then assumes even a heuristic quality: it helps discovering what is wrong in the present state of the world. Not that it was too hard to do that independently: unfortunately, the world is replete with plain wrongs, but this point offers an alternative perspective, often coinciding with that of the most disempowered, the refugees, the poor migrants. What is it that forces them to move, in a way which is problematic to all?

Again, on the (European) Migrant Crisis

What is then gained, when the general knowledge I proposed regarding the migrant crisis, the contextual methodology, and the normative injunction in favor of free movement are assumed and combined? What are the recommendations for the European context, the one where this thesis was mainly written, which the bibliography, especially the empirical works, mainly describes, and to which its argument should be most suitable? Since in ethics it is important to show that a theory is applicable and that its effects can be humane, I would now proceed with a thought experiment – more than a direct policy recommendation. Each voice of the proposed “agenda” is relative to both sending and receiving countries, however, due to the natural and already

acknowledged partiality of my perspective, but also to the desire to avoid Eurocentric and careless propositions, I would address mainly the receiving states.

On the Possible Increase and Change in (Some Countries') Migration Rates

The first, most logical, and direct consequence would be a general rising of legal migration rates, at least in the countries who seem to be able to manage them and whose colonial and present history and world status would make more directly responsible for providing an answer to the migrant crisis. Countries like France, Italy, Germany, the UK, whose population is of several million people, whose dimension would be potentially sufficient to host millions of new settlers – not that a correspondingly high number is to come in, this is but one factor to count among others – whose economies are relatively solid, whose societies are traditionally more open to immigration – perhaps with the exceptions, recently transforming, of Italy and Germany– whose armies and security forces are among the most effective in the world, whose demographic prospects are very gloom – this time, it is especially the case of Italy and Germany – should reasonably increase the number of strangers they allow in, beginning with refugees, for instance by preparing and annually testing and reviewing migratory plans involving a gradual increase in the entries, and verifying the effects on society. It is not necessary for this effect to be very good to prove the direction taken is the correct one: even if social standards remain relatively stable, the improvement in the lives of those who have come in from poorer settings would make the situation overall better, including the obvious spill-over benefits such as remittances to the sending countries and the like. Furthermore, as I already said, the colonial past of these great powers makes them especially responsible for the world poor. By increase I mean not a migration boost or revolution, but a safer progress of say 0,5-1 percent of the population each one or two year: this would still interest several million people. In order to make the effects more beneficial it should be possible to create a distribution scheme based on the choices of migrants and citizens, which would in turn rely on willingness and affinity. The system should not proceed as a “lottery” but by, say, allowing more working visas and other forms of socially connected immigrations, which are the less morally problematic and the most conducive to integration.

Since migration of their citizens to the richest countries of the world is sometimes desirable to sending states, given the economic benefits, and in any case preferable to having the same fellow

countrymen live with an irregular status or endanger themselves while trying to reach Europe, the increased number of working, studying, touristic, and other visas could be negotiated in exchange for reasonable measures of migration containment by sending societies, for instance their effort to develop and create job in the particularly depressed regions which are identified as major sources of migration. The receiving state could also cooperate with – ethical – economic investments, thus trying to bring about the ideal and sometimes realized “win-win-win” situation, with gains for migrants as well as for the sending and receiving society, which is the goal of the Global Compact for Safe, Orderly and Regular Migration being negotiated at the UN.

I suspect that in any case, greater migration will take place due to the severe economic and demographic factors I illustrated in chapter I.I: but without the negotiation of legal pathways *directly with the states of origins*, and not with the states of passage², in exchange of effective and non-coercive immigration controls – incentives might be more efficient than deterrents – the human and economic toll will be greater, as will be the alienation of the Western “exclusive corner” from the rest of the world.

I insist on the role of the countries of origins, because I think that the current policy of giving up a crucial sovereign prerogative such as border controls to states such as Libya and Turkey, besides implying detention in morally problematic conditions especially in the former case, is more expensive economically, morally, and politically, since in the long run receiving states are exposed to blackmail and since the costs of stemming a flow are supposedly higher than those of preventing it at its source in a poorer country – higher for everyone.

Who is this choice to be reconciled with the people’s democratically opting consistently for *less* immigration? While reminding that I am not here to advance a detailed policy proposal, I would suggest that those are often the very people who then hire about 200 000 undocumented caregivers. As I claimed with respect to polls quoted by Miller, it is one thing to declare a taste, and it is another to act on concrete material interests or needs. So the best way seem to be to enhance and liberalize the natives’ and migrants’ liberty to offer and find a job, by easing all the restrictions on undocumented or provisional visitors in that sense. The legal places are to be created by the exercise of the right of association, not by its denial.

² The political power exerted by states in control of migration is not to be underestimated: see Kelly M. Greenhill, *Weapons of Mass Migration, Forced Displacement, Coercion, and Foreign Policy*, Cornell University Press, New York 2010.

On the Demographic Winter (and the Population Bomb)

Attempts at controlling demography in the developing world have repeatedly failed and, even if this is mainly a problem for demographers, some relevant considerations can be offered by and to political theorists as well. Actually, as I have shown in chapter I.I and II.I, migration theorists are already attentive to the point. On my part, I would content myself with reporting the final lines of Lewis Mumford's monumental masterpiece *The City in History*. There, Mumford claims that an increase in birth rates is the natural human reaction to harsh conditions and vitally dangerous circumstances³: he is talking about the nuclear menace, and the book is written in the midst of the Cold War and of the post war "baby boom", but his analysis seems to hold for the richest and safest country of nowadays, which are also the most demographically depressed. Conversely, if Mumford is correct, there is no way to persuade, say, Sub-Saharan Africans to contain the demographic growth that then leads to migration. For people leaving under those conditions, mainly in absence of social security and with high mortality rates, having many children is advantageous if not indispensable to increase the probability to survive. We will not persuade them to stop by explaining that it is not in the West's interest. Rather, it is more likely that the amelioration of the conditions of living and the creation of local jobs – something which can be helped with foreign aid and investment - would lead, at least in the long run, to a decreased "youth bulge". And the West is to address its demographic problem also: migration, as Blangiardo and other explain, cannot be a safe solution. To the contrary, according to what I have described as the "migratory shock", migration is perceived as *more traumatic* as it happens against the background of a native population which is ageing if not dying off. To smooth the relative unbalance between migrants and citizens, and to ensure that demographic differences do not insist on already problematic ethnic and economic divides, it would be useful that the population decrease in the West be not *that* sharp. Governments know it well since the ageing population is a problem for a great host of issues – health expenditures are but the most obvious – but thus far, the reaction has not been proportionate- They still struggle to break free from the Malthusian framework: as Keynes remarkably said, we are all really unconsciously obeying some dead economist. I would believe that it is impermissible to societies with a minimal respect of human

³ Harcourt Brace Jovanovich Inc., New York 1961, p. 595: "The automatic response of every species threatened with extirpation takes the form of excessive reproduction".

rights and private life to interfere in such an intimate sphere as family life, but an effective and carefully designed *nudging* to remove the obstacles – economic and others - which impede many people from raising as many children as they wish is not as inconsistent with moral standards. The few developed countries which are more or less succeeding in keeping the birth rate around the replacement threshold – France, the US, the UK, Ireland, Iceland, Norway, Sweden and Albania – and those who are devolving successful efforts to raising them up from a record low – the Russian Federation – should serve as models.

On Culture, Welfare, and Nationality

As it has been claimed, the fear for the disruption of the social fabric is one of the most serious concerns favoring migration restrictions and it seems not prudent to reject it completely. How can Western states react to their population's worries for the "watering down" of their national cultures without abdicating those aspects of multiculturalism which are not separable from non-discrimination? This issue is not of easy solution and is by definition even more contextual than the others, since each country would display a specific national culture. In general, I would defend the view that a positive endorsement and preservation of one country's culture is not necessarily at odds with its being inclusive and tolerant. National symbols and languages can well be preserved while at the same time, for instance, campaigning for the children of immigrants to reach bilingualism, and empowering them to do that. For the rest, as I said in chapter I.I., and as reported by Michael Dummett also, immigration is not the only nor necessarily the most dangerous threat to the identity of a nation. The global culture is also vehiculated by media and power relations, especially of an economic nature. I remember discussing with a Hungarian friend the impact of Facebook on the Magyar way of addressing – it is one of the languages which put the surname first, but while logging in to a global social media one adapts to the broader conventions not to generate confusion. The example is trivial but it applies to much more relevant things: for instance, I would doubt that the erosion of the rights of workers is to be imputed to migrants more than on lobbying and neocolonialism by neoliberal world economic giants. Dummett makes the case that the culture which is most evidently unifying the world is the American, while jeans, MTV, McDonald, Disney, and other of its emblems go unchallenged as symbols of modernity and globalization.

As for welfare, I am not fully persuaded by Miller's claim that a diverse national identity would threaten social trust and, in turn, the generosity of citizens in providing for each other. I would think that things often go the other way around, and that the nation-based welfare state has established a firmer persuasion in the value of nationality than before it operated. In any case, a strong national culture of solidarity, which can be promoted by state education even in a context of diversity, should ensure the necessary reciprocity and contributions.

Related to all these issues is a reasonable naturalization policy. In political philosophy as well as in politics, there is a strong cultural insistence on the necessity to naturalize soon, with a standardized procedure, and to grant citizenship to the children of migrants through *ius soli*. To me, the conjunct realization of all these policy proposals seems not necessarily an improvement, since even among the most outspoken advocate of cosmopolitanism and open borders, such as Carens and Ayelet Shachar, there is a growing awareness of the importance of social membership or, as the latter has named it, *ius nexi* ("right from/of the connection"). I do not think that states like Switzerland and Germany must necessarily be less open than the United States and France only because they have more burdensome requirements to naturalization: the different conception of their nationalities should instead be preserved, if for anything to avoid scaring the respective populations with the threat of the "flattening" of all the identifying traits of their societies. But I would think, coherently with the Aristotelian and Thomist conception of citizenship as a *political* good, that it would be above all the necessity to ensure stability and to incentivize integration that would suggest making naturalization equally and surely achievable, but also enough time- and effort-demanding to give people a reason to strive after it. Furthermore, and it is once again the case of Switzerland, very high immigration rates seem to be perceived as less threatening when the corresponding change in the countries constituency is delayed and gradual, and when solid democratic institutions and strong local communities guarantee the preservation of agencies and identities.

On Global Justice

To conclude this "thought experiment" agenda, I cannot but mention the wider radical reforms that would be conducive to a greater enforceability of the right to migrate. These are obvious if they are understood as counterparts to the problems described in chapter I.I. And yet,

they appear so blatantly utopian to make one doubt that qualified free movement is, in comparison, truly too realistic.

The most impactful phenomenon on the *refugee* aspect of the crisis is war: if it is at least possible that Western powers would be more prudent, in the next years, before embarking into military interventions whose results have been notably lower than the expectations and often evidently insufficient to justify the human toll, it is much more naïve to hope that world conflicts in general will reduce, and even more difficult to identify a way to achieve this result. Nonetheless, a reform of the United Nations and in general a movement of the international society towards a multipolar – or even better, democratic - scheme of cooperation could possibly serve the scope.

No less conducive to greater world peace would be addressing the other main factor provoking the *migrant* crisis, that is, the worsening and in any case scandalous global inequality. A global redistribution of income, besides other independent justifications, would then be further recommended by its likeliness to improve freedom of movement – *in the long run*. Without going into detail, it seems apparent that a more peaceable and equal world resemble two dreams more than two political conditions that can be realistically postulated. And this leads to the really concluding “conclusion” and the final restatement of the right to free movement, through the presentation of a paradox of a similar kind of the one presented in the section “On the Value of a Right to Free Movement” above. For, human rights, and rights in general, are generally mutually sustained: for instance, the right to shelter, the right to health, and the right to a decent occupation and income cannot be pit the one against the others, but are rather supportive. This is to be put in balance with the claim that there is a plurality of human goods, as repeatedly recalled in chapter II.I Also, the difficulty in realizing those rights – millions of people are denied healthy conditions of living, a house, and a decent job – does not diminish in any way their normative force. In a similar way, to show that the realizability of the right to free movement is conditioned upon and conducive to other hardly achieved rights, is to show its embeddedness in the intricate geometry of the rights which are related to, if not fundamental to, human thriving. It is to project free movement in the Olympus of universal human rights: demanding and challenging aspirations, but also legitimate and real ones. And, to identify and defend a right of this sort, be that too realistic or too idealistic, too much or not enough to the eye of some people, is precisely what it is required from ethics and political theory.

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