

# Self-determination and Immigration: the Right to exclude in the Context of global Justice

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**UNIVERSITY OF RIJEKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES**

**Tamara Crnko**

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IMMIGRATION: THE RIGHT TO  
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**Supervisors: Ass.Prof. Nebojša Zelič, PhD  
and Ass.Prof. Ana Gavran Miloš, PhD**

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**SVEUČILIŠTE U RIJECI  
FILOZOFSKI FAKULTET U RIJECI**

**Tamara Crnko**

**SAMOODREĐENJE I IMIGRACIJA: PRAVO  
NA ISKLJUČENJE U KONTEKSTU  
GLOBALNE PRAVEDNOSTI**

**DOKTORSKI RAD**

**Rijeka, 2023**

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## **ABSTRACT**

The aim of this thesis is to critically examine the role of self-determination in the philosophical discussion on migration. This internationally recognized principle is often used to ground the state's right to exclude immigrants. It is claimed that self-determination entails the right to control membership composition of self-governing political collectives, and limited duties to foreigners and migrants. From this, proponents of the self-determination based argument conclude that legitimate states are morally entitled to control immigration, and to exclude prospective, even very needy, migrants. To show that the general right to exclude does not follow from self-determination, I will engage in analysis of the concept of self-determination as used in the argument for the right to exclude, and to situate it in the wider discussion on global justice and legitimacy of the state system. Control over the membership composition is not an essential aspect of self-government, but is an added layer of this right with potentially problematic consequences. Immigration controls are not inevitable in securing conditions of self-government. Migration is, furthermore, not a self-regarding matter over which states should have discretion, but a complex phenomenon with an effect on a number of agents, on global justice, and therefore on the conditions of legitimacy. If the exercise of self-determination depends on the legitimacy of the state system, then the role of different migration policies in securing it should be incorporated in decisions on migration. States exercising self-determination, therefore, lack complete discretion over migration, since it affects the conditions of its legitimate exercise. After showing that self-determination does not ground a general right to exclude, I will proceed in offering the blueprint of the way self-determination can be re-imagined and migration justice conceived.

**KEY WORDS:** self-determination, immigration, the right to exclude, global justice, legitimacy



## PROŠIRENI SAŽETAK

Cilj ove teze je kritički istražiti ulogu prava na samoodređenje u filozofskoj raspravi o imigraciji. Ovo međunarodno priznato pravo, koje štiti ključne interese pojedinaca u ostvarenju političke slobode, često se razumije kao temelj prava država na ograničenje imigracije. Zagovornici ove pozicije tvrde kako samoodređenje povlači pravo zajednice na kontrolu vlastitog članstva, te ograničene dužnosti prema strancima i migrantima. Iz navedenog slijedi da legitimne države imaju moralno pravo kontrolirati imigraciju, te odbiti useljenje potencijalnim, čak i vrlo potrebitim, imigrantima.

Ovoj poziciji, koja pripada tzv. konvencionalnom pristupu po pitanju imigracije, suprotstavljene su pozicije koje se zalažu za daleko veću slobodu kretanja i otvorene granice. Navede pozicije uglavnom se pozivaju na ljudsko pravo migranata na slobodu kretanja i otvorene granice u funkciji ostvarenja veće razine globalne pravednosti i jednakosti mogućnosti na svjetskoj razini. Kako bi se utvrdilo da zaključak iz pozicije konvencionalnog pristupa ne slijedi, koncept samoodređenja će biti podvrgnut analizi u kontekstu rasprave o globalnoj pravednosti i legitimitetu sustava država. U tom smislu, ova teza neće se naslanjati na one pozicije koje tvrde kako bi svi ljudi trebali imati ljudsko pravo na imigraciju, već će razviti argument iz globalne pravednosti u kombinaciji s analizom ključnih koncepata u diskusiji. Ovaj pristup ujedno predstavlja i najveći doprinos ove teze razumijevanju uloge samoodređenja u raspravama o imigraciji. Kako bi se pokazalo da samoodređenje ne povlači snažno opće pravo suverenih i legitimnih država na kontrolu i ograničenje imigracije, pristupit ću razumijevanju samoodređenja kao prava koje sadržava pravo na samo-kompoziciju, odnosno pravo kontrole nad kompozicijom članstva zajednice. Razmotrit ću, također, ulogu tog prava i migracije u kontekstu širih globalnih odnosa i zahtjeva za većom razinom globalne pravednosti, a koja je potrebna za osiguranje uvjeta legitimiteta o kojima ovisi moralno opravdanje samoodređenja i prava koja proizlaze iz njega.

Nastojat ću pokazati kako samoodređenje, kada se primarno razumije kao samoupravljanje, ne sadržava pravo na kontrolu članstva. Ta je dimenzija nadodana ovom pravu, te potencijalno povlači problematične posljedice po unutarnje članstvo države i diskriminaciju migranata. Također, nastojat ću pokazati kako kontrola nad članstvom nije nužna za osiguranje uvjeta samoupravljanja. Vanjska dimenzija samoodređenja zahtijeva da kolektiv donosi vlastite odluke neovisno o vanjskom uplitanju, dok unutarnja zahtijeva očuvanje institucionalnog poretka koji osigurava

sudjelovanje članova u političkim procesima zajednice. Promjene u unutarnjem članstvu koja su potaknute useljavanjem, a koje često sadržavaju promjene u vrijednostima i karakteristikama zajednice, nisu nužno suprostavljene ovim dimenzijama samoupravljanja. U tom smislu, samoupravljanje ne ovisi o kontroli nad članstvom te može pružiti utemeljenje isključivo uvjetnom, a ne općem pravu, na ograničenje imigracije. Kako se pravo na donošenje politika o migraciji smatra važnim segmentom provedbe samoupravljanja, povezivanje migracije i samoodređenja s raspravom o globalnoj pravednosti, pruža kontekst u kojem se može pokazati kako donošenje odluka o useljenu stranaca nije istoznačno donošenju drugih važnih internih politika. Migracija je kompleksan fenomen koji utječe na niz aktera te ima nezanemariv utjecaj na smanjenje razine siromaštva i nejednakosti. U tom smislu migracija se često smatra komplementarna razvojnim politikama u svrhu ostvarenju veće razine globalne pravednosti. Osim toga, samoodređenje se često uzima kao pravo koje povlači da zajednica neovisno odlučuje o vlastitim politikama, te da je stoga i primarno odgovorna za negativne ishode svojih politika, siromaštvo i loše političko uređenje koje često potiče migraciju. Kako navedeno razumijevanje samoodređenja povlači da su dužnosti prema migrantima i strancima ograničene, nastojat ću pokazati kako ovaj argument počiva na pojednostavljenom razumijevanju konteksta u kojem se odvija migracija, te u kojem zajednice politički djeluju. Siromaštvo i migracija, to jest, često su potaknuti politikama brojnih djelatnika na globalnoj razini, iz čega može slijediti daleko kompleksnije razumijevanje dužnosti globalne pravednosti. Povrh svega, ako se samoodređenje treba razumjeti kao ovisno o osiguranju legitimiteta države i sustava država, onda se odnos samoodređenja i migracijskih politika dodatno komplicira. Samoodređenje i prava koja proizlaze iz njega, ne trebaju se smatrati apsolutnim i bezuvjetnim. Samoodređenje, iako štiti važne interese zajednica i pojedinaca, mora biti opravdano osiguranjem određene razine pravednosti. Odnosno sustav koji ono utemeljuje, a to je sustav suverenih država koji obično uključuje različita prava na ograničenje djelovanja drugih, mora biti takav da ga svi pojedinci kao moralno jednaki, čak i oni koji su podvrgnuti određenim ograničenjima i nejednakostima mogu prihvatiti. Legitimitet države i sustava država zahtijeva zaštitu ljudskih prava i ostvarenje određenih dužnosti globalne pravednosti poput smanjenja ekstremnog siromaštva, pravednih međunarodnih odnosa i osiguranja uvjeta za ostvarenje samoupravljanja. Ukoliko je moguće pokazati da migracija ima ključan utjecaj na te aspekte, države ne mogu na temelju vlastitog samoodređenja, donositi jednostrane

odluke o migraciji na način koji odgovara isključivo njihovim interesima. Pravo na samoodređenje u tom smislu stoji u daleko kompleksnijem odnosu s migracijskim politikama nego što je razvidno iz argumenta za pravo na ograničenje imigracije.

Nakon obrane teze da samoodređenje ne povlači opće pravo na kontrolu imigracije, ponudit ću i nacrt re-interpretacije samoodređenja, te okvir promišljanju pravednog pristupa migraciji. U tom smislu pokušat ću pokazati kako se samoodređenje ne mora interpretirati kao strogo pravo na neovisnost, već kako može dopustiti da se odluke o nekim pitanjima od zajedničkog interesa, poput migracije, donose u suradnji s drugim djelatnicima. Navedena promišljanja pružit će okvir razmatranju veće pravednosti u upravljanju migracijom, a koja će biti srodna onim pozicijama koje traže daleko veću slobodu po pitanju migracije, uzimajući u obzir ključne interese država prihvata, poput interesa za samoupravljanjem.

**KLJUČNE RIJEČI:** samoodređenje, imigracija, pravo na isključenje, globalna pravednosti, legitimitet

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## 1. INTRODUCTION

“Migration is not a problem to be solved, it’s a human reality that we need to learn to manage.” - William Lacy Swing, IOM General Director

Migration is a phenomenon that has been an integral part of human history, and is still prevalent today. It refers to the movement of people from one place to another, whether within a country or across national borders. People migrate for various reasons, to improve their economic, social, political or cultural opportunities, or out of necessity and dire need. According to the United Nations, in 2020, there were an estimated 281 million international migrants, of which 26,4 million refugees (McAuliffe & Triandafyllidou, 2021). While these numbers constitute a small proportion of the world's population, or about 3.6%, migration has significant implications for individuals, societies and economies, and is a prominent political and theoretical issue. It is also a highly polarised topic, present in media, political and everyday discourse, especially following the refugee crisis in 2015. The responses to this crisis polarised the general public and politicians, many of which thrived on anti-migrant sentiments. General public debate surrounding the issue of migration is characterised by conflict between those that argue for its restriction, and others which argue for much greater openness. While migration is at times perceived as beneficial, the worries about national security, the decline of local economy and lowering the wages of local population, effect on social services or effect of immigration on national culture, often emerge. Many of these popular arguments are lacking both empirical and normative grounding (Seglow, 2005, p. 319), or are grounded on fallacious reasoning.

Though prevalent in the real-world context, migration did not, at least in a systematic way, preoccupy political theorists and philosophers until the 1980's, which coincides with the development and intensification of research on global justice. Until then political philosophy mostly focused on questions of duties and rights of individuals within the scope of a single, closed society. Ethics of immigration, and discussions on global justice, challenged the theoretical idea that the state is the only relevant site of justice or mutual cooperation. Relationships between states and foreigners became of importance, of which migration is a paramount example. Following two seminal publications, by Michael Walzer (1983) and Joseph Carens (1987), issues of migration



entered into political philosophy as a relevant topic, developed by now as a highly diversified field of research. This field has developed significantly, and scholars working in it have addressed a number of issues and aspects of migration, giving a more nuanced dimension to the popular and political treatment of the subject. It, however, also exhibits a live discussion between those that argue for liberalised migration, and those that claim sovereign states should have a significant level of discretion when it comes to reaching decisions on migration policies. The relationship between receiving states and immigrants, therefore, remains the focus of the most research within this field. This thesis will, in this sense, take a closer look at this relationship, with the focus on the state's self-determination considering movement across borders.

### **1.1. Research subject and brief overview of the discussion**

One of the core questions in ethics and politics of immigration centres around the *moral* justification of the state's right to exclude immigrants. Current international practice operates on the assumption that sovereign states have a wide discretion in setting up their immigration policies in a way that best serves their national interests, ranging from giving priority to immigrants sharing the descent or national culture, or preferring highly skilled migrants over those arriving from poorer countries with lower skill sets. Practice of excluding persons from states other than their own is widespread and prevalent. Workers, students, family members, refugees, needy and prosperous, all seem to be placed under the discretion of states and state officials when seeking to migrate. For most individuals settlement in other countries contributes to important life goals and greatly impacts their life prospects. Political philosophy of immigration aims to explore the justifiability of this discretion and its grounds. In addressing this question two main positions have emerged, open borders positions and the conventional view. Open borders positions aim to show that states lack discretionary rights in controlling migration, either due to the role limits on migration have in perpetuating inequality and poverty, or because freedom in immigration should be considered as a general right of individuals (Carens, 2013; Cole, 2000; Oberman, 2016a). Proponents of the conventional view on migration, on the contrary, argue that states should be considered free in electing different migration policies, subject to minimal constraints (Blake, 2020; Miller, 2016c; Pevnick, 2011; Wellman, 2016). This thesis is focused on

a subset of arguments from the conventional view, which assume that the state's right to self-determination offers moral justification for the state's right to exclude prospective immigrants (Angeli, 2015; Miller, 2016c; Moore, 2015; Pevnick, 2011; Song, 2018a; Walzer, 1983; Wellman, 2008).

Right to self-determination is taken to offer a powerful ground for extensive exclusionary rights of sovereign states. This international principle refers to the claim of the state for independent self-government free from the interference by external agents (Stilz, 2016b). Self-determination is understood to encompass the right of the political collective to freely shape and control its affairs, including migration. This conclusion is mostly derived from the specific interpretation of this right in immigration debates. Self-determination is, that is, mostly taken to entail the right of the current membership to control its composition and character. To be self-determining, the proponents of the conventional view claim, the community needs to have control over what it is, and membership control is the crucial component of defining it (Miller, 2016c; Song, 2018a; Walzer, 1983; Wellman & Cole, 2011). If self-determination is to be interpreted as a state's right to control who is its member, and what its membership looks like, then uncontrolled and free immigration is in tension with it. This dimension of self-determination is challenged in the literature. It is shown that this interpretation is not standard and is problematic (Lægaard, 2013), and that self-government does not necessarily rely on this control (van der Vossen, 2015). In this sense, space is opened to additionally investigate the relationship between control over membership, or i.e. immigration, with the conditions of self-government.

Self-determination is, furthermore, seen as a right which limits the scope of duties the state owes to those in need, which are outside of its membership (Miller, 2005a, 2007a). The exercise of self-determination entails that each self-governing state tends to its own affairs independently, and is in turn primarily responsible for outcomes of the elected policies. States do not, therefore, have extensive duties to outsiders, even when in dire straits. This means that self-determination is a right generally understood as in tension with claims to mitigate inequalities or equalise opportunities on the global levels. Immigration, which is at times seen as a policy which could improve life prospects of needy foreigners, is therefore a subject to the discretion of the state. If self-governing states do owe something to the needy foreigners, the manner of its fulfilment is subject to the discretion of the state. This means that states

are free to choose other policies to address claims of needy foreigners and to preserve closure (Miller, 2007a; Wellman, 2008).

This right is finally understood as providing grounds to territorial sovereignty, and the arrangement of the global population in sovereign states (Moore, 2015; Stilz, 2019). Its exercise is, however, in need of justification. Self-determination and the exclusionary rights which follow from it, like the right to exclude is, cannot simply be assumed. Most authors take that legitimacy offers moral grounds to exercise self-determination and territorial sovereignty (Brock, 2020; Wellman & Cole, 2011). This requirement is generally tied to the protection and respect of human rights to members of the political community and foreigners. It is generally considered to entail fulfilment of some duties of global justice, like alleviation of severe poverty or securing fair terms of cooperation and enabling the background conditions of self-government to others (Miller, 2016c; Stilz, 2019; Wellman & Cole, 2011). Brock (2020) has dealt with the connection of self-determination and legitimacy extensively, and this research aims to further the understanding of migration and self-determination in the context of global justice and legitimacy of the state system.

Self-determination is, therefore, one of the core concepts in the immigration debate. Since it is recognized as a relevant international principle it offers a powerful defence of the state's right to exclude prospective, even very needy, immigrants. The conclusion that states are generally free to exclude immigrants as an expression of their self-determination is challenged by more open borders positions, motivated by referring to universal right to freedom of immigration (Carens, 2013; Oberman, 2016a), and arguments from global justice (Carens, 2013; Oberman, 2015), which indicate the need to address the claims of needy migrants and to mitigate global inequalities and poverty. These positions are often construed as in tension, and this thesis will focus on the role self-determination has in discussing migration justice. In this sense, it will aim to offer analysis of self-determination, and to develop its relationship with global justice and the role of migration in achieving it. To this end, this thesis will not pursue the development of the argument for freedom in immigration as a human right, but will focus on alternative routes to assess the strength of argument for the right to exclude based on self-determination.

## **1.2. Aim of the thesis, hypothesis and methodology**

The aim of this thesis is, then, to critically examine the relationship between self-determination and immigration. It is hypothesised that self-determination, when primarily conceived as self-government, does not ground a general right of the state to exclude immigrants. Self-determination can, in this sense, offer grounds only for conditional right to control immigration, when it poses a threat to conditions of self-government. To support this conclusion, I rely on the analysis of the right to self-determination within the immigration debate, and connection of this right to global justice.

Self-determination is standardly analysed in the context of the relationship between different collective agents within the international system of states, including matters of secession, decolonisation or intervention. Immigration debate utilises this right in a specific manner. Along with self-government, membership control becomes the core of the concept. Without having a control over membership composition, it is claimed that collective agents cannot have a control over their self-definition, and cannot be self-governing in the real sense. This dimension of self-determination will be in focus of the analysis. In this sense, I will try to show that control over membership composition is not an essential aspect of self-determination as the right which protects claims of self-government. More liberal migration, for that matter, need not be conceived as in tension with self-determination.

Self-determination is also a concept sitting uneasily with duties of global justice, especially when conceived in an egalitarian manner. Understanding self-determination as grounds for the right to exclude depends on more minimalist conceptions of global justice. Some duties to non-members are recognized, but are limited and subject to the discretion of self-determining states. Self-determination, that is, limits what can be required from the state with respect to foreigners. While this may provide grounds to reject self-determination for the sake of global justice and to argue for open borders, this thesis will not follow this route. I will try to show that the relationship between global justice, self-determination and immigration is more complex than is revealed in the argument for the right to exclude. In this sense, it will be shown that migration is not a self-regarding policy of the receiving society, but that different migration policies affect a wide range of agents and contribute to global justice. It will be argued that self-determination should be observed as a part of a wider system of states, which both

stand in need of justification. Since observing human rights and some duties of global justice figure prominently in this justificatory route, complete discretion on migration policies, which have a prominent role in achieving these conditions, may not be warranted.

Therefore, in this thesis, the combination of the conceptual analysis of self-determination with arguments from global justice is used to show that self-determination does not entail the general right of the state to discretionary control over admission of immigrants. At best, it can establish a conditional right to exclude, for those instances in which self-government is endangered by migration.

Apart from the critical treatment of the argument for the right to exclude based on self-determination, this thesis aims to offer a tentative reconceptualisation of the right to self-determination, and an outline of the migration justice, which may take into the account both claims for self-government and interests of migrants. In this sense, I will abstain from arguing positively for open borders or freedom to immigrate as a general right, but will try to work out the contours of an account of migration justice moving from the concept of self-determination and its relationship with global justice.

This thesis will be developed using standard philosophical methodology of conceptual and problem analysis. The research will, therefore, focus on concepts relevant for the argument, mostly self-determination and migration, and try to analyse some of their layers and place them in the context of discussion of global justice. It will also proceed in re-interpreting the concept of self-determination and offering the alternative way in which it can be used and understood within discussion on migration justice. Since this thesis will engage in analysis of some of the misconceptions about the way self-determination and immigration are understood in the context of discussing duties of global justice, some reference to social scientific research will be provided. Empirical research, therefore, serves to shed some light to understanding complexity of the background against which self-determination is exercised and migration occurs.

### **1.3. Plan of the thesis**

This thesis unfolds in three main sections.

First part will provide positioning of the thesis in a wider debate, with critical focus on a subset of arguments which take self-determination as providing the grounds for the right to exclude. In this part, the right to self-determination will be introduced,

with its dimensions and its core value. This part will, furthermore, stress the way in which self-determination is utilised in the immigration debate, with focus on the control over membership composition. Some of the most prominent arguments within immigration debate which take self-determination as grounds for exclusion will be critically examined. Self-determination will also be situated within the wider discussion on global justice to the extent to which it is relevant for the argument under analysis. In this part of the thesis, strategy and methodology will also be introduced. This segment is essential in highlighting elements which are relevant for further discussion.

Chapter 2 will, therefore, give a wider context to the discussion. It will provide a theoretical map on which arguments from self-determination are situated, with indication of some theoretical presuppositions that will guide the analysis. This argument will be placed in the context of migration debate which centres around the issue of exclusion. Self-determination based arguments are, in this sense, a subset of arguments from conventional view, which, contrary to positions that argue for open borders, take that states should generally be free to limit and control migration. The position of this argument within wider discussion on global justice will also be indicated, with self-determination generally seen as entailing a limited duties to foreigners. This chapter will, furthermore, explain methodology which will be used and strategy of approaching arguments from self-determination.

Chapter 3 will provide an overview of self-determination as a concept relevant for the discussion. Brief historical background of self-determination will be given, its main dimensions, interpretation of its value and explanation of its agents. Self-determination will be explained as a collective right to self-government, which entails that its agents should generally be free to arrange their affairs free of external interference. Its value will be tied with the interests of individuals to have some control over their political environment, which requires political arrangements to be respective of this requirement. Special attention will be given to the state, as an agent of self-determination which is relevant for discussion of migration justice. In this sense, conditions of the legitimate exercise of self-determination will be introduced with special focus on its place within the wider system of states. It will be argued that legitimacy, understood minimally as protection of human rights, is necessary for justifiable claim of exclusionary rights within the system of states. The aim of this chapter is to give introduction to the right to self-determination, with special emphasis

on its core value and conditions of its legitimate exercise, since these elements will figure prominently in the following discussion.

The focus of Chapter 4 will introduce the self-determination based argument for the right to exclude immigrants. This chapter, therefore, turns its focus on the place of self-determination within the discussion on migration justice and its role in justifying the right to exclude immigrants. The main shape of the argument will be provided, with special emphasis on the role of membership control in understanding self-determination and migration justice. This part will also provide an overview of prominent self-determination based arguments in the immigration debate, with focus on the interpretation of self-determination and membership control employed in them. The aim of this chapter is to show that most of these arguments use a similar interpretation of the self-determination, as a right which entails control over composition of the agent of this right. Common elements of this argument, with respect to understanding duties to foreigners will also be introduced, including the way self-determination is taken to shape the response to the claims of foreigners. This chapter will also offer some critical response to overviewed arguments, to show that the specific conceptions of migration justice employed in them are wanting. The focus on the place of self-determination as membership control and on its place within global justice is reserved for analysis in later chapters.

In this part of the thesis, the aim is to offer a much wider context in which discussion is situated, with introduction of self-determination and an overview of arguments for the right to exclude. The aim of this wider introduction, apart from situating self-determination within wider discussion on migration justice, is to highlight elements which are relevant for further discussion. In this sense, self-determination is understood as a right to self-government, which protects the political freedom of collectives and their members, and which fits into the wider discussion on global justice, where legitimacy of the system of states play a role. These elements guide discussion within the second part of the thesis, where the analysis of self-determination based argument takes place.

Second part of the thesis will offer the main argument against seeing self-determination as entailing the general right to exclude immigrants. The intention of this part is to show that self-determination based argument for exclusion of immigrants does not hold. To argue that this is the case, first, connection between self-government and membership control will be analysed. In this part, the relevance of seeing self-

determination as protecting a sphere of political freedom and autonomy is of importance. This part is followed by the analysis of self-determination and migration in the context of global justice, where the focus will be on securing conditions of legitimacy which gives rise to justifiable exercise of exclusionary rights grounded in self-determination.

To this end, chapter 5 will focus on seeing self-determination as reliant on membership control and, therefore, on the right to exclude. Seeing membership control as a crucial aspect of self-determination is a common feature of most arguments that take self-determination as the basis for the right to exclude. In this chapter, I will first try to show that this dimension of self-determination, or control over the composition of the self, may entail negative consequences, like excessive control over internal membership, or selection of discriminatory admission policies. In this sense, the relationship between this dimension of self-determination and legitimacy will be problematised. This chapter will, furthermore, try to see if this dimension is necessary for achieving self-government. To this end, both dimensions of self-determination, one entailing freedom from outside interference, and the other entailing internal conditions of self-government, will be connected to the control over membership composition. This chapter will try to show, then, that control over membership composition and migration cannot be justified by reference to the conditions of self-government. It will be claimed that states can generally remain self-governing even in light of changes which migration brings in their membership composition. Self-government and control over membership composition, will in this sense be treated as separate notions of self-determination, where control over membership composition should not be seen as essential for self-government.

In chapter 6 the focus will be turned to the relationship between self-determination, migration and global justice. The aim of this chapter is to show that, while choosing migration policies freely may be of interest to the self-governing community, self-determination does not entail discretion over migration when other considerations enter the picture. To show that migration policies are not on a par with other policies that states should have a discretion of choosing, in this chapter I will turn focus on the way migration and self-determination are understood in the context of global relationships. In this sense, I will try to show that understanding self-determination as entailing freedom to independently guide the development of society, and in turn responsibility for these policies, often emerges from the background



assumptions on the way the world is arranged. However, when self-determination is understood as embedded and exercised in a more complex setting, where choices and policies of some, affect others and even entice migration, then duties to foreigners may be conceived as more robust. This part will focus on migration as well, with the intention to show that it has a significant effect on development and poverty alleviation, which makes it one of the policies with impact on global justice. It will be claimed that migration should not be read as a self-regarding policy which states permissibly elect for themselves, but as a policy which has a wider effect on the number of agents. This discussion will be connected to the idea that exercise of self-determination should be justified with respect to legitimacy of the state and state system, in which protection of human rights and achievement of some levels of global justice figure prominently. In this sense, it will be claimed that if migration can be seen as an important contributor to global justice and conditions of legitimacy, which provide moral grounds for justifiable exercise of self-determination, then states should not be understood as having complete discretion on migration policies based on their self-determination. Migration, in effect, contributes to the conditions of legitimate exercise of self-determination in the first place.

These chapters provide a main argument against seeing self-determination as providing firm ground for the state's right to exclude immigrants. This argumentation will mostly focus on the way self-determination is understood and employed in arguments for the right to exclude. This part is, therefore, mostly critical, and it seeks to show that having control over migration policies is not necessary for self-government, and that migration policies should not be understood as policies which self-governing states elect freely for themselves due to the way both self-determination and immigration relate to global justice.

Finally, the last part of this thesis will offer the way migration justice and self-determination can be reconceived.

Chapter 7 will in this sense offer a summary of the way self-determination is understood in the argument from self-determination and the way it is critically examined in this thesis. Additionally, a proposal of the way self-determination may be reconceived will be given, following from the analysis of this right in the preceding chapters. It will be claimed that self-determination should be observed as part of a wider and complex system, in which this right should not be interpreted as entailing independence, self-sufficiency and non-interference. It should, that is, be interpreted

as allowing other agents to have a greater scope of influence on self-governing states when reaching decisions on common matters. In this chapter, a tentative blueprint of migration justice, which incorporates elements from the discussion within this thesis, will be offered. This means that, if self-determination should be read as allowing mutual decision-making on some matters, alternative modes of migration governance may emerge. This right should also, in this sense, not be seen as offering a robust ground for states' right to regulate migration. This chapter will additionally indicate a potential for future research on the relationship between migration and self-government to which this thesis aims to contribute.

#### **1.4. Contribution of the thesis, some caveats and theoretical debts**

Before proceeding, it is worth highlighting the contribution of this thesis to discussions on migration justice.

This thesis aims to contribute to the philosophical discussion on ethics and politics of migration and the right to exclude, more specifically to the literature which is critical of the role of self-determination in establishing the right to exclude. This thesis will offer an overview of arguments from self-determination and extrapolate common elements of these arguments which pertain to the understanding of self-determination, which should contribute to better understanding of the argument for migration controls. These elements and the way self-determination is understood are approached by engaging in conceptual analysis and development of arguments from global justice. This strategy aims to retain the value of self-determination even against competing considerations, but also to show that extensive unilateral control over migration need not follow from self-determination. Engaging with this argument often implies that global justice overweighs claims for self-determination, or that freedom in immigration trumps claims for self-government. This thesis proposes a combination of the analysis of the concept of self-determination with development of arguments from global justice to show that self-determination does not provide a ground to the general right of the state to exclude migrants. The combination of these strategies can contribute both to the understanding of the way self-determination is utilised in the migration debates, and the relationship between self-determination, migration and global justice. The argument from global justice which will be used in this thesis will also be remodelled. It will not focus exclusively on seeing immigration as contributing to global justice, but

will provide space to address the way self-determination based argument relates to global justice. It will analyse theoretical grounds which shape it and the way this discussion may be connected to legitimacy of the state system.

Apart from a combination of the approaches which should lead to the conclusion that control over migration is neither essential aspect of self-government, nor a standard self-regarding policy under control of the state, this thesis aims to offer the way self-determination can be reconceived. In this sense, a modest contribution of this thesis can be found in reimagining self-determination in the context of migration justice, and in offering a blueprint of the account of migration justice which follows from the discussion.

This thesis leans on the work of other authors in the migration and global justice debates. The conceptual analysis of self-determination leans on the work of Sune Laegaard (2013), Anna Stilz (2019) and Bas van der Vossen (2015). These authors have stressed that focus on membership control in self-determination is non-standard and represents an additional conceptual layer of the right, which should be justified. It is my intention to develop on these considerations by showing how arguments in the debate use self-determination as reliant on membership control, and why this conceptual layer is problematic. I will, furthermore, try to connect self-government and membership (immigration) controls, to show that self-government relies on the right to exclude only conditionally. Understanding self-determination and its connection to the legitimacy of the system of states builds on the work by Anna Stilz (2019) and Gillian Brock (2020). These authors see the need to justify the system of states by taking human rights and some global justice duties as important. I will develop on their accounts by proposing to see migration policies as contributing to these conditions of legitimacy which places limits on exercise of self-determination with respect to them. These considerations are connected with the understanding of migration policies and their relationships with global justice and the background theoretical assumptions of this argument which are developed with reference to the work on methodological and explanatory nationalism as proposed by Alex Sager (2018, 2020), Thomas Pogge (2002) and Peter Higgins (2013), and social scientific literature some of which is reviewed by Kieran Oberman (2015). The way self-determination can be re-imagined leans on the proposals offered by Iris M. Young (2000, 2007) and Ayelet Banai and Eszter Kollar (2019), and is connected to the discussion on migration justice.

Finally, it is worth indicating some caveats of this analysis. Even though political self-determination is in the focus of this thesis, the engagement with this right is reserved for its narrow connection with immigration. In this sense, it takes self-determination of existing political entities, like states, into focus. This leaves aside substantive corpus of literature dealing with this right in normative philosophy, but also international law or social sciences. Self-determination is, furthermore, a hot topic, closely related to territorial disputes and violence. While this prospect of peace breaking prompts many dealing with self-determination to even discard it as a relevant or valuable principle, this thesis recognizes its value. This by no means justifies some of the ways in which this right is sought to be achieved. Even though some reconceptualization of this right is offered, it is mostly connected to the issues of immigration, membership and exclusion. This thesis will not offer the full account of this right, with precise definition of its scope, its subject or the best or most just way to achieve it. Its connection to global justice is as well reserved for its relationship with migration, which leaves many topics for which this right is pertinent open. Discussing migration justice within this thesis, will, furthermore, focus only on a narrow issue of immigrant admissions and the right to exclude. It will not deal with other aspects of migration, like integration and naturalisation policies, which should figure prominently in devising a full account of migration justice and its relationship with the right to self-determination. The way duties and responsibilities of immigrants and receiving societies are shaped and governed is of utmost importance for understanding self-government. The focus of the analysis, however, remains on the first admission of immigrants, since this issue is generally the core of the argument placed under the analysis. Future research should, however, address these matters as well.

Even with these caveats in place, the research within this thesis can, hopefully, offer enough material to contribute to better understanding of self-determination and its relationship with migration and global justice.

## **2. METHODOLOGICAL FRAMEWORK AND MAPPING OF THE DISCUSSION**

This Chapter gives a brief introduction to the core issue this thesis deals with, i.e. moral justifiability of the right to exclude immigrants, together with an introduction to the general shape of the debate. The main idea behind this overview is to situate the self-determination based argument for the right to exclude within the wider discussion, and to indicate theoretical presuppositions and a methodological framework of the thesis. This introductory chapter, therefore, serves both to give a wider context to the discussion, locating the argument in focus within the field of political philosophy of immigration, and to provide a closer look to the elements and strategies relevant for the further development of the thesis.

### **2.1. Core questions and shape of the debate**

Political philosophy of immigration predominantly focuses on the question of the state's right to exclude prospective immigrants and its right to freely enforce immigration policies which best align with its interests. This research question, which was long positioned on the margins of debates in political philosophy, has gained significant theoretical treatment within the last few decades. While classical tradition in political philosophy aimed to address matters of justice within a single, relatively closed society, the issue of immigration opened the discussion towards other aspects, including understanding of the way political membership is determined. Migration justice is, furthermore, pertinent to a number of important issues that political philosophers generally deal with, like distributive and social justice, political membership and associative obligations, human rights, duties to foreigners, territorial sovereignty and other similar aspects. This has made the topic of immigration philosophically interesting and relevant, which a great number of authors and publications that deal with this topic testifies to (Wellman, 2020).

This thesis is, therefore, situated in the area of research which covers a wide range of topics and issues. Moral justifiability of the state in excluding prospective immigrants is one of the main and one of the most contested topics in ethics and politics of migration (Bader, 2005, p. 322). It is, also, increasingly seen as a conservative issue within the political philosophy of immigration (Reed Sandoval, 2016). The focus on moral right to exclude immigrants, which is the characteristic of classical debate on

openness or closeness of borders generally, is increasingly supplemented by the focus on other, related topics, using particular contexts and more non-ideal and less abstract theorising (Akakpo & Lenard, 2014), which responds to the fact that migration is a highly diversified and complex phenomenon.

While the philosophy of migration mostly began as a quest to address the question of moral justifiability of states in excluding migrants from their territory and political membership, mostly from a liberal standpoint, recent theories have expanded the field significantly. Migration is increasingly connected to race, feminist and particularist frameworks, engagement with social sciences is increasingly characterising normative research on migration, and normative presuppositions of the debate are coming in the focus of the research (Sager, 2022). Other aspects of migration become research subjects, including the enforcement of a migration regime, criminalisation of migrants, irregularity, position of migrant women and children, migration and social identities, migration and race, and other topics.<sup>1</sup> Issues of exclusion are, therefore, by far the only ones of interest for the political philosophy of migration. Apart from movement across borders the matter of political membership in other societies becomes of importance. On the one hand, there is the issue of admission to the territory, where the concern is with justifiability of exclusion and selection criteria. On the other, the process of integration and naturalisation where the focus is on duties and responsibilities of receiving states and immigrants.<sup>2</sup> Philosophy of immigration generally treats these issues separately. On the one hand, questions on moral justifiability of the discretionary admission policies revolve around the issues of who may enter the state, under what conditions and who gets to decide on these matters. On the other hand, status, rights and responsibilities of successful immigrants and the state come into focus (Calder et al., 2010). These issues, however, are increasingly considered as joint questions (Oberman, 2017b; Toressi, 2010), for matters of naturalisation are to significant extent informing discussion of admission. Apart from these questions that tackle the access and relationship of immigrants to the

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<sup>1</sup> Some contributions in this sense include: discussion on social identity and migrant rights (Reed Sandoval, 2020), feminist political philosophy of migration (P. Higgins, 2017; Jaggar, 2009; Kittay, 2009), temporary labour migration (Brock, 2020; Lenard & Straehle, 2012; Ottonelli & Toressi, 2022), climate change migration (Brock, 2021), irregularity and illegality of migrants (Brock, 2020), enforcement of migration, surveillance and criminalisation of immigrants (Kukathas, 2021; Mendoza, 2015b, 2020; Sager, 2020).

<sup>2</sup> These topics are for example treated in a collection of contributions in the book "Migration in Political theory: ethics of movement and membership", see an overview in the introductory chapter by the editors Fine & Ypi (2016).

receiving state; relationships with sending states are also of concern. Each immigrant, apart from entering into jurisdiction of other states, is moving out of his own political and social context. Issues of root causes of migration, redistribution, brain drain, temporary labour migration, effects on poverty, remittances, and a number of other related topics become of interest.<sup>3</sup>

Philosophy of migration is, thus, an expanding and live field of academic inquiry, and its subject is furthermore, very alive and present.

This thesis to a great extent focuses on the *classical* debate surrounding exclusion and admission of immigrants, which generally uses ideal and abstract theorising to analyse competing claims of migrants and receiving states (Reed Sandoval, 2016, p. 14). This discussion often juxtaposes claims and interests of would-be immigrants to be admitted, against the interests that members of the state have in controlling their collective life and membership. In this sense, the core of this thesis may be understood as falling within a more conservative discussion framed in terms of *open or closed borders* debate. It furthermore, more specifically focuses on matters of admission of immigrants, while matters of rights and status of successful migrants are not primarily in the focus, nor are particularist contexts in which migration occurs. While the discussion on exclusion or admission, or how open or closed borders of the state should be, often omits more nuanced and context-dependent migration, or the focus on identity and particular cases, this tension between perspective and interests of states in controlling migration, against potential rights of individuals to migrate, remains an unresolved and live topic. To this theoretical endeavour this thesis aims to provide contribution.

However, as will hopefully become obvious, argumentation in this thesis aims to connect matters of exclusion with a wider debate on global justice, with some (limited) attention given to more non-ideal aspects of theorising, social sciences, and awareness of methodological presuppositions which shape the debate. In this sense, the topic of exclusion, which is guided by the analysis of one subset of arguments which are situated within the classical debate, will be supplemented by attentiveness to some of the aspects and questions which have recently emerged, including observing migration with the aid of empirical research.

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<sup>3</sup> Some examples include discussion on global justice and migration (Brock, 2009; Brock & Blake, 2015; P. Higgins, 2013; Lenard & Straehle, 2012; Oberman, 2011, 2015).

Before moving to a very brief overview of the debate within which the thesis is developed, setting of the stage and some normative and definitional considerations are due.

### **2.1.1. Setting the stage - Immigrants, state and the right to exclude**

Primary focus of this thesis is, as indicated, on the *moral* right to exclude. This right is understood to be possessed by states, and it is claimed against migrants who aim to enter the state's jurisdiction and its political membership upon (long term) settlement.

Some definitional preliminaries are then due, with respect to these aspects.

Migration, more broadly conceived as a geographical movement of people in order to settle in other places (Bader, 2005, p. 331), encompasses a set of different phenomena. Immigration is only one of its aspects. Migration also refers to both internal migration (or migration within the borders of the state) and transnational migration (migration across the borders of the state); long term (like permanent settlement) or short term migration (which refers to e.g. temporary migration for purposes of study, work, or leisure), voluntary (chosen) and involuntary (driven by war or famine) migration, and other categories, which merit philosophical treatment and which are often incorporated into normative theories of migration. While defining immigration and an immigrant may appear quite straightforward, with immigration seen as a process whereby individuals move from one state to another for purposes of settlement, this terminology is political and normative. This means that the definition of who is an immigrant is the subject to the exclusionary policies of the state and is therefore contextual and established by the law of state in question. Assigning status of an immigrant to persons relies on categorising by state apparatus and officials, and is therefore a political act (Kukathas, 2021, Chapter 2). This means that answering the question as to who an immigrant is, depends on a number of factors, including historical and geographical context in which migration occurs. Defining immigrants also relies on determining who belongs, or who the members are, as compared to others which are seen as outsiders or foreigners. Standard understanding of membership in the political philosophy of immigration, generally, assumes that members of the political communities (or states) are citizens (including at times settled residents). Immigrants are, thus, for the purposes of the task ahead, considered foreigners, who



move across state borders to settle in places in which they do not have political membership. This is a definition which most authors in the migration debate subscribe to, and while it may be subject to some simplification, it is taken here as an operative definition.

Immigrants themselves are, however, a broad category, with two main distinctions which have a bearing on the right of the state to exclude foreigners. In normative theories which deal with matters of exclusion, the distinction between “opportunity migrants” (Stilz, 2019, p. 187) and refugees is generally highlighted. These categories of migrants are considered then as motivating different treatment from the standpoint of receiving (or host) states. Opportunity migrants, often referred to as economic migrants (Miller, 2016c, Chapter 6), or voluntary migrants, are understood to be primarily motivated by better life opportunities which may be achieved by temporary or long-term settlement in other countries. Refugees are, on the contrary, recognized as a category of “necessitous migrants” (Song, 2018, p. 113), which are according to the international law awarded special protection.<sup>4</sup> Persons labelled economic migrants are then seen as moving not out of reasons of persecution or in pursuit of personal security and rights protection unavailable in their home state, but in pursuit of other options and better life prospects. This distinction clearly reveals the way categorization of individuals, which may be differentiated by slight and often unclear and *spurious* differences (Oberman, 2016b), reserves a rather different treatment. While refugees are mostly considered as individuals to which the general right to exclude does not hold, economic migrants are subject to the discretion of host states.

Unless otherwise specified, I will mostly deal with immigrants that fall out of the scope of narrow convention definition of refugees, including both categories of

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<sup>4</sup> Literature on refugees is marred by disagreement on how wide or narrow the scope of definition should be, or who counts as a refugee owed international protection (Kukathas, 2016; Lister, 2013; Miller, 2016c; Oberman, 2016b; Owen, 2016; Shacknove, 1985). The definition established in 1951 Geneva Convention and 1967 Protocol, is focused on persecution as a factor that distinguishes a refugee from a regular immigrant. According to these documents a refugee is a person who “owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” Since here, I do not aim to offer a definition of refugees, I will provisionally take that narrow convention definition may be expanded by other cases in which severe threats to human rights exist and may be most appropriately addressed by offering asylum and sanctuary on the territory of other states.

“opportunity migrants” and migrants that move out of economic necessity, but are not persecuted by their states. Also, short term migrants, like temporary guest workers or other short term territorially present individuals (e.g. international students or tourists), are not the primary subject of this thesis. Instead, immigration here implies a permanent settlement that entails the extension of rights and duties to subsequent full citizenship rights.

The focus on exclusion generally poses a specific set of issues, pertaining to the definition of an agent of exclusion and its object. Exclusion is, naturally, a wider term, since one can be excluded from a range of associations or opportunities, but not all of the possible exclusions are especially problematic from a moral standpoint. Exclusion from a state, which is of primary concern, is one such type of exclusion with potentially harmful consequences for individual life prospects (Fine, 2010). It has a number of aspects, like e.g. exclusion from economic and political sphere, referring to exclusion from resources, like e.g. employment, and exclusion from political participation and decision making (Sager, 2018, p. 84). The state’s right to exclude, which is in focus, consists of both exclusion from political membership and a number of belonging, economic and political rights, and also from the territory over which a particular state has jurisdiction. The right to exclude is thus seen as an aspect of a state's territorial sovereignty, which entails a range of powers and liberties. It is, however, not understood as an unlimited right. It is conditional, limited and subject to restriction (Blake, 2013; Lægaard, 2010; Miller, 2005b; Wellman, 2008). In the philosophy of immigration, this right is analysed as a *moral* right. This means that it is in principle distinguishable from the rights which are *de facto* exercised by the state, or which are elected by contemporary governments. If the state has a moral right to exclude, then this right holds, even if it is not *legally* enforced. The idea behind normative analysis of this right is to see whether it can be morally justified, and if it can, what its grounds, scope and limits are.<sup>5</sup>

One of the primary reasons to justify limits on the right to exclude is the fact that membership in some state affords protection of basic rights and freedoms. States are seen as being the primary agents in fulfilment of such rights, and being without membership in some state is considered dangerous and costly (Fine, 2010; Walzer,

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<sup>5</sup> As the right to exclude itself, sovereignty is as well, not unlimited. The scope of the rights which follow from the territorial sovereignty of state are increasingly subject to moral scrutiny, and stand in need of justification.

1983, p. 32). Exclusion from the state, therefore, has serious implications on the livelihood of excluded migrants, and may be harmful towards the interests of those affected, on both sides of the borders. Potential harmfulness of this right to vital freedoms and welfare of individuals is what requires justification. To establish such a right, then, a solid justification needs to be provided. This is standardly offered by invoking a wide range of important communal goods, including national security, national culture, welfare democracy, or economic prosperity and other interests of citizens of host states (Wellman, 2020). The focus of this thesis is on the right to collective self-determination, used as grounds for the right to exclude. Self-determination is conceived to protect important individual interests which may provide grounds to justify the right to exclude potential immigrants. If successful in providing moral grounds for exclusion, this principle could offer grounds for exclusionary rights exercised with respect to foreigners and migrants, despite them being potentially harmful to the interests of migrants or even illiberal (Cole, 2000; Hidalgo & Freiman, 2016). The idea of justifying this right is to show that it holds, despite the costs it may bring to affected parties. Task of this thesis is to shed a doubt on the plausibility of using this collective right as a ground for the right to exclude.

This leaves us with the agent of the exclusion, or the state, which plays a prominent role in discussing ethics and politics of migration. Sovereign state system, which organises the world and the world population in territorial jurisdictions (or states) is seen as a background assumption of normative discussions on migration. This institutional arrangement is generally taken as given, and as a starting position of discussion on immigration. States, as sets of institutions with power over specified territory and belonging population, are recognized as wielders of the right to exclude immigrants. This means that states are recognized as entities which may possess some rights and claim them against others. This fact may be challenged (Nine, 2012, p. 13), for it may seem that institutional entities are not proper subjects of rights, which are usually seen as belonging to individuals, and sometimes to collectives. This thesis will, however, affirm what is more or less explicitly recognized by scholars in the normative discussions on immigration. Organisational structures like states, that is, may be conceivable as holding some rights, in virtue of them being representatives of their population. States may, therefore, be justified in holding some rights when they fulfil certain requirements, e.g. when they are just enough and representative of their

population in a proper manner. These conditions and limitations on the rights of the state are subject to further theoretical explanation.

It is important to highlight that taking states and state system as a background assumption of the analysis does not necessarily remove from the view that these entities are neither natural nor unchangeable. These arrangements themselves stand in need of justification (Brock, 2020; Stiliz, 2019). Collective right to self-determination, as well, will be taken to provide a necessary element of explaining why some states may hold rights over a particular territory and people. It will be, furthermore, recognized as an important aspect of state legitimacy, or its justifiability. This thesis will, furthermore, open some space to reconsider the state, its self-determination and its role in immigration.

With this background setting in place, a brief overview of the general normative debate with respect to the right to exclude will be presented. It is often framed as a debate around how *open* or *closed borders* of the state for prospective immigrants should be. The following overview is meant to provide a theoretical map on which self-determination based argument for the right to exclude is located.

## **2.2. Overview of the classical Open/Closed borders debate**

The debate situated in ethics and politics of immigration aims to provide normative grounding for either more closed borders, or the right to exclude; or more open borders and freedom in immigration. Most of these positions avoid the notion of completely closed borders or completely open ones, which framing the debate around this general distinction might suggest. This section offers a brief overview of these positions.

Arguments which defend the position of more freedom in immigration aim to show that the right of the states to exclude prospective immigrants is not morally justified, either due to the considerations of global justice (Bader, 2005; Carens, 1987, 1992, 2013; Cole, 2000; Kukathas, 2005), or respect for freedom of movement (Carens, 2013; Cole, 2000; Dummett, 2001; Oberman, 2016a). Democratic legitimacy of the state, furthermore, offers additional normative reason to claim unilateral control of the borders as unjustified (Abizadeh, 2008). These arguments are then generally divided on 1. Global justice arguments, 2. Arguments based on freedom of movement

and 3. Legitimacy arguments (Bader, 2005; Seglow, 2005; Wilcox, 2015). I will consider these in turn.

### **2.2.1. Arguments from global justice**

Global justice arguments were developed first and are primarily motivated by inequalities and severe poverty that obtain on a global level. It is due to these descriptive conditions that justification to restrict immigration cannot endure moral scrutiny. Immigration is, in these arguments, seen as means to equalise opportunities on a global level, and means to reduce global poverty (Carens, 1987, 2013; Kukathas, 2005; Oberman, 2015). There are various types of global justice arguments, which range from global egalitarian arguments stressing moral arbitrariness of borders and injustice in preserving such order by closure (Carens, 1987; Mendoza, 2015a), to more sufficientarian arguments which see immigration as one of the means to alleviate extreme poverty and reduce global inequalities (Oberman, 2015; Velasco, 2016).

One of the earliest global justice arguments for open borders, is the one offered by Carens (1987, 1992), which invokes intuition that vast differences in life prospects between persons which are by mere happenstance born in vastly unequal states, are unjust. This injustice should be mitigated, and migration controls are obstructing the way to equalise these uneven opportunities, protecting what can be seen as a privilege, comparable to feudalism. This argument, however, relies on strong cosmopolitanism and universalism, or the idea that all persons should be seen as moral equals and be treated as such, and a specific type of global luck egalitarianism, or the idea that inequalities which are the result of bad luck are unjust and should be repaired. Most authors in the debate do not subscribe to these positions or they reject them outright (Miller, 2005a; Wellman, 2008). This argument also omits seeing that while arbitrary, membership in some states may be of moral importance, since it entails special relationships and obligations between co-members (Song, 2018a). For these reasons, arguments which do not require equalisation of opportunities across the globe, but which focus on generally positive effects of more liberal migration policies on alleviation of poverty, are considered to have more teeth against positions which argue for the right to exclude. These arguments generally rely on empirical science to show that effects of liberalised migration are largely positive and may contribute to the alleviation of poverty and inequality (Oberman, 2015; van der Vossen & Brennan, 2018). Global

justice arguments for more liberal immigration also connect to discussion on structural injustice, feminism, temporary labour programmes and rectification of the past (colonialism) or current injustice (Velasco & La Barbera, 2019). In this sense it is at times argued that more liberal migration may serve as a remedy for injustice deriving from exploitation, domination and other harms deriving from unequal global relationships (Souter, 2014; Wilcox, 2007). “Poverty arguments” (Oberman, 2011), or the arguments like presented above, which take that global poverty and inequality should be mitigated, are the core of the arguments from global justice for general removal of restrictions on immigration, or open borders.

Global justice (poverty) arguments for open borders, though intuitive on the surface, face, however, a number of problems, which leads many authors to opt for freedom of movement as a justification for more freedom in immigration (Carens, 1987, compare with Carens, 1992, 2013; Oberman, 2011). Arguments from global justice are generally reliant on non-ideal circumstances of poverty and inequality and are also restricted in scope.<sup>6</sup> These arguments target those suffering deprivation and poverty (often those *worst off*), whose mobility is, however, disputable (Miller, 2005b). The emigration of the better off, who are often more educated and skilled, may, furthermore, have negative consequences for sending societies, in terms of lack of essential services and human capital (Brock & Blake, 2015). As such, global justice could lead to even an opposing conclusion with respect to open borders, that the freedom of movement should be limited to some, which could entail policies which require persons to stay in their country (Niño Arnaiz, 2022; Ypi, 2008). These arguments are tied to empirically contested matters and are conditional on the existence of poverty. Furthermore, many authors reject strong universalism on which part of these arguments rest (Wellman & Cole, 2011, pp. 60–67), claiming that if and when some duties to global poor are recognized, they can be discharged by other means, such as providing material aid or investing in development projects (Miller, 2005, p. 198; Wellman, 2008, p. 129) which is seen as more effective than opening the borders (T. Pogge, 1997).

Arguments for open borders, which are motivated by finding solutions to global poverty are instrumental arguments. This means that the value of freedom of movement is tied to achievement of certain (political) goals, vulnerable to manipulation,

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<sup>6</sup> John Rawls (2000, pp. 8–9) removes issues of immigration from concerns of the ideal theory, seeing it as primarily motivated by non-ideal conditions of poverty, violence or overpopulation.

and potentially superfluous in cases in which some threshold of global justice is achieved (Niño Arnaiz, 2022). These reasons lead to the development of additional arguments for more freedom in immigration, which do not primarily rely on the existence of poverty and inequality, but try to establish universal right to freedom of movement, as valuable in and of itself.

### **2.2.2. Freedom of international movement arguments**

Freedom of movement is recognized as an important liberal value and a basic right of persons. The commitment to it has been used as the ground for advocating more open borders, often in the form of arguing for recognition of *international* movement as a basic human right. Freedom of movement is considered intrinsically valuable, as an important freedom in and of itself, but it is also recognized as instrumentally valuable, as a prerequisite for other important human freedoms and interests (Carens, 2013, p. 227). Those arguing for more liberal immigration (or open borders) aim to show that scope of the right to freedom of movement,<sup>7</sup> which is recognized as a basic human right, should be extended globally and ought to include movement across, and not just within borders of particular states.

There are a number of strategies to establish freedom of international movement or the right to immigrate as basic human rights. Apart from seeing this freedom as relevant for achievement of personal autonomy, protecting wide range of life options (Brezger & Cassee, 2016; Oberman, 2016a; Wellman & Cole, 2011, Chapter 15), it is seen as a logical extension of the already recognized right to internal freedom of movement (Carens, 2013, pp. 238–239). This right is also understood as required by symmetry to the right to exit one's country, which is also recognized as an important human right (Cole, 2000, p. 44). Without the right to immigrate, the right to exit one's state, which protects individuals from potential threats within their own countries is deemed meaningless. In arguing that people have a right to immigrate, it is claimed that interests which ground that right are important for an individual's wellbeing and autonomy, and that they are of such character that others are placed under a duty to respect this right (Song, 2018a, p. 94). This is aimed to achieve by

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<sup>7</sup> The scope of this right is limited to the movement within boundaries of existing countries. Article 13. of The Universal Declaration of Human Rights (United Nations, 1948) states: (1) Everyone has the right to freedom of movement and residence *within the borders* of each state [emphasis mine].

arguing that this right protects a number of important human interests, like interests in forming intimate or professional relationships, choosing associations, practising religion, acting politically or in short, having access to a full range of life options (Oberman, 2016a), which are relevant for leading an autonomous life. These interests are seen to already ground human right to freedom of movement, and should be extended across borders of the state.

The right of international free movement is, however, not conceived as absolute, or the one that necessarily entails a world without borders (Carens, 2013, p. 231). Rather, it entails that states generally do not have a right to prevent people from migrating to and residing on their territories (Oberman, 2016a, p. 34). Since all human rights are conceived as subject to justifiable limitations, freedom to immigrate would also be subject to limits in some cases, e.g. when it would constitute dangers for social order or national security. Bar these circumstances, states would generally be unjustified in preventing regular immigration to their territories. This would imply a fairly different international order than the one that obtains, or the one argued for by proponents of the right to exclude.

It is clear that, if such a right is to be recognized, the right to exclude would be hard to justify. This right would then be rightly seen as restricting universal human rights, and would be deemed unjustified, bar extreme circumstances. It could not be, that is, understood as a general, but merely conditional right, justified in a narrow range of circumstances where the exercise of freedom to immigrate would severely disrupt the social order, political functioning or security of receiving states. This is the reason why proponents of this right aim to show that strategies to establish freedom to immigrate fail (Miller, 2016a; Song, 2018a, Chapter 6). It is argued that as long as our states provide an adequate range of opportunities to satisfy our interests there are no sufficient grounds to argue for the human right to immigrate (Miller, 2016a, p. 22). Freedom to immigrate is also seen as resting on an implausibly broad conception of freedom by which any state restriction is considered unjustified, which renders normal functioning of the state questionable (Stilz, 2019, p. 204). Freedom of movement, from which the right to immigrate is seen as flowing is, instead, better construed in sufficientarian terms (Moore, 2015, pp. 203–207), which would in principle mean that states generally offer adequate opportunities to exercise this right, without the need to expand its scope across borders (Miller, 2016a). Furthermore, justifications of this right is generally construed in the manner which disproportionately takes individual interests



into account against the interests of host communities which are affected by such a right (Stilz, 2019, pp. 203–204). Its connection to the right to exit and internal freedom of movement is also destabilised, by showing that these rights protect from disadvantages or oppression within the state, while freedom to immigrate does not play a similar role. In principle, only one other state willing to accept immigrants is enough to render the right to exit meaningful. Choosing a state in which to immigrate when others are willing to do so is not justifiable (Miller, 2016a).

While freedom of movement is a vital human interest and right, the justification of its extension across borders is a relevant task for many which find restrictions on this freedom morally problematic. In combination with seeing the background against which migration occurs, which is rather unequal, these arguments pose a significant challenge for all that wish to argue for the right to exclude.

### ***2.2.3. Democratic legitimacy***

Other strands of arguments which question the moral justifiability of states' right to exclude migrants invoke the idea that such arrangements, which have a bearing on foreigners, should be justifiable to persons as moral equals. Some question the arbitrariness of the way in which membership is assigned to separate and unequal states to begin with, or the fact that distinction between those outside and inside borders is simply assumed and not justified (Cole, 2012; Wellman & Cole, 2011, Chapter 12). Other arguments invoke principles from democratic theory to show that such unilateralism in decisions with respect to migration is unjustified (Abizadeh, 2008). The latter is one of the most cited examples of arguing against the right to exclude based on legitimacy considerations. This position aims to show that justifying some political decisions, like election of different migration policies, should in the process of decision-making include all who are coerced by the elected law. This would essentially be required by the democratic theory which holds that all those that are subject to laws or are coerced by them, should have a say in their shaping. In the case of migration, migrants are coerced by the migration law and should be the ones that participate in electing these decisions. For Abizadeh, the fact that unilateral border control cannot be justified to all coerced by it entails that the migration regime should be regulated by some form of cosmopolitan global institution. Decisions on migration that is, should not be exclusively held by states. Others have also recognized this need

to transfer some of the powers over migration to a transnational level (Bertram, 2018; Christiano, 2008; Hidalgo, 2016; Wellman & Cole, 2011, Chapter 12).

This argument has met a strong opposition from those that argue for the right of the state to exclude. The analysis of exclusion as an act of coercion was argued against by Miller (2010), who aimed to show that border controls prevent people from entering the state territory and do not coerce them, in a manner that would require democratic justification to migrants in form of their participation in the decision-making. Wellman (2011, Chapter 4), however, asserts that states may permissibly coerce outsiders if it can be shown that states have a right to control migration. Democratic theory, furthermore, is often more tightly connected to the principle of self-determination and is considered to require bounded groups and thus favour control over the membership (Song, 2012, 2016), even though some has sought to show that this commitment need not entail the right to control admission to the membership (Bauböck, 2009; Cole, 2000, p. 184), and that democratic principles may be used to argue for open borders (Carens, 2013).

Much of the discussion on these principles, especially as utilised by Abizadeh, refers to the way as to how the demos that participates in the decision-making process is supposed to be determined. These matters are familiar from the democratic theory as a “boundary problem”,<sup>8</sup> or the problem deriving from the fact that democratic theory cannot itself provide the answer to the logically prior question about how boundaries to the demos should be determined (Whelan, 1983).

While some discussion on the proper agent of self-determination is a part of this thesis, this specific problem about the constitution of the demos will not be elaborated in detail. Aspects of legitimising the way the state system is arranged, including exclusionary rights which flow from self-determination, will, on the other hand, figure prominently in the further development of the thesis, tied to the notions of equal moral worth and human rights protections, as explained below.<sup>9</sup>

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<sup>8</sup> This problem is one of the foundational problems of democratic theory, and it refers to question about demos, who is to be considered a member of it, and what principles are to be used to determine this matter, with all-affected and all-subjected principles as most common approaches (Miller, 2020b).

<sup>9</sup> Specific form of democratic legitimacy which Abizadeh convincingly argues for will, however, not be additionally developed. Further development of his argument can be found in Lepoutre (2016), who argues that self-determination based argument for migration controls is self-defeating.

These strategies are only a portion of the arguments developed to argue against the right to exclude, and for opening the borders to a much greater extent.<sup>10</sup> This thesis will not directly rely on any of the aforementioned strategies exclusively, but will draw from elements of some of these strategies in addressing the right to exclude grounded in self-determination. Before contextualising the migration debate in the discussion on global justice, I will briefly present the conventional view on immigration, with a focus on the argument based on self-determination.

### **2.3. Conventional view on immigration**

Contrary to the arguments that question the justifiability of state's discretion in setting up their immigration policies in light of their interests, there are a wide range of arguments that aim to establish the right to exclude. These arguments can be termed as arguments from the *conventional view*. What the proponents of the conventional view wish to establish is *moral* justifiability of states in discretion over their immigration policies, including the right to exclude, or the right to prevent people from entering the territory and political membership of the state. There are a number of arguments and grounds on which such a position is established, ranging from nationalist arguments, arguments from security to economic arguments. Overview of aforementioned arguments<sup>11</sup> is not given here. Instead, the most important elements on which conclusion for conventional view is grounded<sup>12</sup> is provided, namely, the right to self-determination, territorial rights and special obligations to co-members. Rejection of freedom to immigrate as a universal human right also figures prominently in arguments from the conventional view.

#### **2.3.1. Collective right to self-determination**

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<sup>10</sup> There are also various arguments that rely on other freedoms, like freedom of association or ownership rights. Apart from libertarian positions, there are also utilitarian or democratic arguments for more open borders (see overview by Wellman (2020)), arguments that rely on equal ownership of the earth (Oberman, 2017a), or arguments for more open borders that rely on avoiding discrimination and racism (Hayter, 2004).

<sup>11</sup> For an overview of different arguments see Bader, 2005; Seglow, 2005; Song, 2018a; Wellman, 2020; Wilcox, 2015.

<sup>12</sup> The term conventional view in this thesis is taken in its wider sense. It refers to those positions that aim to establish the moral right of the state to exclude immigrants, and not necessarily the positions that defend the status quo in international practice.

The right to collective self-determination is often cited as one of the main grounds for the right to exclude (Song, 2018a; Walzer, 1983; Wellman, 2008). It refers to the right of particular political collectives, like nations or people, to freely determine their political status and choose cultural, economic and social policies without interference from external agents. This right is recognized within the human rights framework and codified in its major documents. Self-determination is a collective right and it may be understood as a form of collective autonomy. The main power of the principle of self-determination lies in individuals *collectively* engaging in forms of self-government, shaping their collective lives and political projects freely from unwarranted interference. Following from such understanding of the right, it is generally claimed that self-determination has two main dimensions, external, or the one that refers to freedom of the collective from external coercion and interference, and internal dimension, which refers to the idea of popular sovereignty, or people being in relevant sense those that make political decisions for themselves (Song, 2018b, p. 395). The exercise of self-determination is often understood to require a separate territorial unit in which collective political autonomy may be realised, like e.g. sovereign state. Self-determination, especially its external dimension, is then often understood as tightly connected to the notions of sovereignty and non-interference. As will become obvious in further development of the thesis, the scope of this right is not precise nor completely clear. Regulation of membership in a political community is, however, recognized as falling within the contents of this right, or following directly from it, since rules about membership composition are often taken as a key component of self-determination in arguments from a conventional view (Miller, 2016c; Song, 2018a; Walzer, 1983; Wellman, 2008). Some critics point out that this right in and of itself is generally not enough to establish the right to exclude prospective immigrants from the territory and political membership of the state (Fine, 2013, p. 259). For this argument to be successful, it is claimed that proponents of self-determination need to clearly conceptualise who the bearer of this right is and how its members are identified, what the role of this collective right for individuals is, and why this right trumps other important individual interests immigrants usually have in being admitted into destination states (2013, pp. 263–264). Self-determination is primarily the right of the collective, and while it can be seen as serving important goals like (democratic) self-government, it is often pitted against the rather pressing interests prospective migrants have in being admitted to the state's territory and membership. Justifying discretion in

matters pertaining to migration, based on this right takes a specific shape which will further be analysed.

### **2.3.2. Territorial Rights**

Referring to territorial rights is another major segment of the conventional view, since the question of exclusion is also the territorial matter (Lægaard, 2010). States, which in effect exercise exclusionary policies, are territorial entities (Blake, 2013, p. 104,108). To implement various policies states need definite and bounded territory over which they exercise control. Territory is a political concept, since it refers to the domain of political authority (Moore, 2021, p. 148). Territorial rights are, thus, generally seen as an integral part of state sovereignty, consisting in the right to territorial jurisdiction, the right to control resources in the territory, the right to control movement over the borders of the territory of the state and thus the right to control immigration (Song, 2018a, p. 61). Like the right to collective self-determination, territorial rights are collective and are not held directly by individuals, even though they are interpreted as protecting important interests of individuals, as members of the collectives. Exercise of territorial rights are generally construed as exclusionary with respect to foreigners. In virtue of e.g. control over natural resources of the territory, individuals that do not belong to the collective cannot directly use the territorial resources or benefit from them. The right to control movement over territory also entails that foreigners may be prevented from crossing the territory or settling on it. States are often seen as exercising these rights as representatives of their territorial membership which is often understood to be the proper bearer of these rights.

Different authors in the debate explain differently the connection between respective community, state and territorial rights. Authors that endorse nationalist positions, like Miller (2012), usually invoke *quasi-lockean* explanations of territorial rights, where territory, mixed with labour of the community, its culture and history, explain the value of territory for the nation in question. Territory is considered laden with symbolism and in fact a homeland of the nation. For some other accounts, it is the occupancy rights of the people and its individual members having located life plans and interests, that explain the importance of territorial rights for individuals and the collective, represented by the state (Moore, 2015; Nine, 2012; Song, 2018a; Stiliz, 2019). Territorial rights of state are generally justified by reference to justice or some

other moral good that territorial state serves, or its functions (Stilz, 2009) on the one hand, and on the other, by reference to value of collective self-determination for the territorially located people (Moore, 2021, p. 147).<sup>13</sup>

The discussion on territory is rather novel, and its importance for discussion on immigration is recognized in the literature.<sup>14</sup> The right to control immigration is more precisely considered as part of a cluster of state's territorial rights. However, this thesis will not deal with territorial rights extensively, only insofar the connection to them is important for explanation of self-determination based argument for the right to exclude, or the explanation of the state which exercises this right. It is, however, recognized that the right to exclude is a part of territorial rights in general,<sup>15</sup> and that states, when satisfying some preconditions, are morally justified in holding them.

### ***2.3.3. Special obligations to co-members***

Proponents of the conventional view also often subscribe to the idea of special obligations and responsibilities. It is argued that states are primary bearers of responsibility for their citizens and population (Gibney, 2004, p. 211). Due to special relationships between co-members of various communities, special obligations between them arise. This means that it is in principle morally acceptable to reserve more extensive duties to some individuals, based on some features, than to others. The most intuitive examples are special duties to family members or friends, where the specific relationship between members gives rise to more stringent duties. The case of belonging to a particular political community or a state as grounding special obligations is especially relevant for the conventional view on immigration. The basic idea is to claim that prioritising the interests of our co-members to interests of foreigners is morally acceptable.

The grounds for arguing for special obligations are different. For some like Miller (2016c, pp. 26–30) co-patriot partiality is justified by members participating in a shared

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<sup>13</sup> Discussions on territorial rights are summarised in e.g. Ypi (2013) and Moore (2020).

<sup>14</sup> Invoking territory and territorial rights is also one strategy to argue for more freedom in immigration. For example, one such strategy in arguing for more freedom in immigration is invoking common ownership of the Earth, as shown by Miller (2016c, pp. 39–44), and argued for by Oberman (2017a).

<sup>15</sup> Some authors like Sandelind (2015) and Nine (2019) aim to show that territorial rights do not necessarily entail the right to exclude immigrants. This right requires separate justification, and it may be shown that justifying a state's right to territorial jurisdiction does not offer a ground for a broad right to exclude immigrants.

political system, economic and legal cooperation and shared *national* culture. Others, like Blake (2001) and Nagel (2005), stress coercion under a shared political system as a defining feature of relationship between members. Participating in the same political project, or history of mutual political participation, and political institutions is also seen as valuable and may ground mutual obligations between co-members (Song, 2018a, pp. 9–10)). Generally, social, civic and political features of the relationship between compatriots are stressed as defining features that ground special obligations (Abizadeh, 2016). These accounts recognize that due to some special relationships, which are shared in the context of shared (state) membership, duties of justice obtain, which do not similarly extend beyond the borders where such relationships are lacking or are less prominent. Special obligations challenge more open borders positions, especially those that stress the importance of duties to foreigners, by claiming that it is the primary responsibility of citizens and states to fulfil duties to co-members. Special obligations are, however, not incompatible with duties to foreigners, often conceived as respect for their basic human rights, but they justify giving priority to co-members. This means giving extra weight to the claims and interests of co-members, with respect to similar claims of outsiders. These priorities are often conceived in terms of distributive justice, which gives a specific position to conventional view in debates on global justice. As will become obvious, giving priorities to co-members, in virtue of some shared characteristics or relationships, does not entail that some duties should not be recognized for non-members. These are, however, generally conceived as more limited and humanitarian, which means that they are not required by justice or enforceable, but are subject to the discretion of the benefactor. Duties of justice, are contrary to humanitarian duties, considered as more stringent and generally enforceable (Armstrong, 2012, pp. 21–23).

#### **2.3.4. No human right to immigrate**

Additionally, proponents of the conventional view converge on the idea that the right to freedom of immigration cannot be established as a basic human right. Since most of the arguments for the right to exclude are conceived as limited, minimally by respect of basic human rights, then it is clear that recognizing such a right would pose a serious challenge to the conventional view (Stilz, 2019, p. 202). The prospect of establishing the right to immigrate is therefore forcefully resisted. Conventional view

also rejects arguments from global justice, or arguments for more liberal immigration as a means to realise equality of opportunity or alleviation of poverty. However, while the possibility of human right to immigrate is forcibly argued against, most proponents of the conventional view recognize some duties of global justice, as will become evident in development of this thesis.

### ***2.3.5. Self-determination based argument within the conventional view***

Most arguments from the conventional view use some of the aforementioned elements, either territorial rights, self-determination or special obligations, and their various combinations in defending the right to exclude. Michael Blake (2013) for example combines the fact that states are jurisdictional units that operate on specific territory with the idea that states and their citizens have stronger obligations to those present in these territorial jurisdictions, to establish the right to exclude. Entering into a jurisdiction places current inhabitants under obligation to provide protection of the basic rights of immigrants. Unregulated and unwanted immigration would thus force unwanted obligations on current members.

Focus of this thesis will be on arguments that primarily lean on the notion of self-determination, or the idea that states or communities that states represent have a right to be self-governing, or to be free to pursue their social, political and economic goals, without interference or intervention from the outside. This collective right is seen as entailing the right to control membership of a community and thus immigration, which alters it. It is claimed that without the control over the membership constitution there is no control over the character of the community or its future development (Miller, 2016c; Song, 2018a, Chapter 4; Wellman & Cole, 2011, Chapter 2). The right to freely enforce migration policies, which is seen as a part of the cluster of territorial rights of the state, is also seen as a matter over which self-governing states should have discretion, subject to some limits. These arguments, however, combine this right with other elements of the conventional view to ground the right to exclude. Miller, thus, apart from national self-determination stresses both territorial rights of a nation and special obligations that arise between co-members (2016c, Chapter 4). Wellman (2011, Chapter 2) supplements his self-determination based argument for state's freedom of association by arguing for special obligations with respect to co-members. Song (2018a) combines all four elements in her defence of the right to exclude. Other



arguments for immigration controls, like the one from Moore (2015, Chapter 15), Angeli (2015), Pevnick (2011) and Walzer (1983) are also recognized as self-determination based, and will be, together with the authors mentioned previously, subject to analysis.

What characterises these arguments as self-determination based, is a clear emphasis and focus on precisely the collective right to self-determination of the political community, as a normative ground for the right to exclude foreigners from the territory and political membership. Other elements, like territory and special obligations, are tied to self-determination and used to establish the right to control immigration, but the normative force of the arguments rests primarily with self-determination. I will, hereinafter, refer to these arguments as self-determination based arguments for the right to exclude.

Self-determination is also recognized by a number of proponents of more cosmopolitan positions and arguments for more freedom in immigration (Carens, 2013, pp. 270–273), which makes it one of the strongest arguments from a conventional view. Authors in the migration debate are actively engaged with this argument, which its appearance in the contemporary discussion testifies to (Brock, 2020; Kukathas, 2021; Sager, 2020; Stilz, 2019). This thesis aims to contribute to the discussion around this particular right and its place in the migration debate. As will be argued, this argument rests on specific interpretation of self-determination, as entailing the right to control membership composition, its character and future development. It is, furthermore, often understood as entailing specific relationship with global justice, and these elements will be in focus of this thesis.

Before moving to the part which introduces strategies of approaching this specific argument, migration debate will very briefly be placed in the context of discussion on global justice, together with self-determination, which is often seen as in tension with substantive duties to foreigners.

## **2.4. Immigration and self-determination in the context of global justice**

Normative, philosophical discussions on immigration deal with questions of rights and duties and distribution of benefits and burdens between the parties affected by the process of migration. In the philosophy of immigration, aspects of movement and membership come into focus, and migration is often framed in terms of competing interests of communities and their members, and foreigners seeking admission into

the membership. Philosophy of migration seeks to find an answer as to how to balance these competing interests in a way that can be morally justified.

To provide an answer to what just immigration policy may look like means engaging in a wider discussion on responsibility to foreigners and duties to co-members (Miller, 2016c, p. 21). Questions of what is owed to individuals, as members of political communities and as migrants, is pertinent to the question of immigration, which then fits into the wider discussions on global justice. The field of global justice is rather extensive and covers a wide range of topics which are seen to have a scope wider than the one focused on the single state or society, including (and not limited to): problems of environmental justice and climate change, poverty and duties to the poor, international trade and the effects of globalisation, just war and intervention, distributive justice and inequality and other topics. The fundamental question of global justice pertains to what is owed to individuals in the context of these global matters.<sup>16</sup> These topics have been approached in a number of ways, and there is a wide array of global justice theories, which cannot be overviewed here. For the purposes of connecting these issues to migration, more universalist approaches will be contrasted with particularist considerations, which is the tension which figures prominently in discussion on migration justice.

Generally, in philosophy of immigration, we can distinguish more universalist, cosmopolitan and globalist approaches against more particularist, communitarian and minimalist ones. Universalist approaches often argue against giving priority to the interests of co-members. They often move from the notion of shared humanity, and moral equality of individuals, regardless of their respective memberships in different communities, including political, which furthermore motivate similar responsibilities to foreigners and co-members. They are, thus, universal in scope and often egalitarian. Particularist approaches are, on the contrary, more partialist, arguing for relevance of political membership, and justifiability in giving priorities to co-members (Bader, 2005, pp. 335–336). These accounts often recognize that it is morally acceptable to give more weight to the interests of those that belong to the same state, nation or

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<sup>16</sup> Global justice is in principle distinguishable from international justice. Unlike international justice it takes responsibility to individuals in its focus, while international justice often deals with relationships between states in the state system (Brock, 2022a). For the purposes of this thesis, these nuances will be left aside, and global justice, as used, will in principle refer to both of these aspects. It will furthermore be constrained to the issues pertaining to migration, and more specifically, those aspects relevant for self-determination based argument.

institutional arrangement. While cosmopolitan, universalist and egalitarian positions often see injustice in global inequalities and argue for some level of global equalisation of opportunities, more minimalist positions do not see troublesome injustice in global inequalities per se, once some level of sufficiency and adequacy is reached for all individuals (Armstrong, 2012). This adequacy is often spelt in terms of human rights framework compliance which will further be introduced.

While there is no clear-cut distinction between these accounts, it is generally taken that more open borders positions in immigration debate, are more aligned with universalist and cosmopolitan positions, that rest on the notion of individualism and idea of equal moral worth of all individuals regardless of their nationality or citizenship. Conventional view is closer to more particularist and minimalist positions, arguing for giving priority to co-members, and providing limited duties to foreigners.

As indicated above, a number of prominent arguments for open borders are motivated by concern with severe global poverty and global inequality (Carens, 1992; Oberman, 2015). However, not all cosmopolitans argue for opening the borders as a response for non-ideal, real-world conditions of inequality and poverty against which issues of immigration are often observed. Some cosmopolitans, like Christiano (2008), worry that more liberal immigration may have negative consequences for achievement of other, long-term cosmopolitan goals, like global democracy.<sup>17</sup> Others do not even deal with immigration, or do not consider it the most effective way to achieve equality of opportunity (Armstrong, 2012, Chapter 8). Migration, that is, need not be a proper tool to address poverty and inequality, since it may lead, not to the desired equalisation of the opportunity sets,<sup>18</sup> but even to widening the chasm of inequality.

The divide between cosmopolitanism as signifying open borders or more particularist positions as requiring more closed or controlled ones is not as straightforward. It is not only cosmopolitan or egalitarian positions that are sensitive to the existence of global poverty, especially in its most severe form, and it is not only cosmopolitan arguments for more open borders that rely on the idea of equal moral

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<sup>17</sup> Cosmopolitanism has more than one meaning. While *moral cosmopolitanism* refers to equal moral worth of all persons, political cosmopolitanism often entails political solutions like world government or global democracy. Moral cosmopolitanism need not entail the political one. For distinction see Miller (2016c, p. 22) and Pogge (1992).

<sup>18</sup> Equality of opportunity is an egalitarian idea. It, in its most simple terms, refer to the claim that opportunities between individuals should be equalised, so that, to offer a vivid example, a child in Mozambique, has similar opportunity as child of a Swiss bank owner to reach the position of the latter (Mandle, 2006, Chapter 7; Miller, 2005a; Wenar, 2008a).

worth of all human beings. Proponents of the conventional view often subscribe to a much weaker interpretation of this cosmopolitan premise which allows for special obligations and partiality with respect to important relationships, such as membership in the same political system (Miller, 2016c, pp. 22–26). Thus, even though proponents of the conventional view often endorse a more minimalist approach to global justice, some levels of duties to foreigners are often recognized. Strong cosmopolitan solutions that require strong redistributive measures, equality of opportunity and opening of the borders in the name of achievement of global justice, are, however, explicitly rejected. Duties recognized to foreigners are often conceived as respect for their basic human rights and capabilities (Blake, 2013; Miller, 2007a, Chapter 7, 2016c, Chapter 2; M. Nussbaum, 2019; Rawls, 2000; Wellman, 2008), with requests for equality of opportunities mostly being reserved for domestic, or state level. Proponents of the conventional view then, do not shy away from responsibilities to foreigners, but conceive them in a more limited manner. When some level of human rights protection is achieved, there are no further requirements of global equality, especially in the form of opening the borders to needy foreigners, bar refugees. This stance, which Wenar (2008a) dubbed “sufficiency not equality” position,<sup>19</sup> is grounded also in the value of self-determination, as a principle which has a bearing on responsibility and duties of global justice. It, thus, has a bearing on immigration justice as well.

Reasons why proponents of the conventional view are antagonistic to more freedom in immigration in the context of global justice are diverse, and this thesis will deal with some of them in a more detailed manner in the following chapters. The right to self-determination, which is often taken as a prominent element of a number of positions from conventional view in immigration, plays an important role in understanding duties to foreigners. Self-determination based argument for the right to exclude rests, as will become evident, on a specific interpretation of this right and its place with respect to global justice.

#### ***2.4.1. Self-determination and global justice***

The right to self-determination is often taken as a reason to reject stronger cosmopolitan solutions, like the world government and to argue against global

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<sup>19</sup> This position is evident in work of other prominent authors as well, like John Rawls, Richard Dworkin, T.M. Scanlon, Samuel Scheffler and Allen Buchanan (Wenar, 2008a, p. 401).

egalitarianism (Banai, 2015; Miller, 2005a). Even though some cosmopolitan authors are cautious of self-determination and what it is taken to entail (Beitz, 1999, pp. 92–123), some of them consider their positions as compatible with it, at least when heavily qualified (Caney, 2005, Chapter 5; T. W. Pogge, 1992). It is often, even in cosmopolitan positions, recognized as an important principle, and a prerequisite for the achievement of justice. As it will be further elaborated, it is a principle tightly connected to the value of political freedom and political autonomy. Apart from its intrinsic value, self-determination is also considered as instrumentally valuable, serving a series of important goals, like the functioning of democracy (Armstrong, 2010, pp. 317–318). However, since in its most basic terms self-determination requires independence and non-interference with respect to the free choice of economic, social, cultural and political development, it can be seen as entailing rejection of stronger cosmopolitan positions that deal with global poverty and inequality. Global equalisation of opportunities, which requires constant redistributive measures across societies, in this sense limits self-determination understood as a freedom from interference and freedom in pursuit of important goals of community. It is claimed that, on the one hand, global (egalitarian) redistribution disregards the results of self-determining economic choices of different societies, their consequences, and responsibility of the society for its policies. On the other, it requires some supra-national or global institutional mechanism or body of authority to coordinate global redistribution, which would potentially limit self-determination, and even negate it completely (Miller, 2005a, 2007a, Chapter 3). More freedom in immigration as a strategy of battling poverty or global inequality, also, it is claimed, disables the possibility of self-determination, since decisions about membership are considered of importance to the receiving society, as a part of it being self-determining (Miller, 2005a, p. 73). Self-determination is thus seen as in tension with poverty and inequality solutions that interfere with free choices and policies of societies. It is also seen as limiting what can be required from a state as a matter of global justice. The work of this thesis will, in this sense, not deal with global equality of opportunity, but will try to make more room for self-determination accommodating more freedom in migration, which may be seen as a policy with some impact on global justice.

Self-determination should not, however, be considered as an unlimited right on par with the idea of unlimited control over some territory and freedom from any constraints from the outside. It can be limited in some cases, and it should not be

observed as incompatible with duties to foreigners and other states.<sup>20</sup> Achieving and valuing self-determination itself provides reasons to limit global inequalities and severe poverty, which, when significant, generate inequalities in power on the global level. Self-determining economic, social or political decisions of societies, while inevitable in creating some inequalities, should not be such as to disable achievement of self-determination of other societies (Miller, 2005a). If inequalities in economic and political power are such that poor or unstable societies cannot undertake free choices and guide their development, then they are owed assistance. This assistance is for many authors of limited character. It is owed up to the point where basic human rights are protected and conditions for a functional institutional system achieved (Miller, 2005a, 2007a, pp. 75–80; 247–261; Rawls, 2000, pp. 105–120). Self-determination can, thus, be justifiably constrained to enable the background conditions for self-determination of other societies and respect for basic human rights (Miller, 2005a, p. 78). It should not, therefore, be understood as synonymous to absolute sovereignty.<sup>21</sup> It is considered as a moralised claim, which means that it should be grounded in morally salient reasons, and justified to others which are affected by it. It is considered constrained by at least some, limited duties of global distributive and reparative justice.

This thesis understands self-determination as limited by concerns for global justice, and as a concept which is necessarily observed within the context of global relationships. I will try to show that understanding self-determination and valuing it necessarily involves contextualising it in global relationships. Self-determination can be compatible with even more stringent duties to foreigners, which may in some cases include more significant permissibility in freedom to immigrate. The value of self-determination is, thus, not *per se* rejected, nor states and sovereign state system against which discussions on immigration take place; it is, however, recognized as a right that stands in need of justification and reconceptualization in the context of global justice.

The following segment offers a role of human rights within discussions on migration and global justice, especially with reference to the argument in question.

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<sup>20</sup> Some even suggest a way in which self-determination, as an important principle, and global egalitarianism may be reconciled (Armstrong, 2010; Kollar, 2017).

<sup>21</sup> Sovereignty refers to the final and central authority over political and legal matters within definite and bounded territory (Young, 2007, p. 26). State is generally considered to be the wielder of sovereign power.

Human rights are, as was indicated above, often understood as constraints on the freedom of states to act freely in pursuits of their goals.

#### **2.4.2. Human rights, self-determination and justice**

While the proponents of the self-determination based argument for the right to exclude immigrants generally subscribe to more minimal duties towards foreigners, including prospective migrants, some duties to outsiders are recognized. These are generally spelt out in terms of respecting their basic human rights. This, however, requires that this framework be introduced, since it will figure prominently in the following discussions, especially pertinent to global justice duties.

##### *2.4.2.1. Human rights in the discussion on migration*

Human rights are generally considered to be universal, duty-imposing rights, of high level of priority, which protect persons against political, legal and social harms (Nickel, 2021). In the philosophy of migration, most authors use the human rights-based approach to discuss duties to citizens or foreigners, which follows the common thread in theories of global justice and international relations (Brock, 2009; Mandle, 2006; T. Pogge, 2002; Rawls, 2000). Language of human rights has some merits with respect to discussing duties to foreigners and limits on what may be considered as permissible conduct of states. The use of human rights vocabulary is recognizable and has a bearing on international relations. They are codified and internationally recognized<sup>22</sup> and their restriction and violation is seen as warranting international action. Their protection is, however, not always enforceable, but they signal a level of urgency and the need for political action on the global level, and are used widely in development, international relations and normative research.<sup>23</sup>

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<sup>22</sup> Human rights are codified in a number of international documents, like the 1948 Universal Declaration of Human Rights, and following Covenants, International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966). International Bill of Rights which consist of these documents, also refers to following four documents: Convention on the Elimination of All Forms of Racial Discrimination (1969), the Convention on the Elimination of All Forms of Discrimination Against Women (1981), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), and the Convention on the Rights of the Child (1990) (Brock, 2020, p. 45).

<sup>23</sup> It is not only human rights that are used to discuss duties to foreigners. Capabilities approach, which focuses on individual well-being, capabilities (real freedoms and opportunities) and functionings (what

For discussions on migration, this framework is used across the accounts. Positions which argue for more liberal migration or open borders often aim to show that the right to freedom to immigrate can be established as a basic human right (Carens, 2013; Oberman, 2016a; Wellman & Cole, 2011, Chapter 15). Other accounts aim to show that concern with human rights of the impoverished may give reasons to engage with migration policies (Oberman, 2015). Human rights of refugees become an especially prominent matter in the discussion on migration justice (Brock, 2020, Chapter 6).

For those authors that argue for self-determination based argument for the right to exclude, human rights framework compliance is often seen as: a) condition of state legitimacy, and b) scope of justice owed to foreigners.

For the proponents of the argument, it is often taken that states need to satisfy some conditions to be justified wielders of political powers, including the rights to control admission of the foreigners. States which fail miserably with respect to human rights protection to its members and foreigners are not considered legitimate (Miller, 2016c, p. 34; Wellman & Cole, 2011, p. 16), or morally justified in excluding migrants. As will become obvious, in the following chapters, legitimacy is often conceived as hinging on more than respect for human rights, including securing the conditions for self-government. However, human rights are taken to provide a specification of the condition to the moral right of the sovereign state to exclude migrants. What this may mean in detail, depends on the underlying notion of human rights.

Human rights are, furthermore, conceptualised as a minimal requirement of global justice with respect to foreigners (Miller, 2007a, Chapter 7). As highlighted, proponents of the conventional view, including those that argue for self-determination based argument, often subscribe to a more minimalist conception of duties to foreigners. Foreigners are not owed strong social or distributive justice, but respect and protection of their basic human rights. This may include states merely abstaining from harming those rights directly or in contributing to such harm, and it may entail more stringent positive duties, including sending aid, assisting in development, or contributing to collective endeavours which aim to protect these rights. Human rights

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individuals are able to be and to do), also figures prominently in discussion on what is owed to individuals from the standpoint of justice. These approaches, developed most extensively by Martha Nussbaum and Amartya Sen, are closely related to human rights-based approaches (M. Nussbaum, 2006, 2011).



then define what is a level of justice owed to all, regardless of the nationality or citizenship status.

When protection of human rights fails in some state, even though it may be seen as primarily responsible for their protection, this triggers responsibility on the global level to remedy this situation. Respecting human rights is a way of recognizing the universal moral equality of all individuals (Miller, 2016c, p. 31)

While the protection of human rights is widely shared across different accounts as what is owed to individuals in virtue of their humanity, details of what this in practice entails, both with respect to legitimacy, or global justice duties and responsibility sharing, hinges on the specific accounts of human rights. These are, however, very diverse even within the narrower discussion on migration justice.

#### *2.4.2.2. Normative grounds and determining the list*

While human rights are seen as essential in understanding what is owed to individuals, this framework of understanding justice is at times vague, since there are many different conceptions about what rights are, how they are grounded and how they should be secured and enforced (M. Nussbaum, 2003, pp. 36–40).

Examples of these uncertainties arise in discussions on immigration. Depending on the conception of the grounding or scope of human rights, different notions of duties to immigrants emerge in the discussion. Authors which endorse minimalist accounts of human rights, conceived as grounded on basic needs, entail much weaker duties to immigrants (Miller, 2016a). When human rights are conceived as grounded in autonomy and authorship over one's life, even freedom of international movement as human right is more easily defended (Oberman, 2016a; Wellman & Cole, 2011). In this sense, seeing human rights as constituting a rather minimal list, which should secure fulfilment of most basic generic needs to persons, as Miller argues (2007a, Chapter 7, 2016a), falls short of establishing human right to immigrate. This is especially so in cases in which states already satisfy protection of these needs to an adequate level. These examples show how seeing rights as targeting a minimum, and rights as tools for empowerment, relate differently to understanding migration justice.

Since there is no adequate place in this thesis for mentioned disputes, and since it is not my intention to provide an account of human rights, they will be used in their intuitive sense, as securing what persons require to lead a life of human decency. To

this end, they are taken to refer to what is universally considered as relevant for persons across different contexts to be able to lead a decent life.<sup>24</sup> This includes physical, psychological and social needs, like basic welfare needs for shelter, food, water, clothing; physical and psychological health, security and integrity of persons; needs to be part of wider social context where meaningful relationships can be formed, need to have adequate level of education, options for work and leisure, and other basic liberties like association, conscience and expression. Equality before law and rights to due process are also recognized as human rights which protect against arbitrary power over individual lives (Mandle, 2006, Chapter 4). The interests to participate in the political process of the state, or the right to democracy, are however, more controversial, with some authors thinking that this strong requirement cannot be seen as a basic human right (Altman & Wellman, 2009, pp. 31–34). Recognizing the importance of self-determination, and underlying values it serves, gives reason to see that some form of political participation merits inclusion on the list of core human needs which requires protection.

These elements provide only provisional indication as to what human rights seek to protect, but some convergence is found around some of these core aspects (Brock, 2020, Chapters 2, 3; Miller, 2007a, Chapter 7; M. Nussbaum, 2003, pp. 41–43).

Human rights then may be seen as identifying a threshold that should be reached for all individuals, including migrants, which then informs duties of states and the international community. The identification of the duties, however, does not necessarily offer guidance as to how they should be fulfilled and how the responsibility for their fulfilment is to be assigned. While negative duties imply that all are placed under the obligation not to restrict human rights to others, positive duties require some way of understanding how responsibility should be fulfilled (Miller, 2016c, pp. 34–36), which complicates understanding of duties to foreigners. These nuances are left aside in this thesis. It is taken that states which claim exclusionary rights to migration should be attentive to human rights of both migrants and members, and should respond to

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<sup>24</sup> It is clear that invoking decency may be problematic, for notions of what good life and well-being constitutes in, vary in different cultures and accounts of well-being. Decency is here taken to imply that some form of life, across cultures, may be considered as decent, as compared to obvious examples where persons cannot be considered to live a life worthy of human beings, like the cases of severe poverty and lack of basic subsistence testify to.

human rights violations which occur. In cases of migration as a result of human rights violation, duties to offer remedy are recognized (Wilcox, 2007).

While human rights play a relevant role in discussing migration justice, many accounts fall short of supplying a detailed account of human rights which may support their conclusions. They, however, lean on the widely shared notion about what rights protect human decency (Altman & Wellman, 2009, Chapter 1; Brock, 2020, Chapter 3; Miller, 2007a, Chapter 7), mostly found in the human rights documents, and this route is followed in this thesis. This is deemed sufficient for a dialogue with proponents of the self-determination based argument for the right to exclude undertaken in this thesis.

## **2.5. Self-determination based argument - summary and the way forward**

Before moving to the methodological framework of the thesis the self-determination based argument for immigration control is briefly summarised and positioned in the debate, together with strategies to approach it. As elaborated, arguments from self-determination are a type of arguments which use collective right to self-determination to ground the moral right of the state to control immigration and exclude foreigners. These arguments are falling within the so-called arguments from the conventional view, which, apart from stressing other normative grounds, like territorial rights or associative duties, draw force from the collective right to self-determination to argue for the right to exclude.

Self-determination, generally, is understood as a claim of the people to govern themselves independently. This entails a substantive range of freedoms in conducting collective affairs, including immigration, subject to some minimal constraints, usually understood as human rights framework compliance. Since self-determination is taken to imply the right of the political collective to shape the rules with respect to its membership, the right to exclude prospective migrants is seen as its important aspect. Self-determination also gives specific shape to understanding global justice and duties to foreigners. These are minimal and allow for giving priority to the interests of co-members. These duties should not, when there is a need to respond to some claims to foreigners, be conceived in the form of extensive redistribution or liberalised migration, which would make collective self-determination void.

Self-determination based arguments for the right to exclude are especially powerful, since they rest on an internationally recognized principle, and a human right,

construed as serving important individual interests for political freedom. Freedom in immigration, when understood as a right to freely travel and settle across borders of the states, is generally understood as in tension with this collective right.

This argument has met extensive criticism, ranging from minimising the relevance of self-determination when pressed against interests to migrate (Carens, 2018), to arguing that the self-determination based argument is flawed, question begging or self-defeating, or that it lacks additional elements to ground the right to exclude (Fine, 2013; Lægaard, 2013; Lepoutre, 2016).

Next segment will introduce strategies in approaching this argument utilised in the thesis and general methodological framework.

## **2.6. Methodological framework, strategies and theoretical presuppositions**

Self-determination based argument for the right to exclude immigrants is introduced as one of the main and the most powerful strategies in arguing for moral justifiability of states in excluding prospective immigrants. This segment offers the way this argument will be further approached, with some of the underlying theoretical assumptions relevant for the discussion.

### ***2.6.1. Approaching self-determination based argument: strategies***

Self-determination based argument, in its most basic form, asserts that if states have the right to self-determination, then they are free to shape their affairs, including migration, as is best aligned with their national interests. This on the one hand, moves from the idea that states (when some preconditions obtain), in virtue of their self-determination, have a right to control their membership, including potential new members arriving by migration. On the other hand, by virtue of the same right, they are not required to fulfil extensive duties to foreigners, including by opening the borders to needy foreigners.

To challenge the self-determination based argument for the right to exclude, two general approaches are recognized, a) approach which moves from a strongly cosmopolitan position, often entailing forms of political cosmopolitanism (e.g. global state), which aims to negate the relevance of self-determination altogether, and b)

approach which recognizes the relevance of self-determination, but aims to show that right to exclude does not follow from it.

For some, then, this argument begs the question, in the sense that it assumes what should be justified in the first place, i.e. that the distribution of membership in territorially bounded selves (states) is morally justified (Cole, 2012). This means that the starting position of the argument in question is under analysis. While proponents of the argument move from the idea that states, as institutions of territorial distribution, are justifiable, some question the justification of having the world arranged in such units in the first place. In this sense, the relevance of self-determination may be questioned, and other forms of governance, including global state, with global egalitarianism guiding distribution, may be elected.

This thesis will reject a), or the strongly cosmopolitan position, and approach self-determination based argument by recognizing the value of self-determination, but aiming to show that it does not straightforwardly entail the moral right to exclude immigrants (b). This thesis will therefore, move in another direction than strategies recognized in a). It will be assumed that self-determination may be valuable, and that it may give rise to organisation of the world in territorially separate units. This means that the focus will rather be on a normative strength of self-determination based argument for exclusion, or the argumentative path which aims to show that self-determination does not entail the right to control migration.

There are a number of strategies which aim to do so, and they may be provisionally categorised as follows:

1) arguments which aim to introduce human right to immigrate (Brezger & Cassee, 2016; Carens, 2013, 2018; Oberman, 2016a). These arguments aim to show that the right to exclude based on self-determination, while potentially serving the interests of individuals and communities, is not strong enough to justify restriction of freedom to immigrate. Other individual interests and rights, to which the right to immigrate contributes, trump the self-determination based right to exclude. In the conflict of competing values, that is, interests to exercise political freedom by restricting migration lose out.

2) arguments that start from considerations of global justice (Brock, 2020; Carens, 2013). These arguments aim to show that having the right to exclude is incompatible with justice in light of conditions of poverty and inequality which obtains between states. Having strong borders is claimed to perpetuate injustice and block

alleviation of poverty. Legitimacy of the state system and its closure, as such, is scrutinised from the standpoint of global justice. Unless the conditions of severe poverty and inequality are tackled, the state system as such, cannot be morally justified. Self-determination, that is, while important in contributing to the interests of collectives and individuals as their members, must yield when confronted with claims of impoverished or those owing remedy.

3) arguments which rely on analysis of self-determination itself, with focus on the concept, and what it is taken to entail (Hidalgo, 2014; Lægaard, 2013; Lepoutre, 2016). This route aims to reassess self-determination based argument, and is either opting to show that argument is self-defeating or circular or that its connection to membership control is to be relinquished.

While the 1) strategy is fruitful and increasingly developed, this thesis does not aim to contribute directly to this specific route, and remains agnostic with respect to the possibility of defending freedom to immigrate as a basic human right. It will, however, recognize that this freedom is of relevance to individuals, and generally align with the idea that liberty in moving freely should be a starting position.

Strategy 2) is a more limited option, and relies on certain empirical conditions, which make it powerless in a just world, in which, however, interests to immigrate will not necessarily cease to exist. This route will be given some furnishing since self-determination based argument is supported by a specific conception of global justice which merits additional attention. Understanding self-determination is, that is, reliant on its position in a wider global context, in which aspects of legitimacy may be opened. Some considerations to global justice, with migration as one of its relevant aspects, have a role in legitimising the exercise of self-determination, and the state system following from it. To justify the existence of the state system as it is, territorial division cannot be simply assumed. It should satisfy some conditions which can make it morally acceptable to all which are subject to this arrangement. This strategy may place additional constraints with respect to self-determining choices in migration policies states may justifiably elect.

To these theoretical endeavours this thesis aims to contribute, with special emphasis on the strategy 3) which looks at self-determination as a concept and right, aiming to reassess what it is taken to entail. It focuses on the specific way self-determination is used, in the philosophical debates on migration, to argue for membership controls, or the right to exclude immigrants. For this specific purpose,

arguments that deal with boundary problem, and which try to show that this argument is circular or self-defeating, are left aside. The focus is on assessing the connection of self-determination with membership control, and the role of this control in achieving the underlying value of self-determination, or political freedom. Contribution of the thesis, thus primarily lies with arguments from global justice, and with conceptual reassessment of self-determination as understood in migration.

Strategy 1) should not, however, be seen as incompatible with the one opted for in this thesis. It may be seen as complementary to arguing against the general right to exclude based on self-determination. For purposes of this thesis, where the idea is to situate migration and self-determination in a wider context of global relationships, arguments from global justice may be seen as more appropriate in developing.

This general approach unfolds against some theoretical presuppositions which are briefly indicated in the following segment.

### ***2.6.2. Theoretical assumptions***

This thesis unfolds against some theoretical presuppositions which are relevant for the discussion, including the state system as a background of discussion, moral cosmopolitanism and moral individualism.

As already indicated, the migration debate generally unfolds against the background of the state system. Most authors simply assume that states are relevant in discussing immigration, since it mostly entails crossing of the borders of the states and settling on the territories of states where migrants do not politically belong. Taking state as an important element of discussion, and the fact that the world is characterised by a sovereign state system, by no means imply that such territorial division is the only natural or justifiable, or that it is as such, unchangeable. Taking states as foci of analysis is recognized as an instance of “methodological nationalism” (Sager, 2016a, 2018). This methodology has a bearing on the way discussion is framed and which theoretical questions are addressed. This means that some aspects of migration may be left unaddressed, while others may be oversimplified and misconstrued. Some of these assumptions will be subject to critical analysis in the following chapters. This background setting is, however, relevant for the argument which is in the focus of the thesis, since most of its proponents take that it is a state which, in virtue of its self-determination, has a right to exclude migrants. Setting of the stage of discussion as

mostly seen against the background of the state system is, that is, to the extent shaped and determined by the argument under the analysis. In this sense the work of this thesis may be understood as falling within institutional conservatism (Blake, 2020, p. 10), in the sense that it takes some institutions, like state system and state, as given, and tries to evaluate them, or seek the way to justify them. This thesis will, however, offer some reasons to re-evaluate this background. It will, furthermore, take that it should not be simply assumed, but that it should be justified from an impartial standpoint. And while collective self-determination may be used as one of the grounds to justify territorial distribution in states or state-similar units, other considerations, like contribution to global justice, may be required to deem such arrangement justified to all that are subject to it. Some of these considerations figure prominently in Chapters 3 and 6.

Highlighting the need to justify, and not merely assume, the state system against which migration occurs, reveals other important theoretical presupposition. It refers to taking all individuals as moral equals, which are equally owed justification for having an arrangement which profoundly shapes their life prospects and which is exclusionary. This means that persons should be, irrespective of arbitrary differences between them, seen as equally deserving of moral consideration. As was indicated, this may entail a strongly cosmopolitan reading, where moral equality of all persons is taken to imply equal responsibilities and consideration, precluding any partiality to interests of those with whom some relationships are formed. It may, however, imply that partiality is acceptable, but that individuals are to be given equal moral considerations (Miller, 2016c, Chapter 2; Wellman & Cole, 2011, Chapter 2). This entails e.g. respect of their human rights and provision of justification in cases in which their claims, e.g. to be admitted in other states, are rejected. This thesis rejects the strong cosmopolitanism, and takes that moral equality of individuals can be observed also in the contexts in which partiality to co-members is recognized. Human rights play a relevant role by which this universal commitment to moral equality is recognized. As indicated, this more limited account of global justice is characteristic for authors which argue for self-determination based argument for the right to exclude. This thesis will, however, offer some reasons to show that considerations of global justice, even of sufficientarian character, entail much less discretion on migration than initially seems.

Additional presupposition, related to the previous which takes that persons are of equal moral worth, is moral individualism. Moral individualism implies that it is



primarily individual persons that are the source of moral value (Altman & Wellman, 2009, p. 37). Taking individuals in focus, however, does not omit from the view that they are included in the wider affiliations, communities and relationships, which are relevant for them and which to extent shape them. Moral individualism, that is, does not preclude assigning moral worth to communities. They can be deemed valuable, mostly by reference to contributions they have for individuals and their interests. Taking self-determination as a relevant and valuable right will follow this route. It will be, that is, recognized, that some collective rights or collectives may be deemed valuable, when they have a clear role in serving important human interests. Both states, which are of certain quality, and their self-determination may be seen as serving these goals, and Chapter 3 will provide an account which may explain their value.

For global justice, and migration justice more specifically, other aspects of respecting moral equality of persons are also of importance. They refer to taking persons as separate individuals, with separate lives, which are all worthy of moral consideration as such.<sup>25</sup> This means that each person should be taken as an end (M. C. Nussbaum, 2000, p. 56), and not as a means to achieve some preferable collective goals. This is especially relevant in discussions on duties to foreigners and impoverished, where the focus is often more on cumulative effect of some policy, then on individuals which should be primary recipients of global justice or rectificatory measures which states elect.

Considerations of justice will in this thesis be connected to the relationships which obtain between different parties. Duties of justice arise when discernible connections and relationships are present. This is most evident in the cases of individuals who are immersed in common social, economic and political practice, and who share and participate in a common set of institutions. Apart from applying to membership within the single state and society, relational justice may be applicable to a wider global context. Relational justice, which is in focus in some accounts under analysis (Song, 2018a; Wellman & Cole, 2011, Chapter 2), is especially sensitive to relationships and inequalities which may give rise to oppression or exploitation. While, as Wellman (2011, Chapter 2) shows, this is especially worrisome within a single society, global relationships between largely unequal states, and other global actors

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<sup>25</sup> John Rawls (1999, pp. 19–24) uses the notion of separateness of persons in his *A Theory of Justice*, first published in 1971, to argue against utilitarian conception of justice, which focuses on aggregate utility, and loses focus on individuals and their distinctiveness.

like civil society or transnational associations, are especially fruitful for domination, oppression and exploitation.

Finally, this thesis will take important liberal and democratic principles, together with previously mentioned human rights as relevant in discussion on migration. These principles are mostly tied to seeing persons as free and equal, and are characterised by commitment to important human interests and freedoms. These include freedom of association and thought, freedom of movement, non-discrimination and principles of toleration of differences, equality of sexes, the importance of political participation and other freedoms (Lægaard, 2007b, p. 46). In this sense, migration policies which are elected are generally considered to be aligned with these principles, including the commitment to human rights. The right to exclude is on the one hand at times understood as incompatible with liberalism (Cole, 2000; Hidalgo & Freiman, 2016), but on the other, required by democratic principles which require closure of the demos (Song, 2016). These aspects will be incorporated in the thesis and further analysed.

In what follows methodological approach of the thesis will be briefly introduced.

### ***2.6.3. Methodological framework - conceptual analysis and social sciences***

This thesis primarily uses standard philosophical approach, or conceptual and problem analysis. As indicated above, both conceptual analysis and further development of arguments from global justice will be used, to argue against self-determination based argument for the right to exclude. This strategy allows for a combination of theoretical approach, that will rely on the analysis of concepts relevant for the debate and their implications on the field of discussion, with further development of substantive argumentation which addresses migration contextualised in wider global relationships. On the one hand, the approach of the thesis is critical, offering assessment of argument from self-determination, with focus on the way self-determination is used in these arguments. On the other hand, this thesis aims to offer a modest contribution in reassessment of the concept of self-determination in the context of its relationship to immigration, with a blueprint of what a just migration regime, which still endorses this right, may look like.

In what follows some merits and rationales, together with limitations of this methodology in philosophy of immigration are provided.

### *2.6.3.1. Self-determination and immigration: concepts, setting and non-ideality*

The main strategy in arguing against self-determination based arguments as grounds for the right to exclude immigrants is relying on analysis of concepts used in the debate.

The main part of the thesis focuses on the right to self-determination, as used in philosophical discussions on immigration, where understanding of this right includes, apart from self-government, membership control. Self-determination and migration, furthermore, are often understood as unfolding against a specific understanding of the world and global relationships, where self-determination is understood as entailing limited duties to foreigners and migrants. This thesis will challenge this way of understanding self-determination, and relationship with migration which this interpretation entails. To this end, Chapter 5 will mostly deal with self-determination, understood as consisting in the right to control composition of the membership, while Chapter 6 will situate self-determination and migration in broader analysis of global relationships.

Focusing on key concepts in the debate, self-determination and immigration more specifically, allows us to critically examine relevant arguments but also to contextualise and reinterpret them. In this thesis, I will argue and try to show how both self-determination and immigration are concepts that need to be observed in the wider context of global relationships and global justice. This will provide space for reinterpretation and reconceptualization of these concepts which may contribute to the efforts to reimagine the connection between them.

Since self-determination is, as a concept, still relatively open and allows for different interpretation, this thesis will open the possibility to reconceptualize it in the context of global justice and immigration debates, by indicating what it might entail, and how it can be interpreted more permissively with respect to freedom in migration. This will open some room to reconceptualize the right to exclude, and political membership itself, which this thesis will indicate only tentatively, as a possibility for further research.

While this thesis is primarily consisting of critical analysis of the general shape of self-determination based argument for the right to exclude, focusing on the way self-determination is conceptualised, some considerations will be given to the context of the real world in which migrations occur. This will require some engagement with social

sciences and normative literature which leans on it extensively. While this task may be somewhat removed from the expertise of a philosopher, it seems necessary for engaging with normative questions that aim to be relevant for discussion on issues like migration, which have an important practical relevance. Engagement with social sciences in normative work of philosophers has, moreover, become a standard procedure of inquiry, which opens new research questions and gives novel shape to previous work in philosophy of migration (Sager, 2022).

Normative discussions on immigration are often positioned somewhere between highly idealised and theoretical discussions, and non-ideal theorising which is constrained by the conditions of the real world.<sup>26</sup> This distinction between so-called ideal and non-ideal theory is not always clear cut, and these strategies may supplement one another.<sup>27</sup> Many authors use either social scientific research or real world examples and constraints when discussing immigration and deriving their normative conclusions. This is also evident in theoretical work of the proponents of the argument under analysis. Miller (2016c), for example aims to provide theory which is sensitive to the real world in which migration unfolds. Song (2018a) and Pevnick (2011) also lean on social scientific research in devising their theories. Arguing for more freedom in migration is also often motivated by the non-ideal conditions of poverty and inequality. Theories of migration, that is, often lean on at least some empirical context, which motivates the normative conclusions and guides the discussion.

In this thesis, conceptual analysis of the concept of self-determination will be supplemented by its contextualisation in wider global relationships. This will, furthermore, allow this concept to be reassessed. This requires some engagement with empirical research, to provide for understanding of the context in which migration unfolds, and its relationship to self-determination. This engagement is limited, due to constraints of space and limits in engagement with social sciences, which deal with migration extensively.

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<sup>26</sup> Ideal and non-ideal theories in migration both offer theoretical frameworks of approaching philosophical and moral issues, and analysis of certain institutions or practice. Ideal theory is characterised by focus on ideally just arrangements, while non-ideal theories allow some constraints, and focus on the way more justice can be achieved from a less ideal starting position. While ideal theory allows for idealisation of phenomena, non-ideal approaches tend to be more descriptive and attentive to feasibility constraints (Wilcox, 2018).

<sup>27</sup> For example, in organising his book Carens (2013) uses both the constraints of non-ideal, real world (in the first part of the book), and ideal theory where these constraints are removed (second part).

In this sense, critical work of the thesis does not revolve exclusively around showing that the concept of self-determination which proponents use to establish their normative conclusions may be re-evaluated. It also offers reasons to see that the understanding of the background against which both self-determination and migration are understood is somewhat limited and misconstrued in these arguments. This may be due to the limited engagement with social sciences, or the selective reading of such literature. In this thesis, it is therefore argued that the way migration is understood relies to a significant extent on the understanding of the phenomena, for which some engagement with real world context and sciences which describe and explain it, contributes.

Before concluding, it is important to revisit strategies highlighted before, to chart the task ahead.

This work will engage with one specific argument used to argue for the state's right to exclude. It will primarily focus on the analysis of the way its normative ground, or principle of self-determination, is conceived. This will require, on the one hand, normative analysis of the concepts used in the debate, which is a task of philosophical endeavours. On the other hand, it will require some engagement with wider context in which migration occurs, which requires some engagement with social sciences. As previously stressed, the strategy which guides this work, does not primarily include devising arguments for freedom of migration, or direct contribution to these arguments. It rather combines conceptual analysis, as explained above, with arguments from global justice.

The main reason for this strategy lies in the fact that migration occurs in the context of the world which is highly unequal, and where poverty is the reality for a great number of people. In this world, migration occurs in spite of the controls states aim to exercise on the movement of people. Migration itself is, furthermore, often shaped by the conduct of states and other global actors, and it has a complex effect on both poverty and inequality. Turning focus to some of these issues, in place of directly arguing for freedom to immigrate, may contribute to discussion on migration and self-determination in connection to it somewhat differently. While arguing for freedom in immigration directly is one of the well devised and common strategies, the focus on global justice and conceptual analysis aims to provide a contribution in observing the relationship of migration and self-determination in a less ideal context where the right to immigrate may seem a distant endeavour. In connecting migration, self-

determination and global justice (including legitimising the system of self-determining states), more space is opened to devise an alternative relationship between these concepts, to build an account of a just migration regime, which may be sensitive to the real-world conditions of poverty, human right protection and inequality. A blueprint of such an account will be provided as a result of critical evaluation of self-determination based argument for the right to exclude in Chapter 7.

## **2.7. Summary and the way forward**

This Chapter aimed to introduce the self-determination based argument for the right to exclude and to situate it in wider debates on migration and global justice. This argument was shown to be a part of the conventional view on migration, which aims to show that states are morally justified in excluding immigrants, or electing and enforcing migration policies, subject to some constraints and limits.

This argument will be further introduced in Chapters 3 and 4, where the main shape of the argument and explanation of self-determination is provided. These Chapters will offer the understanding of self-determination endorsed by the proponents of the argument, with connection of it with legitimacy and state system, and global justice and duties to foreigners.

This Chapter also offered some theoretical presuppositions, and underlying values which will guide the discussion. Strategies used to argue against this argument are also introduced, with conceptual analysis and arguments from global justice figuring prominently in arguing that the self-determination cannot ground the general right to exclude migrants. This strategy is most evident in Chapters 5 and 6, where the main critical task of this thesis unfolds.

Chapter 7 will finally, provide a synthesis of the discussion, and offer contribution in conceptualising self-determination and migration justice which may be derived from the discussion in the thesis.

### **3. THE COLLECTIVE RIGHT TO SELF-DETERMINATION AND SOVEREIGN STATE SYSTEM**

Political self-determination is recognized as an important principle in international law. It awards a right to self-government to entities like states, which entails a broad right to enact policies freely and to determine the future development. The citizens of a particular state can, thus, free of unjustified external compulsion, decide on their economy, social life, culture and political status, and elect a number of other policies, including immigration policies. They can freely, that is, chart the future of their community and state. When understood as such it is clear that self-determination entails a great level of freedom for its subjects. This widely recognized understanding of the right is challenged by both its use in international law, and normative philosophical analysis. Both its scope, contents and subjects are not as straightforward, and it is understood as warranting strong justification and a decent level of constraint.

This chapter introduces this right, aiming to highlight what is taken to be its core value, and its moral ground. It also introduces the discussion of the subject of the right, following mostly interpretation of the right offered by the proponents of the conventional view this thesis focuses on. Self-determination is here recognized as a valuable freedom which may ground the system of territorially sovereign states. In this sense, this chapter starts from within existing institutional arrangement and political reality of sovereign state system, where the place of self-determination is explained. While this system is grounded in the important interests which exercise of self-determination serves, its exclusionary character and potential for injustice is claimed to be under the requirement of moral justification. This leaves space to re-evaluate this system and place it within the constraints of the requirements of global justice.

#### **3.1. Introducing the right to collective self-determination**

The right to self-determination, as previously indicated, is an established principle of international law, codified in major human rights documents and recognized by the International Court of Justice (Rodríguez-Santiago, 2016, p. 201). In its most general terms, it is taken to refer to the people's right to self-govern (Buchanan, 2004; Nine, 2012; Stilz, 2016b; van der Vossen, 2015, 2016). Apart from this basic

understanding of this right, as will become clear in the following discussion, a number of important issues are left open with respect to the definition of the subject of this right and its scope (Miller, 2020a; Rodríguez-Santiago, 2016, p. 201; Tesón, 2016a). This right is still subject to modification and re-interpretation, and its history testifies to its variability. The core idea behind self-determination, however, generally encompasses the right of a particular collective to govern itself independently.<sup>28</sup>

Self-determination is, generally, tied to affirmation of states, movements of decolonisation, secession and autonomy of indigenous peoples and minorities. It, therefore, primarily refers to claims for achievement of some form of self-government, affording protection against outside interventions and domination. It is considered to have two dimensions, external and internal, with external dimension figuring more prominently in its earlier development (Stilz, 2016b). In this sense, self-determination was mostly interpreted as the claim for territorial independence closely connected to the principle of sovereignty and non-intervention. It was often interpreted as a claim of the particular group (e.g. nation or a people) to the sovereign state, or to exclusive control over aspects of collective life upon particular territory. Its internal dimension is taken to refer to the political arrangement, closely related to popular sovereignty, and more recently to minority rights. Fundamental idea behind this dimension is enshrined in popular sovereignty which entails that political regime and sovereign power can be justified when political power derives from the people over which political regime rules (Moore, 2015, p. 27). External aspect of the right, then, defines the relationship between political groups. When there is a group suitable to be the holder of this right, it is to be able to govern itself independently, making relevant decisions which determine its collective life, free from external interference. Internal dimension, rather, defines the relationship between individuals and the government, following from popular sovereignty, which presupposes political mechanisms that allow self-government (Angeli, 2015, p. 101; Rodríguez-Santiago, 2016, p. 202; Song, 2018a; Stilz, 2016b). Self-determination, as Philpott (1995, p. 352) vividly asserts, gives expression to the intuition that as individuals should be unchained from kings, nobles and churches, peoples should be emancipated from outside control. Self-

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<sup>28</sup> Focus is clearly on matters of political self-determination, which is relevant for immigration. Other, non-political groups or individuals may also be self-determining, in the sense of deciding freely for themselves. Self-determination is here described as collective and is taken to refer (unless specified otherwise) to those collectives which are subjects of political self-determination.



determination may then be interpreted both as a negative claim right against intervention and as a positive claim right of the people to self-govern (Lægaard, 2013, p. 659). In this sense, democracy or other similar arrangements are taken to provide a political mechanism for self-government (Stilz, 2019, pp. 127–131).

Self-determination is, furthermore, often understood as closely related to sovereignty, which entails states having ultimate authority over particular territory. These concepts are, however, distinct, with self-determination being historically a younger concept. Sovereignty is, moreover, often interpreted as a legal right, and expression or exercise of self-determination (Banai & Kollar, 2021). Self-determination offers a moral ground to sovereignty (Altman & Wellman, 2009, p. 4; Stilz, 2019, Chapter 1). When claimed by minorities and indigenous peoples, or historically, colonised peoples as well, moral claim to self-determination, challenges sovereignty as much as it offers support to it in other cases.<sup>29</sup>

Self-determination gradually started gaining acceptance after World War I, connected to the Covenant of League of Nations, in which the principle of external self-determination can be recognized.<sup>30</sup> However, its development can be traced back to the natural law tradition, to the work of Hugo Grotius (1583-1645), Bartolomeo de Las Casas (1474-1566), Francisco de Vitoria (1480-1546) and Samuel von Pufendorf (1632-1694) which recognized rights of indigenous peoples (Rodríguez-Santiago, 2016, pp. 203, 213–214). Generally, in the period before World War I, self-determination was used to reinforce the existing distribution of sovereignty established by the Peace of Westphalia in 1648 (Macklem, 2016). After the war, national self-determination was used to legitimise creation of states in Eastern Europe (Mégret, 2016, p. 48; Rodríguez-Santiago, 2016, p. 212). In this context, it is a principle which gave rise to the creation of new states.

Period after World War II is characterised by the decolonization process with self-determination beginning to have a universal scope, including also colonised peoples. Decolonisation is what propelled self-determination as one of the most relevant principles in international law. This period was characterised by introduction

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<sup>29</sup> Self-determination is then a principle which often gives rise to conflict between contested groups, like the example of recent conflict between Russia and Ukraine shows. Self-determination is in this sense a principle which is cherished, but treated with great caution in international law.

<sup>30</sup> Initial development of internal self-determination can be traced back to the French Revolution of 1789 and American Declaration of Independence in 1776, characterised, among other things, by recognition of the people as sovereign (Rodríguez-Santiago, 2016, pp. 205–206).

of this right into legal instruments and human rights framework.<sup>31</sup> In 1966 and enacted in 1976 self-determination was recognized in major human rights documents, which gives this collective right status of the human right. Articles 1 of both International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights state: “*All peoples* have a right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” [quote from Tesón (2016a, p. 2)]

While this definition leaves some aspects open, with reference to content of the right, its holders and correlative duties,<sup>32</sup> the general idea behind it is that all peoples have entitlement to some form of self-government. Institutions of self-determination give expression to the way these peoples aspire to be governed, and space to arrange their collective life. This is taken to encompass *all* peoples, not only former colonies or existing states (Young, 2007, p. 41). Definition of these entities is, however, contested, but it is seen to encompass minorities and indigenous peoples, or other groups which claim some level of authority, not exclusively in the form of a sovereign state. The form of expression of self-determination is also taken to be relatively open or is approached by caution. It may include territorial sovereignty, but also other forms of internal political autonomy for collectives within existing states.

Self-determination is, furthermore, characterised by tensions and paradoxes. Introducing this *collective* right into the individualist human rights framework is one example, since often self-determination and individual human rights pull in opposite directions (Macklem, 2016, p. 107). One such instance is clearly the case of immigration, where individual interests and rights of immigrants, satisfied by immigrating into a specific country, are challenged by the right to self-determination of the state. Furthermore, self-determination seems to challenge the current territorial distribution of the world and sovereignty of existing states by claims that various groups are making for self-government and territorial independence. At the same time, this right is used to confirm the existing territorial distribution of sovereignty, evident also in the reluctance of international lawyers to make cases based on the claim to self-

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<sup>31</sup> Self-determination is introduced in the UN Charter, enacted in 1948, where it is recognized as one of the core UN purposes. It was also recognized in the 1960 resolution “Declaration on the granting of independence to colonial countries and peoples”, followed by “Declaration on principles of international law concerning friendly relations and cooperation among states” in 1970 (Rodríguez-Santiago, 2016, pp. 222–224).

<sup>32</sup> For uncertainties regarding these aspects in the definition of self-determination in International Covenants see Tesón (2016a).

determination of various intra-state groups (Macklem, 2016, p. 106; Ohlin, 2016). Apart from the fact that self-determination brings potential of disruption, it relies on the concept of the people, which is in international law, and to some extent in philosophical discussions, unspecified. In contemporary context self-determination, therefore, often loses its practical relevance (Ohlin, 2016, p. 72). Claims of self-determination are met with uncertainty and it is often taken that this right gives moral grounds for territorial sovereignty of existing states.

The content of this right, including determination of political status, or permissible way to chart its own future, is also unclear. The scope of this right is standardly taken to be relatively wide, for example encompassing all self-regarding affairs (Wellman & Cole, 2011, p. 15). It is taken to entail a broad right to determine institutions of political participation, economic development, cultural life, character and membership rules over community and other freedoms standardly awarded to states (Murphy, 2014, pp. 323–324). Clearly, however, in charting its future and shaping its affairs, the self-determining community cannot elect any policy it pleases, if these policies restrict important rights of others, or surpass other important principles (Tesón, 2016b, p. 6). It is also a matter of inquiry what are the domains of this right. It is explicitly tied to determining the political status of entities in the international realm, and in preventing foreigners from imposition in collective decision-making, but it remains unclear as to what falls within the scope of this decision-making. Seeing migration policies as a policy falling within the domain of self-determination will in this sense be analysed. The content and limits of this right are, therefore, vague, and these uncertainties leave space to reconceptualize self-determination, allowing for interpreting these aspects. This thesis will, in this sense, provide a very modest contribution in thinking about the relationship of this right with justice in migration.

As evident from this very brief exposition of the history of the concept in the international law, self-determination is more often used in cases of claims for territorial independence, and is extensively analysed in contexts of secession and humanitarian intervention.<sup>33</sup> In this sense, it is often taken that self-determination provides a scope of freedom to the collective to determine its political status, or whether it should be part of some other unit of territorial sovereignty or governed as an independent one. It is a concept that was modified and that evolved through history, referring first exclusively

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<sup>33</sup> There is extensive philosophical literature dealing with these aspects of self determination. For example see (Buchanan, 2004; Miller, 2020a; Moellendorf, 2002; Wellman, 2005; Young, 2007).

to the external dimension of some established nation state, to a wider claim for independence of the colonised peoples, and more recently to the internal question of political participation and autonomy claims of minorities and indigenous peoples within existing states.

Philosophical treatment of self-determination often ties it with matters of global justice or international relations (Altman & Wellman, 2009; Banai & Kollar, 2019; Beitz, 1979; Brock, 2020; Miller, 2007b; Rawls, 2000; Stiliz, 2019). In this sense, self-determination is mostly connected to matters pertaining to status of the states, scope of their rights and justifiable relationships between the agents in the international system of states, and to the matters of distribution and duties at a global level. It is treated both as a valuable principle, which protects important aspects of individual and collective freedom; but also as an overemphasised principle with potentially problematic consequences. This dynamic and treatment of self-determination is captured in an array of discussions of international relations and global justice, including migration justice (Miller, 2016c; Song, 2018a; Stiliz, 2019; Wellman & Cole, 2011). It is standardly treated as a moral right to self-govern, and as such it is applicable to a wide range of discussions standardly related to matters of just government and political arrangement, but also in discussing relationships between agents. Self-determination is also pertinent to discussions that deal with justice and distribution on the global level, and between self-determining agents. Discussion on migration, from the standpoint of this right, will be in the focus of the further treatment of this thesis. Many above noted aspects to which this right is pertinent, will therefore, remain unaddressed. Importantly for discussion on migration, while self-determination is taken to give moral grounds to sovereignty, the way this right is understood in immigration debate is not standard and offers novel interpretation of the right.

Before moving to the overview of these accounts in the debate on migration, which is a task of the following chapter, more is to be said about the subject of the right, its core value and the way it may ground territorial sovereignty.

### **3.2. Who has a right to self-determination? Agents of self-government**

Who is to be considered the proper subject of self-determination is often, both conceptually, and in practice, an open and unresolved matter. Assigning the right to self-determination, as previously indicated, depends on the context, and is often

related to various agents, like nations or peoples, generally in an unprincipled manner (Tesón, 2016a). While it is recognized to some, like to existing states or former colonies, it is not awarded to many entities within states that claim it. It is, in practice, difficult to determine with precision, which collectives have a right to political self-determination, and which do not. This underspecification and indeterminacy leads to the paradox of recognizing the right to self-determination post fact (in e.g. secessionist movements) only to successful subjects, or those that managed to, often by violent means to claim their territorial independence (Mégret, 2016, pp. 52–53).

Two very broad categories of the agents of political self-determination may be discerned (Stilz, 2019, pp. 123–127), one refers to pre-political entities, like nations, minorities, peoples and groups that strive to achieve self-government; while the other refers to entities represented by existing institutional structures, like nation-states.

For the first general category of potential agents of self-determination, membership is considered to share some common characteristics like culture, language, history or descent, independently of the shared institutions found in state. Members of such collectives can be, that is, detected based on some shared characteristics like culture or ethnic background, which pre-date shared political institutions. In other words, even if states would disappear, the people would still be discernible (Stilz, 2019, p. 124).

The other category refers to agents defined by shared institutions, shared political projects or state. Political participation and agency become of importance in these accounts more than shared pre-institutional identity. Often, in these accounts, only when institutional structure or state exists, it is claimed that agents of self-determination may be discerned. Residents or citizens of the states, or other administrative units, are then agents of self-government.

In pre-political conceptions, the people predate the state, and these conceptions can explain multitudes of collective agents within a single state, like minorities or indigenous peoples. Pre-institutional views may also explain the existence of discernible collectives as candidates for self-government present on the territory of former (failed) states. Statist conceptions are, however, tied to the existence of institutional arrangements and states, which potentially spell problems in above mentioned scenarios, where some collectives are potential agents of self-

determination even in absence of states which map onto their territorial presence.<sup>34</sup> Peoples can, however, be conceived to combine these pre-institutional and institutional conceptions, and are, increasingly, considered as mutable entities (Song, 2018a; Stilz, 2019). This means that, while some pre-institutional aspects may be recognized, political institutions and agency are taken to give expression to these collectives.

### ***3.2.1. Agents of self-determination in the migration debate***

Previously introduced general division of the agents of self-determination (i.e. pre-political and institutional or political conceptions) is also recognized in the philosophy of immigration. There are self-determination based arguments for the right to exclude which tie this right to more or less robustly conceived nations or peoples, like in arguments from Miller (2016c), Walzer (1983), Moore (2015, Chapter 3) and Song (2018a, Chapter 4); and arguments that seek to evade cultural and nationalist conceptions, arguing for self-determination of citizens or members of political community, like argued by Pevnick (2011, Chapter 2), Wellman (2008), Blake (2013) and Angeli (2015, p. 95).

For pre-political conceptions of agents of self-determination, both self-determination and following right to control immigration serve as vehicles of protection of shared recognizable identity or culture of the community (Margalit & Raz, 1990; Miller, 1995; Walzer, 1983, Chapter 2). Agents of self-determination are distinctive communities, often conceived as characterised by: shared belief of belonging and commitment between members, shared history, active (cultural and national) identity, connection with territory, and distinctiveness in character (Miller, 2000, Chapter 2). Shared culture and identity come to the heart of such defined agents. The relevance of these aspects informs discussion on immigration, where the right to exclude unwanted foreigners remains an important tool for their protection (Miller, 2016c, Chapter 4; Walzer, 1983, Chapter 2). Members of such agents may be more or less robustly defined by pre-political characteristics. For liberal nationalists like Miller (2000, Chapter 2), national belonging is conceived as more flexible, not relying on ethnicity,

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<sup>34</sup> Statism, therefore, takes states to be relevant subjects of self-determination. These problems, which are relevant for the complete theory of self-determination, are not further treated in this introductory overview, which aims to give general contours of the right to self-determination, in relation to migration justice. For much detailed treatment of these issues, the reader is referred to Stilz (2019) and Moore (2015).

but on subjective feeling of belonging. For liberal nationalists, national belonging is often connected to political membership in the nation-state (Miller, 2016c, Chapter 2). Members of the nation, however, may also be conceived as more robustly defined by characteristics, like ethnicity, religion, culture or even race. These accounts then perceive national belonging as more exclusionary.<sup>35</sup> These differences often track distinction between ethnic and civic nationalism,<sup>36</sup> where ethnic nationalism defines belonging with reference to shared ethnic background, including religion, language and origin; while civic nationalism refers mostly to citizens attached to political values and practices (Lenard & Miller, 2018, pp. 60–61). These distinctions are in reality seldom clear cut.

Other pre-political conceptions of the *self* in self-determination, used in immigration debates, aim to move away from taking national culture as core of the relevant community. These theories assume that peoples, and not a culturally defined nation, are agents of self-determination. Peoples are seen as communities characterised by shared history, political projects and political agency (Moore, 2015, pp. 50–54; Nine, 2012, p. 45; Song, 2018a, pp. 58–59). They are often understood as communities which historically strive for political self-determination, sharing political identity, conception of justice and willingness and capacity to uphold and participate in shared political institutions.<sup>37</sup> Members of the people are then not primarily identifying with shared national culture but rather with e.g. shared moral character, history or common political agency. These characteristics are, however, especially if used in international law, very hard to specify (Ohlin, 2016). In practice, that is, it is at times difficult to separate notions of nationalism (especially of liberal strand) and peoplehood, which is also understood to accommodate some characteristics which aim to make the people distinguishable from others.<sup>38</sup> Control over migration in this sense does not necessarily entail protection of shared identities, or culture, but rather stems from the

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<sup>35</sup> Brian Barry (1999) criticises liberal nationalism for being overly academic, claiming that nations are, in reality, generally conceived as exclusionary.

<sup>36</sup> For distinction between classical and liberal nationalism see Miscovic (2020).

<sup>37</sup> Mégret (2016) proposes reconceptualizing self-determination to refer primarily to such agents which strive collectively to achieve it, rather than focusing on essentialist conceptions of the people. The idea is that a relevant group becomes people through self-determination. Self-determination is then the founding act of peoplehood. Stiliz (2019) offers a similar endogenous conception of the people as an agent of self-determination.

<sup>38</sup> For some like Stiliz (2022, p. 15), identification as one political community may be enough even in absence of additional common characteristics.

shared political practice of the members of the people. It, therefore, is seen as a condition of controlling collective life of community (Moore, 2015, Chapter 9).

For many other authors in immigration debate, a relevant agent of self-determination is recognized when there is a state or state-like entity with jurisdiction over defined territory (Angeli, 2015, Chapter 4; Pevnick, 2011, Chapter 2; Stiliz, 2019, Chapter 4; Wellman, 2005, Chapter 2). Membership in shared political institutions, rather than membership defined by some essentialist characteristics, comes into focus. Many of the aforementioned authors explicitly reject references to culture or cultural identity when explaining the agent of self-determination. Other characteristics are more important, like the willingness and ability of the group that seeks self-government, to uphold just and functional political institutions (Altman & Wellman, 2009, p. 13). For statist accounts it is the existence of state that is necessary for the creation of people (Song, 2018a, p. 57), but the people may be recognized in its proto variants even before state institutions are installed. Self-determination then belongs to the group of people that constitute the political community and are represented by shared political institutions (i.e. state). Membership in these theories is defined by political relationships under the shared institutional apparatus (Angeli, 2015, Chapter 4; Stiliz, 2019, Chapter 5.6). Some theories see institutional membership as more flexible, referring also to those lacking full citizenship status, but actively participating in the life of the political community, including long term immigrants (Song, 2018a, p. 59).

While these general distinctions between agents of self-determination may be discerned in immigration debate, as overviewed above, it is important to note that for most discussions it is primarily state that is of importance, since states are agents which are taken to control the migration, and so the state, and system of states will be in focus of most of the debate in this thesis.<sup>39</sup> However, the way agents of self-determination are defined, figures prominently in the way migration is approached by these authors. Nationalist and identity concerns on the one hand, and more political and institutional conceptions on the other, inform the way migration is understood to relate to community and its self-determination.

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<sup>39</sup> In this sense, distinction between agents of self-determination, like nations, people and citizenship, and the agent which is doing the exclusion (i.e. state) becomes of importance. Clearly stated connection between these agents are at times lacking in some of the accounts of migration justice (Lægaard, 2013). Below, explanation will be provided as to how states may hold rights in virtue of their self-determination..



Before moving to the value of self-determination, and states as its agents, some more general characteristics of the *self* in self-determination will be highlighted.

### **3.2.2. *The self in self-determination - some common elements***

Some of the general conditions that agents of political self-determination need to satisfy are stressed in this part, together with important elements of providing a full account of political self-determination. These conditions refer to membership, group agency and connection to the territory. Some of these aspects are also stressed as relevant in grounding successful self-determination based argument for exclusion, namely the ability to clearly define who the members are and their relationship to territory of the state (Fine, 2013; Song, 2018b).

Firstly, membership of the group should have some minimal characteristics for it to be deemed appropriate for self-government. It should be stable, continuous and bounded. For a group to be able to make decisions for itself, it must be clear who belongs to the group and who should have a part in decision-making (Miller, 2020a, p. 49). As previously indicated, members may either be identified based on some shared affinities and characteristics, or political participation and shared institutions. To have clearly identifiable membership, members of the collective should conceive themselves as such, at the same time being recognized by others as such (Moore, 2015, pp. 54–55). This mutual recognition requires some form of identification. Citizenship status is e.g. a clear identification of membership in the state. Other aspects like long term territorial presence or social membership may also give rise to identify those engaged in self-government (Carens, 2013; Song, 2018a).

Membership in the self-determining agent is also considered bounded, with clear boundaries between those that belong and can participate in political self-government, and those that fall outside of the membership. Political self-determination, and its democratic forms especially, is considered to require closure, with clear identification of those that are engaged in self-government at any point of time (Honohan, 2010, pp. 92–93).

Another aspect of membership that is often stressed is its stability. To have a common project, or to pursue common goals and shape the future of the collective together, the composition of the membership should be stable. The group that elects policies should be the same as the one that enjoys their effects and is responsible for

them (Miller, 2020a, pp. 49–50). It is, however, clear that in large intergenerational collectives, like the modern state is, members constantly change (Stilz, 2019, p. 133). Something else may then be of importance for specific collective being the same group through time, apart from continuity of individual members. In this sense, stability is often understood as a community having the control over membership, so that it does not change in unpredictable and uncontrollable manners, which would disrupt it significantly (Wellman, 2008, p. 115). The group should, therefore, be continuous through time, so that the clear connection may be discerned between former members and their political activity, and future generations, which may benefit from or suffer the consequences of elected policies (Miller, 2021a, p. 171). Relationship between members of the groups which claim self-determination, including states, is, therefore, intergenerational and temporally extended (Moore, 2015, p. 49; Pevnick, 2011, p. 11), but cohesive enough so that there is the sense that it is the same group, even though particular members have changed (Miller, 2021a, p. 171).

The way membership is defined is of central importance for self-determination based argument for the right to exclude immigrants. The way it is defined affects the decisions that guide immigration policies. If for instance membership is primarily defined by shared culture, then cultural characteristics (Miller, 2016c, pp. 106–108) may affect selection policies differently than in cases in which membership is primarily defined institutionally. If it is boundness, stability and continuity of membership that is of importance for self-government, then having uncontrolled migration, which may have a potential to disrupt these characteristics, may come in tension with self-determination. Discussion on membership of the self-determining community or state, will in this sense, figure prominently in this discussion, especially in the sense of releasing the tension between migration and self-determination, which is understood to entail membership control.

Furthermore, to claim that a collective has a rightful claim to self-determination, it is often needed to explain the conditions of group agency, or to explain how a group of very diverse individuals, most of which will never meet or personally interact, can in the relevant sense be self-determining. How is it possible that a group may act in light of its preferences and interests, and shape its future following common aims and values? Furthermore, what is the place and role of an individual in this arrangement? If self-determination entails self-government, or the ability of the agent to act unconstrained from the outside, following her own values, preferences and goals, then

this entails that the political community should be able to, irrespective of internal diversity, follow group aims and goals and enact policies that reflect them. To explain that some group is an agent of self-determination, this agent should in the relevant sense be able to act as a group (Moore, 2015, p. 48). This requires specification of the procedure through which the collective acts, and some convergence of its members on aims, goals and directions this collective should be guided towards (Miller, 2021a, p. 171). This requires that individuals are included in the decision making process in some manner, including different procedures like representation, deliberation, voting, and similar political procedures. Group agency in cases of large, involuntary and hierarchical collectives is especially controversial, in light of clear cases of internal dissents, lack of participation, and coerciveness. Different accounts of group agency seek to address these challenges (Miller, 2007b, Chapter 5, 2020a, Chapter 2,3; Stilz, 2016b, 2019, Chapter 5). What these accounts stress is that large memberships, like states, can be self-determining if they allow procedures by which members can participate and impact political decisions, even on a minimal scale. This allows some form of correspondence by which members can relate to political decisions even when they do not agree with them (Stilz, 2019, Chapter 4). This is especially so for states, which, when democratic and representative enough, act through political institutions on behalf of their political members. Even though states are impersonal, coercive and involuntary, citizens act in shared activities such as upholding and creating the law and shared institutions, paying taxes or voting (Stilz, 2016b), and by these ordinary everyday and political activities they may be seen as affirming the state (Song, 2018a, pp. 60–61) and acting intentionally as part of the collective. States (of certain institutional arrangement) may then be understood as *cooperative political enterprises* (Stilz, 2016b, p. 102), and vehicles for a self-determination of the collective they represent.

While many issues surrounding conditions of group agency are here left wanting, it is important to note, that for purposes of this thesis, the political process undertaken in most democratic states, which allows political participation and mechanisms to deliberate on decisions (like parliament) or to revoke some decisions is enough to claim that membership may act as a group and be in a relevant sense self-governing.

Finally, connection to relevant territory often figures prominently in understanding political self-determination. Political self-determination often includes a

territorial aspect, since it generally refers to some form of authority over particular territory. While self-government may be conceivable independently of territory (like e.g. in cases of territorially dispersed religious groups or other associations), territory is mostly essential for understanding political self-determination in the sense described above. Nationalist and peoplehood accounts often stress historical connection with the land (Miller, 2007b, Chapter 8). States are themselves territorial units, and exercise jurisdictional control over specific territory (Blake, 2013). Explanation of the connection between territory and agent of self-determination like state, often includes moral claims of the population to the particular territory, which should also incorporate reference to how territory is appropriated and if occupants have a right to it, which is a matter of wider discussion on remedial and global justice (Miller, 2007b, Chapter 8; Stilz, 2019, Chapter 2,3). These aspects should be a part of a much wider theory of territory (Moore, 2015), but would here take us too far away from the main concern of the thesis. For now, it is important to note that discussion on immigration often incorporates a territorial aspect, since the right to exclude is generally conceived as a territorial right (Angeli, 2015, Chapter 4; Miller, 2007b, Chapter 8; Song, 2018a, Chapter 4). Territory and political self-determination are, thus, tightly connected.

These elements have a role in migration debates. While proponents of the conventional view invoke different agents as holders of the right to self-determination, state is taken to play a key role in discussing migration. States may, furthermore, be seen as incorporating overviewed elements. Membership of the state is considered bounded, it extends in time, it is identifiable, and its members recognize themselves as part of the state. States, furthermore, exercise control over specified territory, and offer mechanisms of collective agency, through political institutions. Before taking a closer look at states, and the state system, as central for discussion on immigration, the value of self-determination is highlighted.

### **3.3. The Value of Self-Determination**

While self-determination is primarily conceived as a *collective*, and not individual right (Miller, 2020a, Chapter 3; Moore, 2015, Chapter 3; Nine, 2012, Chapter 3) , the underlying value of the right is tied to individuals as members of these collectives. Self-determination is grounded and justified, that is, in the value it has for individuals (Altman & Wellman, 2009, p. 5; Margalit & Raz, 1990, p. 448). This means that the

normative power of this principle ultimately lies in the individuals and their rights and interests, and not directly in the collective. What becomes of an importance is connecting the rights and interests of individuals with this collective right, and subsequently with rights that follow from it.

There are a number of accounts which seek to explain the value of self-government, referring to well-being, freedom (individual and collective) and nationality (Banai & Kollar, 2021, p. 187).

Nationalist accounts generally stress the value of living in the context of the national culture. It is recognized as relevant for individuals' identity and well-being, and it can best be protected and flourish when a nation achieves territorial self-government. Stable national culture is deemed valuable since it provides the context of choice, giving individuals a range of life options, offering meanings and tools to make sense of the world and to act autonomously (Kymlica, 1995, pp. 82–84; Margalit & Raz, 1990, pp. 448–449). Apart from being important for individual autonomy, and well-being, national culture is claimed to be essential for social and institutional trust, and subsequently for political stability and social justice (Miller, 2016c, pp. 64–65; Perry, 1995, pp. 111–138). National self-determination is then often recognized as instrumentally valuable,<sup>40</sup> as a vehicle to protect national culture and by extension other important individual and collective goods (Stilz, 2019, pp. 139–140).

Institutionalist or political conceptions of self-determination often stress other dimensions and values of the right. Some recognize the importance of liberal values like freedom of association, or associative ownership over political institutions as defining for self-determination (Pevnick, 2011; Wellman, 2008). These accounts stress individual and collective freedom as important for self-determination. Others stress the importance of democratic political participation (Angeli, 2015, Chapter 4; Pevnick, 2011, Chapter 3) and political agency and autonomy of individuals (Moore, 2015, pp. 64–65; Song, 2018a, p. 56; Stilz, 2019, Chapter 4,5). Participation of individuals in creation and upholding of political institutions is understood as contributing importantly to personal autonomy, in the sense of having the ability to control one's collective circumstances. Self-determination is then often tied to personal and political autonomy.

It is also claimed to be tied to the achievement of important well-being interests. Basic rights and liberties are more easily obtained when members have some form of

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<sup>40</sup> Apart from instrumental reasons for valuing self-determination, Miller (2020a, Chapter 2, 2021a), as one of the most elaborate representatives of liberal nationalism, stressed its intrinsic value.

self-government, by which they can safeguard against infringement on their basic rights and interests. Self-rule can best, that is, enable that basic rights of members are secured in a manner in which best corresponds to their interests and needs. When members of the political collective have a say in shaping their political institutions, it is more likely they will be stable and just (Stilz, 2016b, p. 113). For example, accountable and democratic governments, which allow for more transparency, rights protection and freedom, are generally correlated with more economic security and well-being (Murphy, 2014, p. 323).<sup>41</sup>

Cultural and nationalist accounts, which often highlight political self-determination as the best safeguard to protect national culture, cannot, however, explain the intrinsic value of self-government. It is not clear that culture, valuable as it is, can be strong enough to ground a claim of a collective agent to achieve territorial self-government, especially when confronted by other competing interests. Protection of culture may be, that is, achievable in more modest internal forms of self-rule and by enforcement of multicultural politics (Stilz, 2022, pp. 17–18). Well-being interests, which often refer to the securing of fundamental rights and freedoms, while valuable for individuals, still do not adequately capture why the people often strive to achieve a form of rule in which they as a collective have a final say over their self-regarding affairs. Referring to well-being exclusively, lacks the ability to explain what is wrong with external rule over some collective, which is adequate in protecting important well-being interests and rights. It cannot explain what is wrong with benign colonisation (Stilz, 2019, p. 91), which may provide just institutional structure, but cannot provide the conditions in which it is primarily the members of the collective that have a say over their collective circumstances and life. What this explanation lacks, is what this thesis takes as a core interest of self-determination. This interest is in political freedom and political autonomy of individuals, which conditions of self-government may adequately protect. Self-determination, therefore, may be seen as a right which protects an important sphere of individual (political) autonomy, which is achievable through collective political agency (Banai & Kollar, 2021, p. 188).

The ability to control one's political environment is an important aspect of personal autonomy, and may, furthermore, be used to internally justify a state system

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<sup>41</sup> Murphy (2014), e.g. cites some empirical research which testifies to greater levels of personal well-being, but also better development outcomes in cases in which indigenous peoples have greater levels of self-governance.

or similar institutional arrangements. This dimension is explained below, and it will be taken to provide the best explanation of the value of political self-determination. The value of political freedom is what the work of this thesis will connect to the migration justice.

### **3.3.1. Political autonomy and self-government**

Self-determination, as elaborated, is primarily referring to the self-government of a particular collective. It is a claim for political freedom, achievable in the form of an independent state, or alternatively as other forms of (internal) political authority. Self-determining collective should, then, have a degree of political *freedom*, both internally; to be free from internal domination by individuals and groups (like dictators, authoritarians, or other dominating forces); but also externally, to be free from external occupation and domination (by other states or associations). This importance to being governed by those that the group elects or identifies with explains striving of the various groups for e.g. independence from colonial rule, or secession. As indicated above, even if the external rule is sufficiently just, it fails to accommodate the interests individuals have, as members of distinctive collectives, to be those that shape the conditions of their collective life and bring about relevant decisions to determine the way their community evolves.

The value of self-determination is, therefore, connected to (collective and individual) autonomy. It refers to collective self-rule, which safeguards collectives against external subjugation, and allows for its members to participate together in a shared political project. This participation in the political process of the collective (or state) becomes of importance for the freedom and autonomy of individuals belonging to these collectives. Self-determination in this sense, may be seen as having an intrinsic value, contributing to, and deriving from, individual autonomy.

Internal dimension of the right is especially relevant for individual autonomy, understood as the ability of a rational agent to direct her life according to her own judgments (Stilz, 2019, p. 101). This possibility to make relevant choices about one's life has intrinsic value, and self-determination may be understood as a collective contribution to the autonomous life of individuals. The exercise of self-determination, it is claimed, allows individuals to have control over their political environment. Nussbaum (2011, p. 34) defines this capability as having the right of political

participation and the ability to participate in political choices which govern one's life. Having the opportunity and choice to participate in a political process which brings about and enforces laws and rules that shape the conditions of one's life is an especially relevant freedom. There is a value, that is, in individuals having the possibility to contribute, even if this contribution is minimal, to the political projects of a group to which they belong. When they lack this possibility they may find their social and political conditions as alienating (Miller, 2020a, Chapter 2). Self-determination, as a form of self-government, therefore may be seen as contributing to the fundamental interests of individuals to be co-authors of the political institutions which govern their lives. People have, that is, an interest in political, or "maker freedom" (Stilz, 2022, p. 19). This dimension of authorship over institutions, which allows these institutions to reflect (to the degree) values and priorities of individuals, may be seen as grounding the right to collective self-determination (Stilz, 2019, p. 94). In this sense, the value of collective self-determination is flowing from the value of individual (political) autonomy, or interests individuals have in participating in joint political projects, which allows active participation in shaping the collective circumstances of one's life. The possibility to freely decide for oneself and to act autonomously is reduced, in cases in which the impact on collective circumstances is lacking (Moore, 2015, p. 65). Having a degree of political freedom, in which one sees herself as contributing to the institutions which determine one's life prospects, makes institutions and political project of the community perceived not as dominating external forces, but as tools which allow members to effectively carry out the goals of the community (Stilz, 2022, p. 23).

Self-determination may then be understood as requiring certain institutional preconditions. It cannot, that is, be fully achieved under the colonisation, which lacks the contribution to the interests in co-authoring political institutions (Stilz, 2019, p. 92). It cannot, furthermore, be achieved in fundamentally undemocratic societies, where individual members lack any possibility to participate in the political project and control their collective circumstances. In these situations, it is hardly possible that individuals will feel endorsement to their political institutions, or relate to them as partly their own. They will most likely sense these structures as coercive and alienating forces over which they do not have any control. Democracy is, however, not an institutional requirement for self-determination (Nine, 2012, p. 21; Song, 2018a, p. 55; Stilz, 2019, pp. 128–129). What is needed for the achievement of self-government is a political order which allows a significant level of political participation, public accountability,



representation and protection of individual interests and rights, with mechanisms that allow creation of public opinion and mechanisms to revoke authorization of government (Song, 2018a, pp. 55–56; Stiliz, 2019, pp. 127–131).

Internal self-determination, that is, may be interpreted as requiring government institutions to be of certain quality. Apart from contributing to the autonomy by enabling members to have an active role in creating and shaping their political institutions together, self-determination requires “taker” dimension as well, which secures fundamental rights and liberties to individuals, without which they would lack preconditions for political agency (Song, 2018a, p. 55; Stiliz, 2016b, 2019, pp. 93–94). For individuals, therefore, it is important to belong to the political structure that allows political decisions reflecting public debates and input of members, and structure which secures their fundamental rights (Stiliz, 2019, Chapter 4,5). When these conditions obtain political structure which is coercive and profoundly affects one’s life need not be seen as alienating, but as allowing individuals to have a degree of control over their political life and collective circumstances. In these cases political structure, and by extension state, may be considered as non-dominating and self-governing.

Self-determination, however, need not be interpreted as allowing full extension of individual autonomy (Altman & Wellman, 2009, p. 20; Pevnick, 2011, p. 29).<sup>42</sup> Decisions reached even within democratic political institutions are after all collective, and not individual. This means that not all decisions can completely overlap with values, preferences and judgments of individuals. Self-determination may, however, be interpreted as contributing to personal autonomy, when above mentioned conditions obtain and political structure is affirmed, and allows institutions and laws to reflect to some extent the judgements and values of members. Even if the substance of the political decisions is not what the individual would prefer, he is still committed to the cooperation, institutions and procedure of decision-making (Stiliz, 2022, p. 20). In this sense, self-determination does provide a collective condition for autonomous agency.

Self-determination, however, does not exclusively refer to an adequate level of political participation. It also refers to self-government with *particular* others. In this sense, what is of importance is belonging to the particular group, with this group then

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<sup>42</sup> compare Philpott (1995) who sees democracy as an extension of personal autonomy. Self-determination is democratic institution which allows political participation and representation which are activities of an autonomous person in the political sphere (1995, p. 358).

exercising some level of political freedom and control over their collective circumstances. Part of the value of self-determination lies in political participation in shared projects of self-governance as a part of a specific collective, and is derived from the relationship between co-members (Moore, 2015, p. 64). Miller (2021a, p. 169) stresses this by referring to real world examples of Catalonia and Spain. While Spain is a democracy, for Catalans (as a minority group), this fact is not perceived as securing political freedom and self-government. The group (demos) making the decision (consisting both of Spaniards and Catalans) is *wrongly constituted*. Similar idea holds for other collectives seeking secession or other aspects of internal self-government. Self-determination, that is, entails the self-government of a *particular* group. This does not, however, need to imply that the only conceivable or just way is to have redrawing of boundaries. It implies that for self-determination it is not only political participation that matters, or how decisions are reached, but also, the answer to the question of who is making these decisions, and how it relates to other collective agents. The relationship with particular others, or co-members, in shared political projects is what is highlighted in valuing self-determination. Institutions which allow self-government then provide a valuable space for communities to express their collective autonomy, political aspirations and identities (Moore, 2015, p. 64).

In this sense, self-determination may be understood as especially relevant freedom. It is clearly, only one value and while it is claimed to protect important individual interests, it cannot be seen as an absolute right. This means that there are other interests and rights which are competing with self-determination. The right to freedom in immigration is for example seen as one such right which challenges a state's claim to exclusionary rights based on its self-determination. Self-determination is a moralised *pro tanto* claim for self-government (Stilz, 2019, p. 134), and as such, it should be justified and defended in light of other competing rights and interests. It is also a claim right, which means that its exercise has an impact on others, requiring them to respect it. As will become obvious, this requirement gives self-determination a special place in the context of global justice.

Next part will take a closer look at the state and state system, which will figure prominently in discussion on migration. These institutional arrangements may be seen as grounded in the interests self-determination protects. They may offer an institutionalised form of self-government. Legitimate state, or state of certain institutional quality, will be claimed to incorporate self-determination.

### **3.4. Sovereign state system and legitimate state as the subject of self-determination**

In the previous segment the right to collective self-determination was introduced, with special attention given to its value, or political autonomy (freedom). This collective right is generally understood to refer to the claim to self-government of the political collectives, which is, furthermore, often understood as achieved in some form of territorial autonomy, like state. The claim for political freedom is, furthermore, understood to encompass both external dimension, or the ability to be free from *unjustified* external interference, and internal, which refers to the ability of the members of the collective to have a role in controlling their political environment. For proponents of the self-determination based argument, the sovereign state figures prominently in discussions on migration, and this entity is often understood as the bearer of collective right to self-determination. Since neither states, nor the system of states, are naturally occurring phenomena, and since they greatly affect life prospects of individuals, including some, and excluding others, they stand in need of justification. Below, some attention will be given, first to conditions which see individual states as legitimate, and therefore as morally justified in wielding some rights, and second, to the moral grounds and legitimacy of the entire system of states. The role of self-determination will be highlighted in both of these segments.

#### **3.4.1. Legitimate state as an agent of exclusion**

For the issues of immigration our focus needs to be turned to states, which are primary agents of exclusion (Lægaard, 2010). State is, therefore, in focus of theoretical analysis of migration (Sager, 2018, Chapter 2).

States are understood as political and jurisdictional units with the right to enforce law upon a specified territory and population, and with it to control movement and settlement of the people on the territory. States are generally understood as sovereign over the particular territory, and are assigned a wide range of rights and powers, like the right to territorial jurisdiction. This means that states may enforce laws over territory and their population. They are also often understood as having control over their affairs, free from external interference. States also claim other rights, some of which are exclusionary, like the right to control resources and immigration. These rights are

seen as a part of the territorial sovereignty of the state and the way the sovereign state system is arranged. Immigrants, which aim to settle on the territory of the state, are placed in relation with the state and its membership. With respect to individuals like workers, migrants and travellers who claim admission, states are considered to have a right to freely determine should they be granted a right to enter their territory (and membership) and under which conditions. While the question which debate on migration seeks to answer is can the right to exclude be morally justified, it is seldom the question if the state is an appropriate holder of rights, including the one pertaining to migration.

Whether the state can be a proper subject of rights, including the right to self-determination, is a matter of theoretical dispute (Nine, 2012, p. 13; Ohlin, 2016, p. 70; van der Vossen, 2016). While collectives, like peoples or nations, are often understood as subjects of right to self-determination or territorial rights; the same is not as straightforward for bureaucratic entities, like states. States, that is, are very dissimilar to individuals (Beitz, 1999, p. 81) to which various rights are assigned, and they are mostly understood as institutional arrangements, and not collective agents like nations or people are. States, that is, may be claimed to lack conditions which could make them agents appropriate to hold some rights or responsibilities. They lack unified will, aspirations, judgments or motivations, which may make them comparable to individual agents. However, if we recognize that collectives and groups may act like agents, by satisfying some conditions of group agency mentioned before, then some of the rights which pertain to the collectives, in virtue of their agency, may be seen as applying to states as well. States, that is, may be seen as representing the collectives which are situated within their territory, and are engaged in the political process of self-government. Therefore, when of certain quality, states may be understood as institutional representatives of these collective agents and in virtue of this status, they may hold some rights. For the exercise of self-determination, it already was indicated that states are understood as one of the vehicles by which peoples or nations may achieve it. Sovereignty rights of the states may, then, be seen as protecting the sphere of collective autonomy of the group the state represents. States are also territorial units. They exercise a wide range of territorial rights, most notably territorial jurisdiction. These rights are also generally seen as connected to individuals, and populations which reside on specific territory (Moore, 2015, Chapter 3; Stilz, 2019, Chapter 2). States therefore exercise rights to territory over which their constituents have a moral

entitlement. Since these rights are more appropriately seen as connected to collectives, and not institutions, states should be required to satisfy some preconditions, by which it may be claimed that territorial sovereignty rights which they claim relate to the collective bearers of these rights appropriately.

There are a number of theories which provide an explanation of why states may be seen as wielders of some rights as representatives of their population.<sup>43</sup> It is generally considered that states should observe their functions adequately so that they can claim some rights. These conditions generally refer to the notion of state legitimacy (Altman & Wellman, 2009; Lægaard, 2013; Song, 2018a; Stiliz, 2019);<sup>44</sup> or respect and protection of human rights to inhabitants and foreigners and securing the conditions for internal self-determination. Furthermore, the idea of the rightful claim of the occupants to the territory is often invoked (Song, 2018a, pp. 62–63; Stiliz, 2019, Chapter 2), which justifies states in having territorial rights. States, that is, cannot be simply presumed as wielders of some powers. Territorial rights and the right to self-determination, which give rise to territorial sovereignty of states, are moralised claims. This means that they can be exercised justifiably only against some conditions.

For now, it is important to see that states may be agents of some rights of territorial sovereignty, including rights over their territory and their population. In this sense, states may wield exclusionary rights, including the right to exclude immigrants. These rights are granted to states in virtue of them being the institutional representatives of their population.<sup>45</sup>

The fact that states exercise some set of territorial or self-determination rights need not entail that they are morally entitled to the full set and wide scope of rights generally seen as rights of their territorial sovereignty. The extent to which this is the case, and what is used to justify it, is precisely the question of normative analysis. To

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<sup>43</sup> These theories will not be overviewed here. One of the most prominent accounts of explaining the rights of states is functionalism, which claims that states can justifiably claim rights when they fulfil their functions. This function is mostly interpreted in terms of provision of basic justice to state members (Altman & Wellman, 2009; Buchanan, 2004; Stiliz, 2009). When states are adequate in securing basic justice it can wield political power legitimately. Other relevant accounts which explain why states may be morally justified in wielding some power refer to the self-determination of territorially situated people, achieved through just political institutions (Moore, 2015; Song, 2018a; Stiliz, 2019). The latter are endorsed in this thesis, since self-determination is taken as a relevant aspect of these theories.

<sup>44</sup> Legitimacy is here understood, following Stiliz (2019, p. 89), as what allows the state to have exclusive moral right to make and enforce (coercively) laws and policies on behalf of its members.

<sup>45</sup> In this sense, when discussing states, the primary focus is on the population of the state, or the collective agent which acts through state institutions, and not institutional apparatus (or government and officials) per se.

claim that states can exercise some rights, especially exclusionary rights which significantly affect the lives of individuals, stand in need of justification. States, as Wenar (2017, p. 144) vividly asserts, are no longer considered as black boxes, completely opaque to the outsiders and free to deal with their constituents as they please. States also cannot omit taking the interests and rights of foreigners into account when exercising their rights. Moral justification of states exercising the rights of territorial sovereignty is often offered in the form of legitimacy, to which the next segment turns its focus. This condition also gives immunity from interference of other collective agents. When states are legitimate, then other agents should refrain from interfering in their affairs (Mandle, 2006, p. 83; Wellman & Cole, 2011, Chapter 1). Legitimacy, that is, protects the claims of states to the degree of group autonomy which gives presumption of non-interference.

Legitimacy is claimed to give the state a precondition to exercise a moral right to control migration. Without legitimacy, claims of states over migrants or their population is referring to mere *efficiency*, or the exercise of effective political power over territory and population. For discussion on justifiability of sovereign state and system of states, we need to take a closer look at conditions which give moral justification in exercising exclusionary rights.

### **3.4.2. Self-determination and conditions of state legitimacy**

Previous section introduced the way states may be understood as wielders of the territorial rights and rights to self-determination. This part will take a closer look at conditions of legitimacy, which gives moral grounds for particular states to have jurisdictional rights over territory and rights over the group of people it rules.

States, as indicated, cannot *morally* claim rights, like territorial, self-determination rights or exclusionary rights, unless they satisfy some conditions, which prevents them to completely disregard human rights, or act guided exclusively by its national interests. To claim rights justifiably, especially exclusionary rights, states should, therefore, satisfy some conditions with respect to agents on which its decisions may have effect. This includes both members of the state, over which the institutional apparatus of states has a prominent effect, and foreigners. More importantly for

discussion on migration, the human rights of foreigners are not to be actively restricted and should be respected.<sup>46</sup>

States are taken to be bearers of rights only insofar as they are legitimate (Stilz, 2009; Wellman & Cole, 2011, Chapter 1). Legitimacy is what is seen as giving moral grounds to states to rule their population, and to have justified authority over their territory and its internal affairs. It fuels, that is, the right to self-determination, and territorial rights, and creates obligation, both from insiders and outsiders, not to challenge, interfere or resist with enforcement of state policies (Stilz, 2019, pp. 89–90).

Legitimacy of the state is differently explained,<sup>47</sup> but most proponents of self-determination based argument recognize that a legitimate state must satisfy some internal and external conditions. State power is justified by respecting human rights of its subjects and foreigners (Miller, 2007b, Chapter 7; Wellman & Cole, 2011, p. 16). Besides protection and respect of basic human rights, which is a minimal condition of legitimacy, respecting self-determination also enters the picture. Proponents of the argument under analysis take that self-determination is an important value, contributing to the autonomy and well-being of individuals. Self-determination is, therefore, integrated into the conditions of legitimacy for some of these accounts (Song, 2018a, Chapter 4; Stilz, 2019, Chapter 4) Legitimacy may, then, be understood as having two main requirements. One is substantive, and the other procedural (Mandle, 2006, pp. 83–84). Highlighting concern for protection of basic justice and fundamental rights, is taken to encompass substantive conditions of legitimacy. This condition mostly refers to the ability of political institutions in securing sufficient justice, or rights protection for their constituents. For some accounts on migration justice, like Wellman's (2011, p. 16) this condition is sufficient to deem states as legitimate in wielding their powers over their territory and having a right to self-determination. In cases in which states fail to respect basic human rights to its constituents, like in the

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<sup>46</sup> The view which this thesis endorses, which is also compatible with what proponents of the argument under analysis accept, is removed from the realism in international relations, within which states are not under any obligations with respect to foreigners.

<sup>47</sup> Political legitimacy is an extensively covered topic in political philosophy (Peter, 2017). This thesis does not seek to enter into the details on political legitimacy (both state level and level of the state system). It, instead, seeks to tie this concept to the exercise of self-determination, and rights pertaining to migration. In this sense, legitimacy is explained in a fashion that proponents of the argument in question, or its critics, advocate (Brock, 2020; Song, 2018a; Stilz, 2019, Chapter 4; Wellman & Cole, 2011, Chapter 1). Most minimally, legitimacy is seen as a requirement to exercise self-determination, tied to minimal justice conditions and internal self-determination of the collective. These aspects are relevant for discussion of the argument in question, which claims that states are morally justified in excluding migrants in virtue of their self-determination.

cases of the Third Reich, or in which they actively restrict rights of foreigners, the condition of basic justice is not satisfied. In these cases, the coerciveness of the political regime cannot be justified to those over which it rules. In these cases, furthermore, states cannot morally claim their self-determination rights, or rights to territorial sovereignty. Other agents are, in other words, justified in interfering in the internal affairs of such a state.

Apart from relying on the justice condition of legitimacy, procedural aspects are also often highlighted (Mandle, 2006, pp. 83–85). Individuals do not only have interests in having their basic rights secured. They also have an interest in the ability to control their political environment by participating in the political process and creation and upholding of political institutions (Stilz, 2019, p. 93). In this sense, political arrangement of the state, which allows adequate levels of representation, accountability of government and political participation (i.e. internal self-determination) is recognized as an aspect of state legitimacy (Mandle, 2006, pp. 84–85; Song, 2018a, p. 55; Stilz, 2019, pp. 93–95). These institutions should be designed in a manner in which they enable adequate levels of political participation for the members of the group,<sup>48</sup> so that the decisions which are reached, may be seen as reflecting their interests. Self-determination, as explained above, is taken to provide grounds to see a political arrangement as relating importantly to individuals which are subject to it, so that it does not constitute dominating force over them. The rule over population, which is externally imposed or which presents internal domination, does not satisfy the procedural condition of legitimacy.

To see the state as legitimate, therefore, both the justice condition and self-determination is needed. Further conditions, like real or hypothetical consent, which are highlighted in some accounts are not needed for the state to be affirmed and recognized as legitimate (Song, 2018a, p. 60). Members of the state may affirm their participation in the state institutions by their willing participation in the regular activities, and by upholding the law, and participating in the social, economic and political life of their society (2018a, pp. 60–61). The coercive apparatus of the state, which clearly profoundly affects lives of individuals and their freedom, is justified when it is both

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<sup>48</sup> Some examples of political arrangements which are not democratic in a narrow, one person-one vote sense, include Mill's plural voting, where experts receive extra vote, or the idea that minorities may have veto on some decisions, or even decently arranged hierarchical societies, like argued by Rawls, may satisfy the condition of political autonomy (Mandle, 2006, pp. 84–85).



adequate in provision of basic justice for its subjects and adequately representative of their interests.

States, however, do not exclusively claim rights against their members or internally, imposing a set of coercive institutions and rules over collective life. States claim rights against foreigners and other states, and apart from claiming the right to control their borders, states are claimed to have rights over resources of their territory, rights to territorial jurisdiction and rights against intervention (Stilz, 2019, p. 1). External aspects of state legitimacy should, thus, also be taken into account, and proponents of self-determination based argument for exclusion specify some (generally minimal) conditions and constraints on state power with respect to dealing with other states and foreigners (Altman & Wellman, 2009; Miller, 2007b). It is generally considered that states should comply with the human rights framework. States which fail in this respect, could be challenged in exercising some of their rights, like the right to control immigration (Brock, 2020, p. 62).<sup>49</sup> External conditions of legitimacy, should, however point to a much wider context. States are part of a wider system, which comprises territorially sovereign units. Individual states are, that is, embedded into a wider system of states. The justification of their individual powers over specified territory also depend on the quality of the entire system. Some authors (Brock, 2020; Stilz, 2019) claim that seeing states as morally justified in exercising a wide range of powers, depends in part on the legitimacy of the state system as well. In what follows, the perspective on justifying the state system will be presented.

### ***3.4.3. Legitimacy of the Sovereign state system***

Sovereign states are exercising a wide range of powers and liberties in the international dealings with other states, associations, organisations, and individuals. While sovereignty is mostly considered as significantly limited, both in its internal and external dealings, it still implies a wide range of exclusionary rights. Organising the world in such territorial units should, therefore, be justified. To this end, this segment

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<sup>49</sup> In this sense, focus on much of the discussion within the migration debate lies with states which are sufficiently just and representative of their population (or legitimate). This mostly refers to liberal democracies which satisfy these conditions. For sovereign states, which e.g. do not satisfy internal conditions of self-determination, migration controls do not stem from their moral right to self-determination, but rather from their effective sovereign power.

will summarise some of the conditions which could be used to offer justification of such a system.

System of sovereign states as currently obtains, as individual states placed within it, are clearly not naturally occurring or inevitable and are a relatively recent phenomena, subject to modifications and changes. Cosmopolitan thinkers have often envisaged a much different institutional arrangement, in which the world and populations would not be organised in such units, nor would they exercise such a broad range of exclusionary rights. They have also levelled a number of criticisms against the state system, indicating some of its features as being conducive to the occurrence of great inequality, poverty, war and other unfavourable conditions (Stilz, 2019, pp. 5–6). Some thinkers have been known to propose other arrangements which radically surpass existing system, like global democracy (Cabrera, 2004; Marchetti, 2008), while others have proposed other modifications which could render this system more just, like opening the borders (Abizadeh, 2008; Carens, 1992; Cole, 2000, 2012). While one option may be to devise alternative arrangements of the organisation of the world and its population, other routes may involve designing modifications to it, and offering the way it may be justified, even though it is not optimal.

This thesis operates under the assumptions that some such modifications are possible (and desirable), abandoning those positions which claim that states are morally unjustified to begin with. Collective right to self-determination, as will be shown, offers a way to ground this system, together with the notion of occupancy and basic justice. Valuing collective self-determination offers grounds to see states, or similar units of territorial authority, as relevant. System of such states, however, should be justifiable to all present within it, and invoking the moral value of self-determination is in this sense not enough to provide full justification of exercise of territorial sovereignty. Other important values or human interests compete with self-government and political freedom, and justifying institutional arrangement which embodies claims for self-government should accommodate these interests as well.

Justification of the system of states, as was the case with offering justification for the state rights, moves from moral individualism, and should refer to individual interests and rights. Individuals are of primary moral concern, and importantly for normative grounds of the justification to the system, of *equal* moral concern. This means that justifying institutional and administrative structures, which profoundly affect and shape individual life prospects, should encompass universalist stance. These

structures should be such that persons as moral equals can find them acceptable, irrespective of their differences and arbitrary conditions. Reasons offered for their justification, should, furthermore, be universally recognized. Absent reasons which may be compelling both to insiders and outsiders of particular states, arrangement which leaves some in worse position in comparison with others, or which allows giving more weight to claims of co-members, can hardly be morally justified (Brock, 2020, p. 36). Task of providing justification of such institutional arrangement, includes both aspects internal to the particular state, which are more often elaborated in relation to conditions of legitimacy, and the external aspects, pertinent to discussion on global justice.

Some such endeavours to provide justification of such arrangements are present in the literature. Gillian Brock (2020) has offered an extensive account on justification of the state system primarily with respect to migration. Her account will be in focus on the future debate on migration, self-determination and system legitimacy.

Justifying the state system proceeds by taking all individuals as moral equals, and asks a question about the institutional arrangement which persons, as moral equals, can find acceptable. First, internal justification for the system of states is provided, grounded in individual well-being and autonomy interests. Following these, some conditions that relate to the relationships between units and people within the system will be provided, to render the entire system justifiable to all present within it.

#### *3.4.3.1. Internal justification for states and system of states*

Internal justification of the state system will primarily refer to interests individuals have in basic justice and rights, exercise of their political autonomy, and rights to occupy a specific territory over which important attachments are formed.<sup>50</sup>

As indicated above, states are often justified directly with reference to functions they serve, like securing the basic justice to their constituents. States provide institutional schemes which help protect, specify and enforce individual rights, and mediate and resolve conflicts when they arise (Stilz, 2019, p. 10). For arranging, organising and planning provision of justice territorial administrative organisation of

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<sup>50</sup> These interests of self-determination, occupancy and basic justice are invoked across different accounts, e.g. in Stilz (2019, Chapter 2,3,4), Song (2018a, Chapter 4), Brock (2020, Chapters 2, 3) and Moore (2015, Chapter 3). Following overview relies on elements from these accounts.

some form is required, with clear specification of jurisdictional boundaries (Brock, 2020, pp. 28–29). With no clear specification of boundaries there would be no clarity which rules apply where, and therefore no easy way to organise important human services like economy, transport, health, social services and the like (Miller, 2007b, p. 214). When properly arranged, i.e. when legitimate, states protect an array of fundamental rights to its members, enabling them to fulfil their needs, to engage with others under fair terms of cooperation and to act like moral agents (Brock, 2020, Chapter 2). While serving justice need not inevitably hinge on having a number of states, instead of e.g. one, other considerations, like self-determination, may speak in favour of having a system of states, in place of one global state variant.

Occupancy rights, which are claimed to serve important place related interests of people, are also used to give moral reasons to arrange the system of governance in a territorial manner (Stilz, 2019, p. 10). These rights are generally understood as pre-institutional moral rights, referring to interests of people to use land for their social, economic and cultural activities, to reside on the territory, and not to be forced to leave. Persons are generally attached to the specific territory, they belong to territorially located units like neighbourhoods, communities, localities, they form life and future plans relating to the specific territory, may take pride in it and understand it as homeland. States can claim territorial rights based on moral occupancy rights of their subjects, in cases in which occupants of the territory have a rightful claim to it (Song, 2018a, p. 62). This means that occupants of the territory should not have acquired it using severe injustice, and that such situations warrant rectification.<sup>51</sup> State system, which is territorial, should protect pre-institutional claims to the use of territory by individuals and peoples (Stilz, 2019, p. 10). These rights then give reasons to shape the world (and to re-shape it when needed) into the spatially delineated territorial jurisdictions.

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<sup>51</sup> Justice in use of the territory is subject to limitations, conditions and corrections. These aspects cannot be dealt here in much detail. Past injustice is one aspect of problematizing moral occupancy of territory, since there are almost no settlements which have gained territory completely justly. However, we proceed with the idea that current states may be justified in exercising their territorial rights, irrespective of past injustice. Some redress may be offered, but the general idea is that states which are currently legitimate may hold rights over particular territory. Use of the territory justly, with respect to foreigners, is also subject to constraints. Stilz describes these rights as use rights. This means that occupants can enjoy them, but should also allow others to fairly use similar rights within the system (2019, Chapters 2, 3). To those which cannot exercise these rights where they are, some other option, including relocation, should be available.

The value of collective self-determination, furthermore, grounds the territorial division of the world in jurisdictional units, like states, which allow organisation of the world in a way respectful of the ways people aspire to be governed (Song, 2018a, p. 53). Song (2018a, p. 53) briefly indicates that self-determination would, due to its relevance for individuals, be selected as a principle behind the *veil of ignorance*.<sup>52</sup> People would, not knowing their identities, talents or wealth, choose to live in the world organised in state-like territorial units, which could reflect the way they seek to be governed, with fulfilment of their political autonomy interests. The value of self-determination for individuals is already indicated, and it is this value in political autonomy which primarily justifies the system of states, or similar arrangement in jurisdictional territorial units. Politically organised groups of people, where it is feasible and consistent with justice, should be able to govern themselves (Stilz, 2019, p. 11). World state would fall short of this ideal, since it would hardly be able to accommodate differences in the way people aspire to be governed.<sup>53</sup>

Placing interests of the individual in the centre of our moral consideration, especially one's interest to be an autonomous agent with capacity to form, change and act upon one's life commitments, is what justifies having the world arranged in state-like territorial organisations (Stilz, 2019, pp. 11–12). Reasonably well-ordered states, as institutional arrangements, may provide a framework to secure important autonomy and well-being interests of individuals. While I am not entirely convinced that self-determination merits exclusively a system like this, and that it cannot secure exercise of personal autonomy in other forms, here, I take that these considerations may explain why the state system can be justified by important moral considerations. Most proponents of the argument, while not explicating these considerations in this form, assume that states are morally relevant, even though they, and their borders, may be seen as arbitrary.

These aspects alone are, however, not enough to claim that such a system is morally justified. To provide a full account of justification of the system of states, we

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<sup>52</sup> Veil of ignorance is used by Rawls (1999) as a highly technical method of devising principles of justice. It is here used merely as a heuristic device indicating that people would, if asked, not knowing any particularities about themselves choose to have a world in which their political autonomy could be secured.

<sup>53</sup> The world state faces additional problems besides not being responsive to self-government. It would potentially lack accountability, vast cultural and linguistic differences would make necessary communication difficult, and it could potentially become tyrannical, without external pressures from other states (M. Nussbaum, 2006, p. 313).

need to refer to the conditions of the entire system to which individuals belong, which means that conditions external to particular states, should also figure prominently in explaining why individuals should find organisation of the world in the system of states justifiable. The idea is that, individuals placed in some form of generalised original position, not knowing to which state they belong, or what are the conditions of such a state, would require that individual states are legitimate, but also that conditions between these states, and conditions of the entire system be such. To justify institutional arrangement of states, which exercise and claim an array of territorial sovereignty rights, some global justice conditions should be secured. Following segment offers a brief overview of them.

#### *3.4.3.2. External conditions and global justice*

Self-determination, occupancy and basic justice, may provide grounds to see organisation of the world in separate states as morally justified. States are, however, claimed to have rights of territorial sovereignty, which include jurisdictional rights, rights to resources, control over borders of the land, and pertinent to self-determination, rights to self-government and rights against intervention. The right to exclude immigrants, which is in focus of this thesis, is also considered an integral part of territorial sovereignty. Territorial sovereignty of states, thus, implies exclusionary rights, which impose burdens on those who do not belong. States are, furthermore, extensively unequal in their relative standing. To justify this arrangement of states to all that belong to it, reference to some conditions external to a particular state should, therefore, be invoked.

It is generally taken that some standard of justice within this system should obtain to secure that all subject to it can find it justifiable. Protection and securing of human rights to all individuals is often understood as such a standard. In this sense, protection of basic human rights or basic capabilities is a main condition of legitimacy (Brock, 2020, p. 34; Wellman & Cole, 2011, p. 16). Proponents of the argument under analysis often assume that some threshold notion of human rights protection is enough to ensure that states are legitimate in pursuing their goals. This also means, as will become obvious, that justice to foreigners is to be shaped according to this standard primarily, even though other duties of global and reparative justice may also be

recognized in rendering states justified in exercising their exclusionary rights (Miller, 2007b, Chapter 7).

Adequate protection of human rights, or securing this minimal condition of legitimacy, may require that agents which are non-compliant be sanctioned, and that the effects of non-compliance, but also of other unfortunate outcomes of the exercise of territorial sovereignty, like poverty, be mitigated. This means that the system itself, should have some mechanisms to correct for conditions in which human rights of some are not secure, and that all states within this system should contribute to ensuring that basic needs of individuals are protected within this system (Brock, 2020, Chapter 3). The system itself should then be of adequate quality, to ensure that basic justice, self-determination interests and occupancy, which may be seen as grounding it, can be secured to all. This system cannot be legitimate in cases in which some states are severely unequal or poor, and where human rights to a number of people are not secure.

Securing legitimacy of the state system may require adequate levels of global justice, and some of the following duties may be relevant in this sense: eradication of severe poverty, observing the duties of reparative justice, securing the background conditions of self-determination, observing fair terms of mutual cooperation, and contribution to collective action problems. This list is borrowed from Stiliz (2019, pp. 15–17), but most of these duties are found across different accounts of global justice, as requirements of more just global arrangement.<sup>54</sup>

Eradication of severe poverty, which leaves individuals unable to secure a minimally decent life, is recognized as part of most conceptions of global justice.<sup>55</sup> In cases in which severe poverty obtains, human rights to all, or basic level of justice, cannot be secured.

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<sup>54</sup> Examples can be found in Pogge (T. Pogge, 2002, 2007a), Nussbaum (2006) and Brock (2009). Since a more detailed exposition of self-determination in the context of migration and global justice follows in later chapters, here I will not elaborate in detail what each of the proponents of the self-determination based argument find as acceptable for human rights protection and global justice. Details can be found in Miller (2005a, 2007b), Altman and Wellman (2009), Pevnick (2011, Chapter 5) and Moore (2015, Chapters 7–10). Some convergence with respect to mentioned duties is, however, found across their accounts.

<sup>55</sup> This includes Rawls (2000), Blake (2020), Miller (2007a), Wellman (Altman & Wellman, 2009), and other proponents of the self-determination argument, and a number of others which argue for more minimal duties to foreigners; and clearly authors like Brock (2009), Pogge (2002), Singer (2019), and others who argue for more robust duties of global justice.

States should, furthermore, observe duties of corrective justice, which deals with compensating others for incurred injustice, especially when harming others occurred in pursuit of one's goals. Legitimate states are not allowed to directly harm foreigners or to restrict their human rights. When this happens, states are required to offer remedy<sup>56</sup>.

Since self-determination is taken to be one of the core values of this system, its exercise should be available to all which can claim it justifiably. This means that some background conditions to secure self-determination should be secured, including protection of human rights to population which seeks self-government, aid in institution building, mitigation of stark inequalities between states, which may render self-determination unavailable to some, fair relationships with others in the system<sup>57</sup> and even redrawing of boundaries or recognizing claims for other modes of authorities to e.g. minorities or indigenous peoples which claim some form of self-government.

States should, furthermore, ensure that economic cooperation is regulated more justly. This means that the just system requires that states engage with one another respecting human rights of foreigners and their self-determination. They should also, in pursuit of their interests, not seek to unjustly exert power over others, especially when states are materially unequal. Mutual conduct between states, including in the realm of economy, should be fair.<sup>58</sup>

Finally, states should contribute in solving collective action problems, like climate change and responsibility to refugees.<sup>59</sup> These collective problems are recognized as common to all states within the system, and should be dealt with cooperatively. They cannot, that is, be solved by engagement of only a fraction of states in the system. Such an arrangement would not be fair.

Aforementioned duties, including protection of basic human rights, constitute a framework within which conditions to justify the system of states and exercise of their sovereignty rights can be understood. This list is clearly tentative and open-ended. It may include additional duties of global justice and some of these may play a more important role than others. In tying these duties to migrants, which is a task of Chapter

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<sup>56</sup> For example see Wilcox (2007), Wenar (2017), Pogge (2002).

<sup>57</sup> Miller (2005a) e.g. explicitly recognizes this duty. Aid in institution building to a point in which burdened societies can become well ordered is also highlighted in Rawls (2000, pp. 105–115).

<sup>58</sup> For examples of unfair mutual economic cooperation and trade see Wenar (2017). Need to cooperate fairly is recognized in e.g. Miller (2005a) and Brock (2009, Chapter 9).

<sup>59</sup> See e.g. Brock (2020) and Christiano (2017).



6, more focus will be given to eradication of severe poverty, rectificatory justice and securing of conditions for self-determination. Duties to migrants and refugees will, as well, be recognized as playing an important role in securing that exercise of sovereignty rights within the system of states is justified (Brock, 2020).

Before concluding this chapter it is worth noting that speaking about states having responsibilities implies that in effect it is the state's membership which bears responsibilities and costs in fulfilling them. This may be perceived as problematic, since individual citizens cannot be seen as *morally* responsible for *any* action or policy which their governments elect and undertake. This is especially so for cases in which states are non-democratic, and where there is no public accountability, or even the possibility of citizens to be informed about the policies which their states elect, like in cases in which states are failed, marred by constant conflicts or authoritarian. However, when states are democratic, or of the similar political arrangement in which individual members participate in shaping institutions, and in which they choose representatives which shape the law, or in which they achieve internal self-determination, then some level of responsibility can be ascribed to individual members as well. In this sense, when speaking about responsibility of states,<sup>60</sup> it is implied that bearers of responsibility are also members of the collective. This means that states, and their members, may be responsible for outcomes of their policies and political choices, but also they may be responsible to offer remedy or to fulfil duties to others, as precondition of legitimacy for their states and system of states. Understanding responsibility is an important segment of understanding self-determination and duties to foreigners, as will become obvious in following Chapters.

### **3.5. Summary and the way forward**

This chapter offered a brief introduction to the collective right to self-determination. It is a principle enshrined in relevant international conventions and documents, and recognized as an element of the human rights framework. Self-

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<sup>60</sup> David Miller (2007b, Chapter 4,5) offers a powerful account of national responsibility, and indicates the ways members of nations may be responsible for collective decisions. Responsibility, according to Miller's connection account of responsibility, may be assigned to different agents based on different grounds including capacity, benefit, moral responsibility, connections and communality, or causality. Difference between responsibility for some outcome, or for the result of some action, and responsibility to remedy it, is of importance. While one is detected (outcome), the other may be assigned to other agents which did not have a direct role in its occurrence.

determination is, furthermore, as a right recognized in the international law, ascribed to a number of entities, nations, peoples and even states, used both to affirm existing territorial arrangement and to challenge it. Its history showed that self-determination is a mutable principle, its scope ranging from mostly external aspects of sovereignty, to understanding it as self-government, which ties it to the idea of popular sovereignty and democracy. Both these dimensions of the right, external and internal, are taken to contribute to an important individual interest in political autonomy. This interest in self-government will figure prominently in the analysis of the argument for the right to exclude. While the analysis of self-determination is generally mostly reserved for other aspects of global justice or international relations, like matters of secession or intervention are, in philosophy of immigration it figures prominently as a justificatory ground for the state's right to exclude immigrants. This places a theoretical focus on the state, as a bearer of right to self-determination, and subsequent, exclusionary rights, like the right to exclude immigrants. While this may be problematized, since states are administrative entities and not directly collectives or individuals, it is recognized that states may be holders of rights on behalf of its membership. Self-determination, viewed as serving important autonomy and well-being interests to individuals and groups, is used as a moral ground, together with securing of basic justice and rights to occupy particular territory, to justify division of the world in state-like territorial units. Number of exclusionary rights are connected to exercise of territorial sovereignty, which requires that both the state and state system is justified to all. Legitimacy of the state, and state system minimally requires the protection of basic human rights. Self-determination, understood as self-government, which requires some institutional preconditions which allow political autonomy, is also understood as a condition of state legitimacy. States which are just but do not adequately represent their population, or do not allow their political participation, are not fully legitimate. Justification of the state system, furthermore, will require placing self-determination in the context of global justice. Since self-determination as grounds for state's right to control immigration is in focus of the thesis, the relationship between precisely self-determination and migration will be in focus of state system justification and duties of global justice.

Following chapter offers the main shape of self-determination based argument, with focus on the way self-determination is interpreted. Apart from understanding it as self-government, proponents of the argument see self-determination as entailing

membership control, or the right to self-composition. This feature of the right is subject to analysis. While self-determination requires that it is clear who the self is, it is not as clear that it unproblematically entails control over it. This control for achievement of political freedom will be shown as not necessary, but only conditional.

Following chapter will furthermore highlight some common aspects of self-determination based argument for immigration controls placed in the context of duties to foreigners. Self-determination implies both responsibility of the community for the way it develops, and the choice in fulfilling duties of justice to foreigners.

## **4. SELF-DETERMINATION AND THE RIGHT TO EXCLUDE IMMIGRANTS**

The aim of this Chapter is to provide a critical overview of some of the most prominent versions of self-determination based argument for the right to exclude. In this chapter the common traits found in these arguments are highlighted, with focus on the concept of self-determination as utilised in these accounts. The relationship between the right to collective self-determination and the right to exclude is in focus of this analysis. First part offers an introduction into the right to exclude and what it entails. Following this introduction to the right, the main shape of self-determination based argument is offered. This argument is shown to rely on a specific understanding of collective self-determination, as entailing control over membership control or *self-composition*. Conceptual analysis pursued in this chapter will open the space for critical reassessment of this collective right, pertaining to migration. This chapter also offers some preliminaries with respect to positioning the argument in discussions on global justice, which are further pursued in following chapters. Summary of the critical response to the versions of this argument are also provided here, with the intention to make space for the approach pursued in this thesis. The aim of this chapter is, therefore, to show that most authors in the philosophy of migration, who lean on self-determination to argue for the right to exclude, understand this right in a specific manner.

### **4.1. What is the right to exclude immigrants? Territory and membership**

Current international practice of dealing with migration recognizes the substantial right of sovereign states to exclude immigrants. International sovereign state system is characterised by the notion of territorial sovereignty. Territorial sovereignty entails states having territorial and self-determination rights, and a number of exclusionary rights, including the right to elect migration policies freely and according to state's interests. The right to exclude immigrants is not interpreted as unlimited and absolute right, since duties to refugees and asylum seekers are commonly recognized, but it is widely recognized as unproblematic and as an essential part of the territorial sovereignty of the state (Song, 2018a, Chapter 2). This part of the chapter focuses on this right, and connects it to the collective right to self-determination.

The right to exclude is generally interpreted as a *liberty* right of a state (Hidalgo, 2014, p. 3), which gives the state a permission (and discretion) to freely control movement into its territory. State is, therefore, understood primarily as the subject of exclusion. The object of this specific right is the exclusion of foreigners that seek to cross the borders of the state and enter into the state's jurisdiction (Lægaard, 2010, p. 253). The right to exclude minimally entails the right to prevent people that are not members, i.e. citizens of the state, to enter the state territory, including people which are travelling (Altundal, 2022), and furthermore, to settle on it (on a shorter or permanent basis). It also entails the right to expel them in cases in which they have entered illegally (Lægaard, 2010, p. 253). It is seen as a discretionary right, which includes choices in exclusion or admittance of non-members into territory and subsequently into the membership of the state.

The state's right to exclude is understood as general but *pro tanto* right, which means that it holds in all cases, or in general, but is constrained or is subject to being overridden by other normative principles (Lægaard, 2013, p. 654). This right is, that is, understood as a moral right, which is subject to justifiable limits and restrictions. This means that the right to exclude should not be understood as an absolute right, but a right which may be sidestepped in particular cases in which other interests carry more significant weight. For proponents of the conventional view the idea is to show that the cases in which this general right may be overridden are limited, and refer to instances in which no other options but admission is available. The most common example are refugees, which are generally considered to present a case in which the right to exclude is temporarily withheld. Refugees, which reached the borders of the state, are to be accepted on the territory and within jurisdiction of the state and provided with shelter. In cases of refugees the idea is to show that vital interests are protected only by admission in other states, since exclusion may lead to threat to life, freedom and personal security.

This right also unfolds on at least two levels. Individuals may be admitted to the state's territory, but they need not be allowed to legally settle for a long term, or to become a part of political membership with full voting rights. This is evident in the cases of refugees. While refugees are considered to offer a case to sidestep the right to exclude from the territory, if other options, like resettlement, become available, refugees may be excluded from admission into the territorial membership. The state's right to exclude, then, involves both the right to prevent and control access to a territory

over which the state has jurisdiction, and the right to prevent access to political membership. While the right to control immigration is often seen as a part of territorial rights of the state (Lægaard, 2010; Song, 2018a; Stiliz, 2019), for proponents of the self-determination based argument for the right to exclude, matters of political membership come into focus. For self-determination based argument for immigration controls, as will become obvious, the issue of the self, or who the members of the self-governing collective are, becomes a core. Defining the community, which is to have a right to self-govern, becomes of central importance. Self-determination, that is, pertains to the question of *determining the self*, or the community in question. Questions of immigration are, therefore, seen as connected to the questions of political membership and are in turn tied to its self-determination. The scope of the right to exclude then extends beyond the current membership, involving those which seek to enter from the outside and join in membership ranks. The right to exclude is, then, not exclusively the type of jurisdictional rights, even though it is enforced by determining immigration law applied to specific territorial jurisdiction. It precisely entails the control over those that fall outside state's jurisdiction, preventing them, furthermore, to become its part (Lægaard, 2010, p. 253). Exclusion from territory, and exclusion from membership, which are both pertinent to the issue of immigration, are in principle distinguishable. This thesis deals with them as segments of general right to control immigration, since, as will be further elaborated, it is generally taken that long term territorial inclusion has a bearing on inclusion in political membership.

Exclusion is, then, taken to entail both access to the territory and access to membership. This distinction between the domains of this right prompted some authors like Fine (2013, p. 259) to challenge the argument from self-determination. If the focus of self-determination is on the political membership, or the self of the political community, then it fails to fully ground the right to exclude immigrants from the state territory. The idea is to show that self-determination deals with the matters of the *self*, or with composition of the membership, while admission to the territory refers to crossing the state borders including settlement within the jurisdiction of the state. To respond to this challenge the connection between territorial admission and inclusion in the membership of the political community (state) is needed. This is in principle evident in observing that immigration represents not only movement of persons to the territory of some other state. It also consists of the intention to settle and to reside on this territory, generally for an extended period of time or permanently. Most authors, thus,

aim to provide a link between entrance to the territory of the state, or exclusion from it, with admission and exclusion from political membership (Fine, 2013, p. 259). It is generally agreed upon that it is necessary to set all long-term residents on the path to become the full political members of the state. This includes entitlement to all membership rights which come with this status, and importantly for shaping the politics of the state, political and voting rights. Otherwise, the permanent under-class of denizens, or residents without full political and civic rights, may be created in the state, which is incompatible with liberal and democratic principles to which most of the scholars in the debate subscribe (Angeli, 2015, p. 95; Carens, 2013, pp. 45–61; Fine, 2013, p. 259; Song, 2018a, pp. 173–188; Stilz, 2019, p. 197; Walzer, 1983, p. 61; Wellman, 2008, p. 131). In this sense territorial admission of immigrants is observed through the lens of *naturalisation*, which may be taken to refer to the process of immigrants becoming political members of the state, or its citizens. Admission of immigrants to the territory is then connected to matters of membership, or matters of the *self* of the political community. This connection explains why the right to self-determination, tied to the political membership of the *self*, may provide justification to both exclusion from the territory and exclusion from political membership (Angeli, 2015, p. 94). Political membership is, after all, mostly understood as territorially allocated.

Rights such as the right to exclude,<sup>61</sup> which has an effect on distribution of political membership, and which carries with it potentially severe costs to persons affected, like vulnerability to harm or potential loss of important rights, need to be adequately morally justified. The right to exclude, that is, should have a firm moral ground which makes it hold against cases in which very stringent individual interests to migrate are present. This right is, after all, to be understood as having a potentially enormous effect on the life prospects of people, including those whose life circumstances are, in the context of a highly unequal world, less than satisfying. The right to exclude clearly frustrates the interest of individuals to improve their life

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<sup>61</sup> The right to exclude immigrants is here interpreted in its wider sense, since it does not refer only to the exclusion of persons from the territory, but also consists of subsequent exclusion from territorial membership. The right to exclude immigrants is here used synonymously with the right to control immigration, which may be a wider right, but which includes the right to exclude. To have a right to control immigration, that is, implies having a right to exclude immigrants (Lægaard, 2010, p. 251). It also refers to overseeing migration in general, in the sense of tracking and registering who enters the state and settles there, even in absence of the right to exclude. This right also entails the right to select and enforce admission and selection policies, in the sense of defining who is and under what conditions permitted to enter, Naturalisation policies, which may be considered as a second step in immigration process, may also be designed and enforced as exclusionary.

circumstances by moving and settling in other states. Proponents of the conventional view, therefore, aim to show that the right to exclude, as a moral right of the legitimate state, may be justified by reference to protection of an array of important human interests or social goods, like e.g. national culture or social cohesion is. Collective right to self-determination, as explained, is often invoked as the moral foundation of the right to exclude. This right is taken to offer firm grounds to this right since it protects important individual interests for political autonomy, including the interest of persons to be able to shape the conditions of their collective life. The right to exclude should, therefore, also point to the protection of vital human interests to be justifiable as a general right which has an impact on the freedom of individuals.

Justification in the form of the moral collective right to self-determination, this thesis claims, may not be as solid ground for such a right, at least in its form of a general pro tanto right to exclude non-members from admission into territory and political membership. This justification is in principle taken to require a morally salient explanation of why the right to exclude based on self-determination overrides usually very strong interests of potential immigrants to enter state's territory and membership (Fine, 2013; Song, 2018b, p. 262), especially when this is observed in context of global inequality and poverty. To relate to the worry offered by proponents of open borders positions, which highlights important interests migrants have in being admitted, it becomes important to connect the value of self-determination with exclusion. It is important to show that self-determination, and the exclusionary right which follow from it, are of such moral importance that it is in principle justifiable to have unfortunate outcomes of exercise of these rights for a number of prospective migrants, at the same time recognizing their moral equality. If self-determination protects important values, such as political freedom and individual autonomy, do these values justify the broad right to control immigration and exclude immigrants which may have competing interests in having a liberty to move and settle? Proponents of self-determination based argument, propose additional values and interests besides political freedom to establish the general, but limited, right to exclude. These conceptions will be analysed below. As will, hopefully, become obvious, much of the force of self-determination based argument lies in the way this right is conceptualised.

In the further development of this thesis the focus will mostly be directed to the question of core value of self-determination, which also includes questions of the relationship between the interest in self-determination (and the right to exclude) as



opposed to interests of migrants to be admitted. To this end, both focus on conceptual understanding of self-determination, as entailing the right to control membership, and its standing in the context of global justice and state system, will be utilised. The way self-determination is conceptualised plays an essential role in understanding its connection to the right to exclude, and to duties to immigrants.

Following segment offers an overview of the most prominent arguments in the debate, with special focus on the main shape of the self-determination based argument for the right to exclude. These arguments, as will be shown, rely on the specific interpretation of self-determination and its core value; together with its specific relationship with global justice.

#### **4.2. Self-determination based argument for the right to exclude**

In its most basic form the self-determination based argument for immigration control asserts that *if* states have a right to self-determination, then they, in virtue of their right to control access to its membership, have a right to restrict immigration.

This argument generally takes the following form:<sup>62</sup>

1. Legitimate state (peoples or nations) has a right to self-determination.
2. If a state (people or nation) has the right to self-determination, then it has a right to control what *it is*, or it has a right to control its membership.
3. If the state (people or nation) has a right to control what the self is or its membership, then it has a right to control immigration (or the right to exclude).
4. Thus, states (people or nation) have a right to control immigration (or the right to exclude).

For purposes of this thesis premise 1 of the self-determination based argument for exclusion is taken to be relatively unproblematic. As shown in previous chapters, self-determination is understood as a defensible collective right, relevant for interests and capabilities of individual members of the collective, which can be exercised within territorial and administrative units like states. While it can be debated whether states are appropriate agents of self-determination, this thesis accepts that they can have such a right, in virtue of their legitimacy and as a representative of the collective. If and

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<sup>62</sup> See Fine (2013, p. 258) and Hidalgo (2014) for a basic shape of self-determination argument for immigration control.

when states are legitimate, they can morally claim the right to control their affairs and to self-govern. Conditions of legitimacy, or sufficient justice and representation, may however, require additional contextualisation, and this will be provided in the following chapters.

Premise 2 of the argument is rather more problematic and in focus. It takes that self-determination entails the right of the community to define and determine itself, by controlling its membership composition. Control over membership composition entails control over matters of whom the collective consists of and what are the rules of membership. In this argument the focus is on the right to determine who can, and under which conditions, become a member of the self (collective) in question. Self-determination based argument relies on the idea that immigration affects or changes the membership of the state, and that membership of the state is crucial for determining or defining itself. The notion of immigration affecting membership (to an extent) is not a disputable claim. Immigrants have an impact on the membership composition, minimally by adding to the political membership of the state, but may also potentially affect the political process (including the goals of the state, and those policies and laws which are ultimately elected and enforced) and general outlook of the community, including its culture. Immigration is, therefore, connected to the changes in membership composition, and its character. This premise makes a connection between self-determination, which is a right to self-government, and control over the composition of the membership. It is from this connection that the conclusion on the right of the state to control immigration rests. As premise 2 indicates, self-determination entails membership control. It is, in this argument, understood as its core aspect, without which, states cannot be self-determining in the relevant sense.

The core element of self-determination based argument for the right to exclude, thus, becomes the control over the shape of the *self*, or over the agent that is to be self-determining. The right to control the shape and composition of the *self* of the collective in question is seen as fundamental for self-determination. To be self-determining, an agent like state, needs to have a control over *what it is*, and control over the membership composition is seen as a fundamental component of this self-definition. Determination of the self includes control over the membership of the self. Self-determination, that is, entails the right of a community (nation or people) or state which represents it, to set its own membership rules and to control its shape and character. This right to control membership is in this argument recognized as an

essential element of *self-determination* itself (Angeli, 2015; Moore, 2015; Song, 2018a, p. 69; Walzer, 1983, p. 62; Wellman, 2008, p. 115).

Premise 3 highlights the connection between immigration and membership control. Control over membership, that is, entails that rules of admission and naturalisation of immigrants as potential new members, need to be put in place. Having a control over membership composition, that is, refers to implementing rules around the issue of immigration, for it by definition entails long-term settlement which may lead to full political inclusion. Having the right to control membership, does not, however, prescribe any specific membership rule. It simply asserts that having control over membership implies having control over immigration. Migration policies of the state may range from more inclusive to more restrictive. The point is not in their specific shape or content, but in the fact that the self-determining agent (state) has a right in selecting them, and a right in controlling who may become a member of the political collective.

This argument offers answers to the question *who* decides, and *what* is the object of the decision. It is the *state* (or the collective it represents), which has a right to make decisions regarding *its membership composition*, or more specifically, rules about who can become its member.

It becomes clear that freedom in immigration stands in tension with self-determination conceptualised as consisting of the right to control the membership composition. Without the possibility to control and restrict immigration, there would be no control over the membership, since immigrants inevitably affect its constitution. Since justice requires that long term residents eventually acquire a full set of membership rights (to become naturalised), immigrants are seen as potential future full political members of the community and state. As such they have a bearing on the membership of the political community in question.

Following part takes a closer look at this understanding of self-determination.

#### **4.2.1. *Self-composition, future development and community character***

The self-determination based argument for the right to exclude, thus asserts the connection between self-determination and control over the membership composition and rules. Freedom in immigration is, however, in tension with control over membership, and therefore, understood as in tension with self-determination.

Generally, the effect of the immigration is recognized with respect to two areas of concern for self-determination: character of the community (self), and with it connected future development of the community (self).

The control over character of the community, and its future development are in these arguments seen as essential for this community (state or self in question) to control its own affairs, or in effect to be self-determining. Self-determination as a right requires determination of the self. As indicated in the previous chapter, it is minimally required that the agent of self-determination is clearly identifiable. For proponents of the argument from self-determination, this requirement is spelt in more substantive ways. It is not only that the subject of self-determination should be bounded and clearly distinguishable from others, which would imply some way to identify members (e.g. by citizenship status), but its character should be under control, together with the way it develops in the future. Membership control is tied with the way the political community is defined and the way it evolves. These aspects are highlighted in a number of self-determination based arguments for immigration controls, as reviewed below.

On the one hand, immigration has an effect on the constitution of the self, or how numerous the membership is and whom it constitutes of. Immigrants add to the population and in due course become citizens with full political rights and a part of the membership of the political community the state represents. Immigration, it is claimed, affects the *character* of the self, or what the membership looks like, what are its values, culture, aims, and general characteristics. Immigrants inevitably bring different cultural traits, values, aims or other political, social and cultural characteristics to the host community (Miller, 2016c, pp. 63–65). They are often of different political backgrounds, religious affiliations, skills, language proficiencies, ethnic origins and nationality, cultures, identities, and race. This may have a bearing on the current membership, and may bring changes to the general outlook of the community. All these aspects are claimed to affect general characteristics of the community, and experience of being its member (Miller, 2016c, pp. 62–65; Wellman & Cole, 2011, pp. 39–41), and this is what current members are invested in controlling. Unless migrants are mirroring current members in all politically salient matters, like class, gender, ethnicity, religion (Miller, 2021a, p. 173), their effect on the shape of the membership, and its continuity, cannot be omitted. Their effect on number of members is also of importance, since the numeracy of population also affect the way community is composed and the experience of being a part of such membership (Miller, 2005b, p. 202; Wellman, 2022,

p. 83), including e.g. interests that cities are not heavily populated or that membership can retain vast areas of unobstructed nature, which increase in number of population may negatively affect. Shape of the self and its numeracy, furthermore, includes a host of practical matters, including the way the community will evolve in the future.

On the other hand, immigration is claimed to influence the future development of the political community. Changes in membership composition are claimed to have an effect on the choice of the policies which are elected and enforced. These changes, in turn, have an impact on the future cultural, economic, social and political development of the political community. This effect does not pertain only to the future. Accommodating new members with different backgrounds requires some modifications to the way society functions, which includes a number of policies, like multicultural or welfare policies to ensure accommodation of migrants into the society (Miller, 2021a, p. 173). Development of the society is also under the effect of changes in membership. Current members may converge on some values and general goals and elect policies that support them and shape the future of the community aligned with them. When new members receive full political status and enter the decision-making process, different values and goals in the political membership may emerge and result in selecting different policies. This may stir different paths for the community in question (Miller, 2016c, pp. 62–64; Wellman, 2008, pp. 114–115). The way a community evolves is stressed as of importance for a community having control over its political affairs. Political, social, economic and cultural development are elements current members aim to have control over and are of importance for them as members of the political community. Members of the community should have control over the way it develops, and should in turn be primarily responsible for its policies and development (Miller, 2007a, Chapter 5). Uncontrolled migration would disrupt this control.

C.H. Wellman (Wellman & Cole, 2011: 40) thus claims in his freedom of association argument: "...one's fellow citizens all play roles in charting the course that one's country takes. And since a country's immigration policy determines who has the opportunity to join the current citizens in shaping the country's future, this policy will matter enormously to any citizen who cares what course her political community will take."

These common traits are found in a number of different arguments for the right to exclude based on self-determination, from the communitarian argument made by

Michael Walzer (1983, Chapter 2), to more recent arguments such as Sarah Song's argument for democratic self-determination (2018a, Chapter 4) or Margareth Moore's argument for political self-determination (2015, Chapter 9). For most authors that rely on the right to self-determination to ground the right to exclude, the key component becomes the possibility to define the community, or control its membership composition (Fine, 2013, p. 258; Lægaard, 2013). Membership control is placed at the core of the meaning of self-determination. Quotes below offer illustration to this general tendency:

*"Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination [my emphasis]"* (Walzer, 1983, pp. 61–62).

The right to control immigration is seen as tightly connected to precisely the structure of the right to self-determination. "The right to control immigration derives from the right of the demos to rule itself. The aspiration in democratic societies is that all members have an equal right to participate in shaping collective life. Deciding whom to admit into the territory is a *critical part of the defining who the collective is* [my emphasis]" (Song, 2018a, pp. 68–69).

As evident from these examples, decisions regarding membership, or who can be the member of the collective, are placed at the centre of the self-determination. Another example is found in Angeli (2015, p. 98): "To have a choice in this field [i.e. the morally significant field of migration] is to determine *who is the "self"* that is self-determining."

This connection between self-determination is important precisely in relation to the changes which occur in the membership of the group, which are in turn, as explained above tied to character of the community and its development, or in effect to the question pertaining to what the self in self-determination is. "(B)ecause the members of a group can change, an important part of group self-determination is having control over what the "self" is. In other words... a significant component of group self-determination is having *control over the group* which in turn gets to be self-determining [my emphasis]" (Wellman, 2008, p. 115).

Self-determination becomes conceptually connected to self-definition, and this shapes the argument for immigration controls. However, this conceptual shift, from

self-determination as self-government, to self-determination as *self-composition*,<sup>63</sup> is wanting for further justification. This aspect offers another layer of meaning to the right, which requires further specification and justification (Lægaard, 2013, pp. 659–661). These layers of the meaning of self-determination are connected.

Self-composition is recognized as a specific dimension of self-determination, but the authors in the debate connect it with self-government. Self-determination is recognized as self-direction of the collective self, and as a right of the demos to rule itself (Song, 2018a, pp. 69, 71). It is also taken as a right which allows the collective to control its collective circumstances (Moore, 2015, p. 195). From this, it is evident that proponents of the argument understand self-determination as a right to self-government. It is taken to entail the right to control self-regarding affairs (Wellman & Cole, 2011, p. 15) and freely elect relevant policies. It is a right which protects a freedom of collectives to engage with others (Wellman, 2005, 2008), and to be free from external interference. It is however, especially in matters relating to migration, taken that this right entails control over the composition of the self. As explained, without this dimension, the community cannot in the real sense achieve self-government, since it cannot control its future development nor its collective affairs freely if membership control or definition of itself is lacking. Self-government, that is, implies self-composition (Song, 2018a, p. 73).

From the focus of self-determination, as explained in the previous chapter, which deals with internal political arrangement and relationship with external actors, the focus of the role of self-determination *in migration debates* is precisely on self-composition. Issue of immigration highlights the matters of political membership, and with it connected issues of membership rules and composition of the community. This dimension is, therefore, especially relevant for understanding the relationship between self-determination and immigration. Control over the membership is, therefore, seen as an essential part of self-determination, which adds to the standard understanding of self-determination as the right for independent self-government. This relationship is under the analysis of this thesis.

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<sup>63</sup> Sune Laegaard (2013, pp. 659–660) uses the term self-composition to refer to self-determination as entailing the right to control membership, which Wellman's argument (which is in focus of his analysis), but also as shown - other versions of self-determination based argument for exclusion, rely on. I will adopt this term as well, since it nicely captures what is to be considered an object of this interpretation of the right, or composition of the membership.

Self-determination based argument for the right to exclude immigrants, thus, relies on the specific interpretation of self-determination. Apart from standard understanding of self-determination as a right of the community or state to govern itself independently, self-determination is understood as a right to self-define, or to determine the membership composition of a community (or self). In light of this interpretation, it is clear that self-determination stands in tension with uncontrolled immigration. The right to exclude immigrants is, therefore, following directly from self-determination conceptualised as self-composition.

The right to exclude immigrants is derivable both from understanding self-determination as self-government and as self-composition. However, this occurs in a somewhat distinguishable manner. Proponents of self-determination based argument seem to give primacy to self-composition in grounding the right to exclude. For self-composition, the right to exclude follows immediately, as an essential part of what it means to be self-determining. For self-government, the right to exclude may be derived as one of the policies the state or a collective may have a right to enforce freely. In this sense, the right to exclude is tied less to the concept itself, but is understood as one policy which may be scrutinised as any other in the context of competing values. These understandings may, furthermore, as elaborated above, be tied together, since self-composition may be seen as more or less relevant for self-government.

The work of this thesis aims to contribute to discussions which question the normative strength of this argument, or the connection which is made between migration controls, self-composition and self-government, by engaging in the conceptual analysis and by placing self-determination in the context of discussions about global justice.

In what follows, some of the accounts of self-determination based argument will be presented, together with some of the most common ways offered to question their soundness. Before moving to this part of the thesis, aspects of this argument pertinent to global justice will be presented.

#### **4.3. Self-determination based argument and global justice**

Apart from specific interpretation of self-determination as self-composition, self-determination based argument for immigration controls relies on specific conception of global justice its proponents endorse. As previously indicated the right to self-



determination has a bearing on conceptions of duties to non-members, including potential immigrants. This part will offer some of the common elements pertinent to understanding duties of justice on global level proponents of the argument endorse. Even though these elements are not explicitly highlighted in the main shape the argument from self-determination takes, they are directly following from the way self-determination is understood and conceptualised in these accounts.

As previously indicated, proponents of conventional view generally subscribe to more minimal accounts of duties to foreigners (Altman & Wellman, 2009, Chapter 6; Miller, 2007a, 2016c, Chapter 2; Song, 2018a, Chapter 5). While most authors recognize that some duties to foreigners obtain, these are considered limited. They do not, that is, require equalisation of opportunities, strong political cosmopolitanism (like e.g. global state), or more liberal immigration as a form to fulfil them. It is generally considered that when some level of duty fulfilment is reached, in the form of e.g. protection of basic human rights, then no additional, especially distributive, duties follow. This account of global justice, which may be labelled as sufficientarian account, is compatible with the idea that primary subjects of justice are those with whom extensive relationships are forged, primarily those which belong together to a self-determining community. More stringent duties are reserved for co-members, based on special relationships members share, like identity, culture, shared projects of self-governance (Miller, 2016c, Chapter 2; Moore, 2015, pp. 56–58; Song, 2018a, pp. 80–81); or shared institutional apparatus (Blake, 2001; Wellman & Cole, 2011, pp. 75–76).

Apart from special obligations and relational view on justice, a more limited account of global justice follows from understanding self-determination as connected to the notion of responsibility. Self-determination is understood as a right which entails that the community has control over its (future) development, which, in turn, makes it responsible for the decisions it takes. Proponents of the conventional view which give special role to self-determination in their arguments generally reject the idea that states have duties to admit immigrants based on justice claims. While most authors reject the idea that states are at full discretion to pursue exclusively national goals, absent any regards for rights of non-members, these duties are considered limited and compliant with respect to self-determination (Miller, 1995; Rawls, 2000; Wellman, 2008). Self-determination is taken to entail the freedom of the *legitimate* state to pursue its goals, without unjustified intervention from the outside, where unjustified intervention also comprises in requiring the state to fulfil extensive duties of justice to the outsiders.

When the state enjoys self-determination then it is considered primarily responsible for its development outcomes, including institutional and political arrangement, economic outcomes and general prosperity.

Special role in self-determination based argument for exclusion is, thus, tied to the idea that local levels of development are primarily the result of internal factors and choices of the society in question (Higgins, 2013, p. 38). Local culture, political and institutional arrangement and other local circumstances are tied to the levels of development (Miller, 2007a, pp. 242–247; Rawls, 2000, p. 108). This understanding, in turn, informs duties to foreigners. The exercise of self-determination is tightly connected to responsibility and duties to non-members. Whichever choice and action the society undertakes through history leads to different outcomes, which may turn out to be very unfortunate for the society. Responsibility for levels of development or poverty primarily rests on self-determining choices of the society in question. The implication of this idea is that respecting these choices and self-determination of the society in question has a bearing on duties of justice. Inequalities and poverty, which may motivate migration, are not unjust when they are the result of self-determination. If mostly domestic factors explain poverty or inequality, then duties other countries owe to foreigners are mostly translated to humanitarianism and charity. And such duties need not include more liberal immigration policy as a response to these inequalities, nor extensive duties of redistribution.

Apart from understanding self-determination as entailing collective responsibility for levels of development, respecting self-determination entails the so called “choice view”,<sup>64</sup> or the idea that self-determining states have a right to choose a manner in which to fulfil any duties of global justice they may have (Blake, 2002; Miller, 2005b, p. 198; Moore, 2015, p. 213; Wellman, 2008, p. 127). Thus, even if there are more substantial duties of justice reserved for foreigners, societies are at full discretion to opt for any number of different measures of aid or intervention instead of opening the borders to satisfy them. Respecting self-determination entails that, even if there are duties reserved to foreigners, the manner of their fulfilment is at the full discretion of the states as bearers of these duties. Respecting self-determination prevents forcing

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<sup>64</sup> This term is borrowed from Kieran Oberman (2011, 2015), and is used similarly, to refer to the idea that states generally have a discretion to choose a manner in which to fulfil their duties of global justice, however extensive they are. Oberman aims to show that this position with respect to immigration is unjustified if there is a general right to freedom of movement (or freedom to immigrate).

policies or measures which sidestep autonomous decisions of self-determining society. With respect to immigration, states can choose to “export the justice” (Wellman, 2008, p. 129), rather than to import it, in a sense of accepting immigrants from poor societies.

The right to reject more liberal immigration policies in the function of serving global justice, apart from understanding self-determination to entail responsibility and choice, is supported by the idea that migration itself is a poor choice of policy to tackle poverty and injustice. It is claimed to be of dubious effect, privileging those better off, and rendering sending states (often poor) without much needed educated workforce. It is also claimed to be an unpopular or practically unfeasible solution, since the number of the very poor people exceeds numbers more affluent societies have potential to admit and accommodate (Miller, 2005b; Pogge, 1997). Better option is to turn to other measures, like development assistance in place of a general policy of open borders.

Miller (2005b, p. 198) thus claims that: “(T)his policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open immigration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically undeveloped to economically developed societies in search of higher incomes, thereby depriving their countries of origin of vital skills.” Targeted admissions may at times be a better option to rectify certain injustice, but this strategy falls short of understanding duties of (sufficientarian) global justice and poverty alleviation in the form of opening the borders (Song, 2018a, p. 91).

Confronted with poverty and inequality on the global level, self-determining states are, however, not considered free to simply pursue their national goals and deal with their affairs without concern for others. This especially so, for cases of absolute poverty, which is considered an urgent problem to be solved (Oberman, 2015).

“Meanwhile, the lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live - by aid, intervention, or by some other means - or they must help them to move to other communities where their lives will be better. Simply shutting one’s borders and doing nothing else is not a morally defensible option here” (Miller, 2005b, p. 198).

The right to exclude based on the right to self-determination is then, as explained below, considered limited and conditional upon fulfilment of some duties to foreigners, more or less extensive.

“The global distributive justice argument for open borders points to an important qualification of the right of states to restrict immigration: wealthy states cannot exclude the world’s poorest people if they do not do their part to alleviate global poverty by providing development assistance and through other measures aimed at ensuring a minimally adequate standard of living for all” (Song, 2018a, p. 91).

Proponents of this argument then share some common aspects of understanding duties to non-members, and immigrants, more specifically. These elements stem from understanding of self-determination, as a right which allows the discretion of free development of society, responsibility for such freedom, and the right to choose. It also significantly leans on the idea that having the right to self-determination implies non-interference with the general political project of states. This right is, however, for the most, not unlimited, and it in principle permits accommodating interests of foreigners, especially those whose life prospects are less than decent. This consideration, which plays a role in justifying the state and state system as such, will be further developed in this thesis. More detailed treatment of these elements takes place in Chapter 6 in which the argument is situated and analysed in the context of wider global relationships and justice.

Following segment offers an overview of prominent self-determination based arguments for exclusion, with focus on the way self-determination is conceptualised, and its role in grounding the right to exclude.

#### **4.4. Critical overview<sup>65</sup> of self-determination based arguments for exclusion**

Apart from relying on common elements as outlined above, different arguments for the right to exclude utilise different conceptions of self-determination. What this means is that this right is conceived as belonging to different *subjects*, like nation and people (Miller 2016, Stilz, 2019; Song, 2018; Moore, 2015) or co-citizens and political subjects (Wellman 2008, Pevnick 2011); and being grounded in different *values*, like national culture and identity (Walzer 1983, Miller 2016), freedom of association (Wellman 2008), ownership over institutions (Pevnick, 2011); territory (Moore, 2015; Angeli, 2015), or political autonomy (Stilz, 2019; Song, 2018).

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<sup>65</sup> This part draws from review of literature titled: “Samoodređenje u filozofskoj raspravi o imigraciji” (*Self-determination in the philosophical discussion on immigration*), published in Croatian language in *Prolegomena 20 (1) 2021: 75-95 doi: 10.26362/20210104*.

This part offers critical analysis of some of the most prominent self-determination based arguments in the debate building on the distinction between pre-political and political conceptions of the agents of self-determination, introduced in Chapter 3. The aim is to highlight the way the right to exclude immigrants is connected to the protection of the underlying value of self-determination. Moreover, this segment offers some critiques levelled against these conceptions of the right to exclude in the literature. Treatment of global justice is, however, absent from this critical overview, since a more detailed account is reserved for later chapters.

#### **4.4.1. National self-determination, culture and the right to exclude**

The right to exclude immigrants is in nationalist arguments usually focused on protection of distinctive national culture and identity. Control over immigration is important for preservation of the distinctiveness of national communities, which makes the control over membership a core element of *national self-determination* (Walzer 1983: 62).

For those accounts which primarily stress the instrumental value of national culture and national self-determination, the right to exclude is often tied to the relevance of culture for the well-being of individual members of the nation, and to the promotion of stability of democratic governance and social justice. Miller (2007a, Chapter 8, 2016c, Chapter 4, 2021a) offers one of the most elaborate arguments for the right of the nation (state) to exclude prospective immigrants based on its self-determination. His account will thus be presented as a representative of nationalist strand of arguments for immigration control, which is at the same time of liberal character. Although Miller's argument may be seen as closely related to Walzer's, which locates the protection of distinctiveness of community at the heart of self-determination, Miller develops his argument further, focusing on the right of a territorially situated nation (or demos of nation-states) to protect its character and future, focusing on instrumental, rather than intrinsic value of culture and cultural distinctiveness. Miller's argument for the right to exclude unfolds by making reference to self-determination, population control and global justice (Wellman, 2022). This part takes a closer look to national self-determination as grounds for the right to exclude.

Self-determination is in Miller's account recognized as a strong *interest*<sup>66</sup> of a community to make relevant policy choices and decisions for itself (2016c, pp. 62–70). It has both intrinsic and instrumental value, with authorship over collective life stressed as its important aspect. Self-determining collective has a stake in its membership composition. It should, to be self-determining in the first place, be identifiable and have some continuity over time, so that the group which elects some policies is the same one which reaps its effect, irrespective of (intergenerational) changes in membership (Miller, 2021a, pp. 170–171). And this requires reference to the shared identity, which is understood as, in an important sense, cultural. In this sense, Miller makes the connection between self-determination as self-government, or an interest for independent self-rule, with the interests of the community to have control over its membership composition. As shown, Miller's argument also relates self-determination to choice and responsibility of the membership of the collective.

Immigration is a process which inevitably transforms the receiving society. It changes the character of the receiving community and affects the future development of the community by integrating immigrants into the demos, or the body which is politically active (2021a, p. 173). Changes in membership composition and its characteristics have a bearing on the current policies (housing, health, education policies) but also on the future development of the national community. New values or goals emerge, and they may stir different political, social, economic developments of the national community (Miller, 2016c, pp. 63–64). These aspects are of relevance to the control of the collective life to which self-determining communities strive.

Changes in membership composition may also reduce interpersonal trust, and trust in political institutions. For conditions of trust to obtain stable political culture and shared national identity are required, since they serve as a basis for social cohesion. Decline of trust may, in turn, negatively affect democratic functioning of the society which enables internal self-determination, or the conditions of self-government (Miller, 2016c, pp. 64–65). Democratic functioning of the society is, then, potentially imperilled by immigration affecting stable national culture. These potential effects of migration on important social goods are what offers reasons to see migration policies as relevant

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<sup>66</sup> Miller (2016c, pp. 70–71) explicitly rejects the notion of self-determination as a right, which entails more stringency and “determinacy” than is at times feasible for this particular claim. It, however, is considered to generally outweigh the interests of immigrants to be admitted into the self-determining community, due to, among other things, giving more weight to the interests of co-members compared to *strangers*.

for the receiving community, and policies which they should, in virtue of their self-determination, be free to pursue according to legitimate national goals.

Focusing on distinctive national culture is, however, not without its problems. National belonging relies on the *subjective* identification of members with the nation and its culture. This is especially so for Miller (2016c), which aims to define national belonging by invoking subjective feelings, rather than objective characteristics, to avoid being overly exclusionary. Relying on subjective identification with culture or nation, and not e.g. ethnic origin, to define membership must, however, leave space for those members which do not identify with national sentiments and national culture. More importantly, the concept of culture used in these theories is often underspecified or vague. Culture is used both in its thinner and thicker notions (Sager, 2007). Even though Miller (2016c, p. 67) aims to separate these notions of culture, stressing the importance of the political culture for migration, it is not clear how this can be principally achieved. Distinction between political values, or shared beliefs about values the society should embody and aspire to (political culture), on the one hand; and private culture embodying religion, cuisine, personal values and other personal traits, on the other, is not clear cut, and intersects. Focusing on protection of *private culture*, on the one hand, may lead to exclusionary and illiberal policies (Fine, 2016; Song, 2018b, pp. 34–35). Protection of national culture in general may entail admission policies based on shared cultural traits (Miller, 2016c, pp. 107–108) or even ethnic background (Walzer, 1983, p. 41). Stressing the importance of *public*, or political culture may, on the other hand, be too thin to allow for national distinctiveness since political values seem to be rather similar across a number of states (Lægaard, 2007b, p. 44). Shaping migration policies by taking culture into consideration may even motivate opposing conclusions than those reached by Miller. If culture is a relevant aspect in devising migration policies, then, this may motivate the requirement to admit some immigrants as well, like ones from former colonies, which have, to a significant extent, become a part of the national culture in question (Amighetti & Nuti, 2016).

Moreover, it seems that nationalist arguments for immigration controls, grounded on national self-determination, rely on the real impact of immigration on national culture and trust, and consequently, on the functioning of democracy. Negative impact of immigration in these areas is not straightforward (Abizadeh, 2002; Lægaard, 2007a), and fostering democracy in the society relies on much more than restrictive immigration policies (Song, 2018a, p. 68). Culture changes under the impact

of numerous factors, many of which are not under the control of the community. Trying to preserve it unchanged, furthermore, relies on a sociologically inaccurate understanding of culture, which cannot remain monolithic and needs changes to survive (Scheffler, 2009). In this sense, the connection between immigration controls, and the value of national culture and with it connected functioning of democracy, is contingent. It relies on a number of factors such as the rate of immigration, absorption capacity of society, integration of immigrants in the society and other related factors (Sager, 2007). The relevance of stable national culture for an individual, his context of choice or autonomy is often overemphasised, together with its necessity for trust and functioning of welfare democracy (Lægaard, 2007a; Miller & Ali, 2014; Sandelind, 2018; Waldron, 2010; Wilcox, 2004). This means that while culture is important for an individual and her autonomy, it is not clear that only a national culture plays such a role. Rather, individuals are often integrated in more than one culture. Multicultural societies also seem to testify to the fact that the stability of political functioning relies on other elements besides stability of the national culture.

As such, nationalist arguments relying on the notion of national self-determination which is grounded in the value of protecting the distinctive national culture, rest on debatable facts and are open for further social scientific research. While national culture may be considered of importance for individual members of the nation, and its protection may warrant exclusion in some cases (Carens, 1992, p. 40, 2013, p. 286), it is not clear that it can ground the general right to exclude, as nationalist authors aim to show. Interests in protecting national culture, when its connection to protection of other goods like democracy, are not straightforward, does not seem to outweigh important individual interests in migrating, especially those protecting subsistence.

Taking national culture, or rather, changes in character of the community, will figure prominently in the discussion of the following chapter. For now, it is worth noting that arguments for controls over migration based on cultural or national self-determination face problems connected to understanding of culture and its role in fostering trust or securing democracy.

#### ***4.4.2. Peoplehood theories, political self-determination and solidarity***

Other authors, which take people as the relevant agent of self-determination, often aim to move away from the concept of culture as a defining feature, invoking, as



previously shown, shared political projects or *political* identity. Arguments for exclusion in these theories also rest on the importance of membership control (Moore, 2015; Song, 2018a). Moore (2015, pp. 196–197) claims that control over admission and settlement on the territory, apart from following from the territorial jurisdiction of the state, is the key factor of self-determination and possibility of the people to organise its collective functioning according to their collective aims. Control over membership is required for selection of different policies pertinent to numerous aspects of collective life, like e.g. education or health care, and the way these will be shaped in the future. These reasons are connected to legitimate goals society has and the effect of immigration on them. Groups should have control over their destiny and should also have mechanisms to hold any changes to their character in control (2015, p. 58). Furthermore, without the possibility to control admission to the membership, the sense of the collective identity, belonging and special relationships between members of the people would be diminished. For Moore's account the relationship between members, mutually recognized as part of the community which exercises self-determination, is of special relevance. Without having control over aspects of membership freedom of the community would be diminished. Without membership control, control over collective circumstances may be lacking, which reflects negatively on the right of this collective to control them independently, relating to their right to self-govern.

Song (2018a, p. 69) also highlights the importance of membership and special relationships between members of the people in determining immigration policies. The right to control immigration and membership is stressed as a key feature of collective self-determination. It is within the right of the current members to control immigration, and this right stems from the right of the collective to self-define. It does not, as in nationalist argument, depend on the real impact of immigration on the functioning of democracy. Rather, it is highlighted as the core of the right of self-determination itself, as a right of the collective to control its membership composition and self-definition. This means that the right to exclude follows from the conception of self-determination as self-composition directly, as explained above. Immigration is, however, also stressed as impacting various goods of the community, including its culture and its overall collective life (2018a, pp. 65–66). The character of community and its future development are under its impact, but for Song, what is of most importance is the fact that the right to control immigration is a part of collective self-determination, and immigration without control or authorization, undermines this right, regardless on

concrete effects on the culture or future development (2018a, p. 73). For Song, the right to self-composition derives from the right to independent self-government, or from the right of the collective self to direct itself freely (Song, 2018a, p. 71). For this conception, self-composition is an integral aspect of self-determination.

Differently from nationalist positions, which locate the relevance of self-determination and immigration control in the value of culture, these authors stress the importance of political autonomy, but also the value of the relationship which obtains between co-members (Moore, 2015, Chapter 3; Song, 2018a, pp. 8–9, 56–57). Relationship between members is of moral importance for these accounts, and they ground special obligations. It is not, therefore, the instrumental value of culture, that is the ground of the argument, but the relevance of political freedom and autonomy for the members of the political collective, and their capability to control their political environment, with others mutually recognized as members of the community, with whom special associative relationship is formed. While this capability is the core value of self-determination understood as the right to self-govern, it is not clear that it can fully justify the right to exclude immigrants and control political membership of the collective. If political autonomy is conceived as the capability of individual members to participate in creating and upholding political institutions (Moore, 2015, p. 65; Song, 2018a, pp. 55–56; Stilz, 2019, p. 110), then it seems, a decent political arrangement, like democracy, is needed for such functioning. However, as indicated previously, it is not clear that freedom in immigration negatively affects the stability of democracy or similar political arrangements. Further empirical research is needed to reach such a conclusion. To these aspects the next chapter turns its focus.

Apart from stressing the relevance of shaping the conditions of collective life, the notion of affiliation, or solidarity between members is stressed (Moore, 2015, Chapter 3). This affiliation is not conceived as cultural, but rather political, with reference to history of shared political agency. These accounts are particularist (Song, 2018a, Chapter 1). Relationship with co-members is understood as an especially relevant good, and achievement of self-determination without this solidaristic aspect seems void of its value. As in liberal nationalist positions, thus, these theories rely on subjective identification of the members with the collective, and mutual solidarity, which may ignore the fact that not all members are similarly attached to the community. More importantly, it is not entirely clear what shared political identity of community, or its moral character, means, especially when reference to common culture is to be

avoided. Furthermore, stressing the importance of mutual solidarity and group identity for other goods, like democratic self-determination, does not, in and of itself, show that it should be pursued by immigration controls (Blake, 2020, pp. 58–59). As was indicated with respect to nationalist argument, democratic functioning may rely on some other mechanisms and policies besides protection of culture or trust by exclusion. Democratic self-determination may, furthermore, function without reference to shared identities or particularistic solidarities, which, especially in Moore's account (Carens, 2018, p. 5) may resemble familial connections or invoke ethnic notions of membership, which are potentially very illiberal.

Furthermore, arguments which ground the right to exclude on the right to self-determination of nations or the people, or pre-politically defined subjects, may suffer from the discrepancy between the subject of self-determination (i.e. people or nation) and the agent of exclusion (i.e. state). States are often multinational and consist of a multitude of peoples and national (cultural) communities (Lægaard, 2007a, p. 294). This means that connection between collectives with firm cultural and identity affiliations and solidarity, and the multinational states, may remain somewhat obscure. Miller (2016c, Chapter 4) and Song (2018a, Chapter 4) aim to provide some explanation for this connection, referring mostly to demos of nation states and people represented by the state as being a relevant agent of self-determination. However, in these cases, the function of invoking pre-political, cultural or political solidarity in defending the state's right to exclude does not have a clear role. These conceptions can then move away from these notions and instead focus on the state, to which the right to exclude is assigned. If the people are the bearers of self-determination and the right to exclude, then multitudes of peoples within the state could arguably claim such right to enforce different policies of movement and settlement on sub-state level. The connection between pre-political subjects of the right to self-determination, and the state which excludes, may, for these accounts, remain open and wanting for further explanation, or boil down to statist positions, but with pre-political notions of affinities between members as constitutive of self-determination. The question is, to what extent is invoking the affinities or pre-political identities in devising state immigration policies justified.

Following section offers an overview of arguments which take the political community (demos or citizenship) as subjects of self-determination offering stronger link between state and the self-determining community.

#### **4.4.3. State, self-determination and rights of citizens**

Number of proponents of the conventional view turn their focus on the state and its political membership as bearers of relevant rights (Blake, 2013; Pevnick, 2011; Wellman, 2008). The demos of the state, or its citizenship, is then recognized as the subject of the right to self-determination. In virtue of this right, a *legitimate* state, as a representative of the people, is recognized as having the right to exclude prospective immigrants. These arguments try to move away from pre-institutional characteristics, like culture, in defining the subject of rights in question, and highlight rather the relationship of members with state institutions, or their participation in shared social, economic and political life.

Wellman (2008; 2011) and Pevnick (2011) recognize the right to self-determination of state membership as grounding the right to exclude. Both authors recognize and stress particular liberal values and rights as underlining self-determination. While Wellman (2011, Chapter 1) stresses freedom of association, Pevnick (2011, Chapter 2,3) takes collective ownership of state institutions as a core feature of his argument.

The right to self-determination, according to Pevnick (2011, p. 52) stems from collective ownership of state membership over state institutions and belonging goods. Citizens of the state participate cooperatively in creating and upholding state institutions. This task requires labour and resources, which in turn, gives citizens the right to determine the way institutional goods will be used, including the right to determine who should have access to these goods. Self-determination therefore rests on associative ownership over state institutions, which gives rise to a claim that members or owners over these institutions should be the ones that govern it. Exclusion of immigrants and non-members rests on the special relationship of owners with their institutional goods. For Wellman (2011, p. 13), the key element of self-determination is the right to freedom of association. Absent this freedom, states cannot be self-determining; as an individual cannot be autonomous if she lacks the freedom to associate. The collective is autonomous or self-determining when it is free to manage its affairs, and for this freedom the discretion in forming and rejecting associations is of essence. Thus, as self-determining individuals have a right to choose marital partners or club memberships, states have a right to choose whether to associate with other states or individuals (2008, pp. 110–111). Absent this freedom, states (and

individuals) are not self-determining in the relevant sense. Self-determination, as independent self-government, that is, requires discretion in forming political or economic associations with others.

Both authors stress membership control as key for self-determination. The underlying concern is, however, not protection of some particularistic identity or culture, but of the interests and rights of members of the collective. These values define the relationship with immigration and ground the right to exclude. Ownership over institutional goods gives the right to those that participate in shared historical collective action to control access to the membership (Kates & Pevnick, 2014, p. 193). The right to control membership, therefore, derives from the right of collective owners to govern themselves and to determine the rules with respect to their collective ownership. For Wellman freedom of association becomes a key of understanding what self-determination entails and its relationship to immigration controls. The main feature of self-determination is precisely the definition of what the self is (Wellman & Cole, 2011, pp. 40–41). In this sense, his argument, like Song's, is referring precisely to what is taken to be the core of self-determination, or self-composition. Current members are invested into the composition of the membership, and freedom to shape the membership rules is a relevant feature of its self-determination. Immigrants are, however, also perceived to potentially affect culture, economy, political functioning of the society, and population density, and these aspects are what current members often care about. Immigration affects, that is, experience of being a member of these communities (Wellman & Cole, 2011, p. 40). While self-composition is highlighted as a relevant aspect of self-determination, it is also connected to the concrete effects that migration has on the areas which are important for the collective.

Apart from the relevance of the composition of the membership for self-definition, the investment in the future of the demos is highlighted in these accounts. Members play a role in deciding the future of their political community, and decisions with respect to membership constitution are essential for the possibility of the community to chart its future (2011, p. 40). Ownership over institutional goods also seems to entail the right to control what happens with these goods in the future (Pevnick, 2011, p. 44). The direction of the future development and decisions on the way collective ownership is to be governed is considered to be under the purview of collective owners. The right to control membership is in these accounts closely related to the right of the community to self-govern.

Focusing on these liberal values as connected to self-determination and the right to exclude is not without its problems. Freedom of association is in Wellman's argument conceived almost as the ultimate right trumping other important freedoms (Blake, 2012). In analogy with individual freedom to associate, this freedom on the state level allows for almost complete discretion in excluding individuals, even refugees (Wellman & Cole, 2011, pp. 117–124). Even though Wellman (2011, Chapter 1) invokes protection of human rights and legitimacy as requirements of the right to exclude, his position allows for significant levels of harm (Fine, 2010) and possibility of illiberal exclusions (Fine, 2016). Extensive freedom to associate or dissociate in the context of exclusionary politics of states, carries significant potential of harming interests of individuals seeking association; and it may, based on preferences of some ascriptive characteristics like culture or ethnicity, entice discrimination in immigrant admission. Analogy on which his argument rests, which often invokes intimate associations like marriage, is, furthermore, problematic, since it is not clear that freedom of association on state level can be compared with freedom of an individual to associate or disassociate with other individuals or associations (Fine, 2010; van der Vossen, 2015). Moreover, while control over membership may be of relevance for other intimate or expressive associations, like clubs or religious associations, it is not clear that it bears a similar level of importance for the state, which is neither intimate nor expressive (Fine, 2010, pp. 350–351). While individual right to freedom of association is of relevance for autonomy of the person, it is not clear whether it can easily be translated to the freedom or self-determination of the state. Association with other states is arguably of importance for the state's independence and self-government, however, association with an individual may not have a similar impact on state's freedom. Furthermore, it seems that focusing on the freedom of association as the value of self-determination fails to connect the value of this right for individuals with the state's right to exclude. Failing to exclude new members does not trump individual freedom to associate, since existing members need not enter into associations or even meet new members of political collective (Miller, 2007a, p. 211). Exclusion, however, may impact this freedom for members in preventing them from freely associating with non-members. Freedom to associate could, therefore, be used to argue against the right to exclude as well, as libertarian arguments for freedom to immigrate aim to show (Song, 2018a, p. 109). It is not, that is, completely clear as to how freedom of the association of the state, or political collective for that matter, exercised as a right to

exclude immigrants serves individual interest in freedom of association, or other individual interests (Stilz, 2019, pp. 151–152). The connection with protection of political freedom of individuals is also vague. Wellman explicitly rejects the notion of self-determination as deriving from individual autonomy (Altman & Wellman, 2009, pp. 18–20). Self-determination, that is, is valuable for individuals as members of the collective, but it does not translate into protection of their (political) autonomy. Wellman’s position, furthermore, though built on the important liberal rights like freedom of association, is, it seems, overly *collectivist*. It is used to argue for liberty of the state (or collective body of citizens) to associate both with other states and individuals, at times at the expense of similar claims made by individuals (citizens) aiming to associate with other individuals (migrants). In arguing for the relevance of the state’s freedom to associate Wellman (2008, pp. 110–112; 2011, pp. 66, 90) often appeals to intuitions about freedom of an individual to associate in an intimate or expressive realm. It is, however, questionable if such a strategy adequately captures what is specific about exclusion in the context of immigration, where the relationship under analysis is the one between an individual and state. Further discussion will return to some of these elements of Wellman’s account.

The value of ownership over state institutions as grounding democratic self-determination also leaves open the connection between an individual and the right to exclude. While special relationships of citizens with their political institutions may be recognized, it is not clear that this relationship is adequately described in terms of ownership. The relationship may be more precisely described in jurisdictional terms (Song, 2018a, pp. 40–41), which need not entail strong exclusionary rights as ownership may. Since ownership over institutions and their goods is conceived primarily as collective right, it fails to connect with labour and input of individuals (Song, 2018a, p. 42), including those that contribute to development of the institutions but are excluded from ownership, like *illegal* immigrants. Such understanding of ownership over institutions, which depends on contribution, may exclude some citizens as well, since some citizens, like children or people with severe disabilities cannot be said to contribute to institutions with their labour or resources (Brezger & Cassee, 2016). Contributions and labour do not, furthermore, ground ownership rights in all domains, like it is obvious in parenting where children are, emphatically, not objects of ownership rights of their parents (Blake, 2020, p. 62). This may be claimed for political communities as well. Pevnick’s argument is also potentially circular, especially with

reference to illegally present immigrants which do contribute to institutions, but where not authorised to do so. On the one hand, contribution to institutions is invoked as grounds for ownership. From this contribution the membership is determined. On the other hand, the question of who is to contribute is decided prior to the fact of contribution by already recognized members (Brezger & Cassee, 2016). Even though contribution is necessary for political membership, this contribution should be authorised by existing members. Illegal immigrants therefore contribute, but are not members of these institutions, even though membership is defined by contribution to political and social institutions. Furthermore, the question may be asked as to who authorised the contribution of native citizens. This argument may, therefore, face some problems in construing state's self-determination on collective ownership.

Both Wellman and Pevnick, furthermore, somewhat simplify the relationship of state and its collective with individuals and associations that stand outside and either contribute to development of state institutions in globalised economy (Fine, 2013, p. 264), or stand in relevant relationships (like familial or work) with foreigners (Wilcox, 2014). Connection of the right to exclude foreigners with the value self-determination has for individual members of the state is thus not straightforward in these accounts. It is not clear that general pro tanto right to exclude immigrants is morally justified based on these considerations. Freedom of association and ownership over institutions need not entail the right to disassociate or exclude the foreigners, especially when these foreigners aim to associate with existing members, or already contribute to the political institutions.

This part offered a brief critical overview of some of the most prominent defences of the right to exclude grounded in self-determination. Overlooked arguments all provide reasons for the state's general right to exclude immigrants, with special emphasis on the collective right to self-determination. This right is used with reference to different underlying values, namely culture, democracy, freedom of association and associative ownership; and is characterised somewhat differently across these accounts. Its connection to the right to control membership, or self-composition is present in these accounts. Concern with the effect of immigration on the character of the community and its future development is also evident in these accounts. Some arguments highlight self-composition more than others (e.g. Wellman (2011, pp. 40–41) and Song (2018a, p. 73) explicitly), and derive the right to exclude



as more or less extensive (e.g. Wellman (2008) who refers also to refugees as compared to others). Overlooked criticism shows that values highlighted in these accounts do not easily connect to the interest of individual members, or when they do, they do not straightforwardly ground the right to exclude. It is also not clear if referring to mutual cultural or political solidarity, or liberal rights to ownership and association, overweight important interests immigrants have in being admitted. These worries are, however, dealt with briefly, since the main focus of the following analysis will be on the notion of political freedom and self-government in relation to self-composition or membership control and global justice.

Apart from self-composition, which is often explicitly stressed in overlooked accounts, self-determination based argument relies on the notion of self-government, or understanding of self-determination as a right to shape (self-regarding) policies (Miller, 2021a, p. 172; Pevnick, 2011, Chapter 2; Song, 2018a, p. 56; Wellman & Cole, 2011, p. 15). It is, however, as overlooked, mostly understood as entailing or even depending on self-composition. This means that self-determination is understood both as self-government and self-composition, and this relationship will come into focus of the following discussion. In this light, overlooked positions will be given additional treatment emphasising other aspects of arguments or further developing their implications. The main task of chapters 5 and 6 is to deal with some of these aspects.

#### **4.5. Self-determination based right to exclude and its limits**

While the aforementioned scholars defend the right of the state to exclude immigrants based on their self-determination, it is important to stress that they do not necessarily recommend any specific immigration policy as best or most just for any specific state (Miller, 2016c, p. 161). This means that states need not opt to exclude potential immigrants from their territory and membership, but that they, however, have a moral right to do so. This means that self-determination based argument refers to the matter of authority over migration, and not necessarily to the precise shape or content of these policies. Immigration policies states select may range from restrictive to more liberal ones. The point is that there is a right of a state to select them, and that it follows from its right to self-determination. This part will look into some of the limits to this right which proponents of the argument recognize.

Considerations to the global justice duties restricts the right to exclude. States are minimally required to observe basic human rights to both their members and foreigners. Human rights protection is a precondition of state legitimacy, and it may be claimed that states which are inadequate in protection of human rights cannot justifiably claim right to exclude. Global justice places additional constraints on the morally permissible exclusion. The scope of this constraint depends on the underlying account of duties to foreigners, but also on duties to co-members. While some authors allow for more substantive duties to potential immigrants, like e.g. Song (2018a, Chapters 7–9), others like Wellman (2011, Chapter 6,7) may allow for very robust exclusionary rights, not easily trumped by rights of non-members. Below, duties which may constrain the right to exclude are briefly indicated, with the intention to highlight that the right to exclude is not considered absolute in any of the overviewed accounts. These restrictions on the right to exclude are best conceived as connected to duties of global and reparative justice, duties to individuals with particular claims of admission, and duties against discrimination.

Firstly, it is claimed that immigrants whose claims for admission were rejected are due adequate explanation. This requirement is grounded in notions of weaker cosmopolitanism, where individuals, irrespective of their membership, are considered as moral equals. Denying fulfilment of some important interests (like immigration is likely to serve) to individuals, even when justified (by e.g. state having a moral right to exclude) requires explanation which is respectful of the immigrant's moral equality and her human rights. In this way, arbitrary and discriminatory exclusions are not considered justified (Miller, 2016c, pp. 102–103; Moore, 2015, p. 199; Wellman & Cole, 2011, p. 150). In these cases, explanations which rejected immigrants can accept as moral equals cannot be offered. In this sense, exclusions based on race, ethnicity, national belonging or other identity affiliations are considered unacceptable from the moral standpoint and these considerations limit the right to exclude. Rejecting discriminatory selections is also attentive to the interests and moral status of current citizens which may share identity traits with immigrants.

The discretionary right to exclude is, furthermore, often limited by the particular claims which individuals may have in being admitted (Miller, 2016c, p. 77). These claims may derive from connections with the receiving state or from the general urgency of their claims. Refugees and asylum claimants are one of the most recognized category of migrants exempt from general right to exclude (Miller, 2016c,

pp. 76–93; Moore, 2015, p. 209; Pevnick, 2011, pp. 93–40; Song, 2018a, pp. 113–131; Stiliz, 2019, pp. 157–186). Basic rights of refugees are severely restricted in their states and they are owed prompt and direct assistance, usually by provision of temporary asylum on the territory of the host state. Their claims need not be directed to the particular state, but their claims should be addressed by the system of states in general. However, when refugees, who are in an especially vulnerable position, reach the borders of some state, then they have a claim on that particular state to offer them aid, often in the form of temporary admission (Miller, 2016c, p. 85). Other examples of the particular claims of individuals which often warrant admission are the claims of family reunification (Song, 2018a, pp. 133–150). Admission in the cases of family reunification often primarily takes into consideration rights of existing members to reunite with their families. Other individuals that may have a particular claim for admittance, in virtue e.g. for their service to the country or past injustice, may also be exempt from general right to exclude (Miller, 2016c, p. 77). States may, thus, owe admission as a form of reparation for current or past injustice it may inflicted on particular populations or individuals (Souter, 2014; Wilcox, 2007).

Finally, most of the proponents of conventional view claim the right to exclude is conditional upon fulfilment of some level of duties to foreigners. Complete discretion over immigration is not considered justified in cases in which self-determining states do not fulfil minimal levels of global justice and do not provide assistance to societies afflicted by unfavourable conditions, like violence, poverty or political instability (Blake, 2013, pp. 126–127; Miller, 2007a, p. 221; Moore, 2015, pp. 213–214; Walzer, 1983, p. 33). This means that in some cases even admission may be a tool to fulfil duties to foreigners, but as previously indicated, manner of duty fulfilment is generally subject to a choice. Proponents of the conventional view, as indicated before, thus, require fulfilment of some duties of global justice. These are generally conceived in terms of respecting and protecting basic human rights to all persons. The way these duties are to be fulfilled is, however, conceived as fully compliant with self-determination of the society in question, and is taken not to require global distributive justice, or more freedom in immigration as a tool to achieve it. This implies avoidance of any strongly cosmopolitan measures which may be conceived as in tension with both internal or external dimensions of self-determination.

These considerations are taken to either limit the discretion of the right to exclude, or to place restrictions on the conditions which award the right to exclude.

These restrictions on the general right to exclude, which align with understanding self-determination as entailing a significant degree of freedom to choose and direct oneself, are connected to the notion of legitimacy. Apart from understanding legitimacy in terms of internal aspects of the state, it is external legitimacy that is required for understanding migration and justifying the state system. The right to exclude is, therefore, a right which should rest on morally salient grounds, and which should recognize special claims of admission. It should also be seen as resting on some conditions that need to be fulfilled, like respecting basic human rights to all or securing some level of justice on a global level. In this sense, it should not be interpreted as a right which offers a complete power to close borders of the state. It is, however, bar these examples, a right which awards the states a wide range of discretion in selection of its migration policies.

Some of these limitations will figure prominently in the following chapters, where the connection between self-determination and the right to exclude is scrutinised.

#### **4.6. Chapter summary and the way forward**

This chapter offered common elements of self-determination based argument for immigration control and an overview of some of the most prominent arguments in the debate. As shown, most authors relying on the concept of self-determination see it as connected with the notion of membership control, relevant for control over character of the community, including its culture or values; and with it connected economic, cultural, social and political development of the community. Self-determination is in these arguments mostly interpreted as *self-composition*, or as a right which entails the right to control the membership composition of the community, or the right to define it. Self-composition is highlighted as an essential aspect of self-determination, and it figures prominently in the overviewed accounts. These arguments, therefore, see self-determination as entailing definition over what the *self* is and whom it consists of, placing membership control at the heart of this right. Self-composition is seen as relating to collective freedom to self-govern, in a sense in which it is either recognized as its important part or as derived from it. These notions of self-determination are, however, distinct, and their relationship merits further research.

Proponents of self-determination based argument for the right to exclude also share some common understandings with respect to duties to foreigners and potential

immigrants. Duties to foreigners are considered limited and subject to free choice of the state. This understanding of global justice is to a significant degree indebted to the way self-determination is conceptualised. It is seen as a right that entails collective responsibility for outcomes of a collective's development choices and policies. It implies independent control over collective affairs, without interference from the outside agents. Others are not placed under duty to remedy unfortunate outcomes of self-government of others, and even if some duties are recognized, their fulfilment is subject to a choice. For immigration policies this is taken to imply that states may freely choose if they are to admit them or export aid to their home states.

Some limits are recognized to this discretion, and it pertains to cases in which admission is requested based on some particular claims and connections, like in cases in which migrants seek to reunite with their families or are placed in especially vulnerable position like in the cases of refugees.

Argument from self-determination for the right to exclude may then be seen as relying on understanding of this right employed in the argument. On the one hand, it is tightly connected to the notion of membership control, or self-composition. On the other, it is understood as informing a somewhat constrained understanding of global justice based on the idea that it entails a significant degree of freedom and choice with respect to both internal and external functioning. Following chapters take issue with such understanding of self-determination.

Chapter 5 focuses on the conceptual shift from self-determination which is mainly understood as self-government to self-determination as self-composition. This chapter will focus on the way self-composition is understood and what it may entail. It will also explore the connection between membership control and self-government and political freedom, in the context of immigration. Intention behind this chapter is to show that understanding of self-determination as self-composition may be at odds with other accepted principles, and that its relationship with self-government is not straightforward.

Chapter 6 deals with placement of self-determination and immigration in context of wider global relationships. It deals with some common misconceptions on which the argument from self-determination rests, including understanding of the relationship between migration, global justice and self-determination. This chapter will also aim to connect the argument from self-determination to the notion of state system legitimacy.

Intention of this analysis is to provide reasons to undermine the connection between the general right to exclude immigrants and self-determination. This analysis will proceed, first, by showing that self-determination need not entail self-composition, since membership control is not essential for self-government. It will, then, address the idea that self-government entails the discretion over self-regarding policies, including migration, by showing that migration policies are specific in their relationship to global justice and legitimacy.

This will subsequently open some questions as to how extensive a state's right to exclude, grounded in its self-determination, is, when migration and self-determination are seen against complex global relationships. And some of these matters will briefly be dealt with in chapter 7.

## **5. SELF-DETERMINATION: MEMBERSHIP CONTROL AND SELF-GOVERNMENT**

This chapter focuses on specific understanding of self-determination which is used in self-determination based argument for immigration controls. To justify the general right of the state to exclude prospective immigrants, proponents of the self-determination argument aim to show that 1) interests which self-determination serves are such that freedom in immigration would severely restrict them, and that 2) the self-determination itself necessarily includes membership control and is therefore incompatible with freedom in immigration. Overview of prominent self-determination based arguments in the previous chapter showed that values and interests (like freedom of association, ownership or cultural protection) on which self-determination is often construed are not enough to ground the general right to exclude. The focus of this chapter is on the value of political freedom and self-government which are highlighted as essential for understanding self-determination. Political autonomy and freedom will, in this sense, be connected to the understanding of self-determination as self-composition, employed in this argument. This chapter, therefore, turns its focus to self-composition, from which it is claimed that immigration controls necessarily follow and its connection with political freedom and self-government.

The aim of this chapter is, thus, 1) to show that understanding self-determination as self-composition may be at odds with other principles proponents of the argument wish to retain, which may make this layer of understanding especially hard to justify, and 2) that self-composition is not essential for protection of core value of right, or political freedom, in the context of immigration.

It will be claimed that self-determination, based on the connection between membership control and self-government, may establish only conditional, and not general right to exclude migrants, as proponents of the argument claim.

### **5.1. Who is the member? Self-composition and illiberalism**

Self-determination, as previously indicated, is traditionally interpreted as the right to self-government free of external interference. The external dimension of the right refers to the non-intervention, and the relationship between collective agents on the international level. Internal aspect of the right refers to the right of the people to rule themselves. Self-determination is, therefore, understood as a claim of the political

collective to choose, enforce and make law and decisions for itself. As such it is seen as contributing to the political autonomy of members, allowing them to participate in the political process and control their political environment. Self-government is here, following standard interpretations of the right, taken to be a core reading of self-determination. It is directly grounded in the protection of vital human interests and capabilities. Control over one's political environment and political participation are recognized as fundamental interests on which self-determination is grounded. Non-intervention is interpreted as a negative claim right that requires other agents or states to refrain from interference when legitimacy conditions are obtained (Lægaard, 2013, p. 659). Other agents are, that is, placed under a duty not to interfere into self-governing affairs of legitimate political collectives. The general idea is that in principle, it is unjust to interfere in affairs of the state, including its policies, status and territory, when the state is (sufficiently) just for its subjects and foreigners, and when, additionally, it allows its subjects some form of political participation, or self-government. Non-intervention is, thus, following from legitimacy.

Self-government and non-intervention are both grounded in important human interests. Legitimacy in turn gives states moral justification in having a wide range of claim and liberty rights, which subsequently put others under certain duties.

As indicated in the previous chapter, proponents of the self-determination based argument for the right to exclude, introduce another, different notion of self-determination, or *self-composition*.<sup>67</sup> Proponents of this argument assume that self-determination entails control over the membership composition. Even more extensively, such control is seen as a key element of self-determination, without which the political collective is not in the relevant sense self-governing. Self-determination, that is, necessarily includes rights over membership, or the right to define *itself*. Self-determination, therefore, does not refer exclusively to the right of the *self* to *govern itself independently* and free from external intervention, but the right to *self-definition* (Laegaard, 2013 p. 659). This self-definition then refers to the right to control who the members of the *self* are, and what the self-looks like, or what is its character. This understanding of self-determination is found in different, previously analysed, arguments for the right to exclude, from nationalist (Miller, 2016c; Walzer, 1983) to

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<sup>67</sup> Laegaard (2013, pp. 659–660), who introduces the term self-composition, provides explanation of these interpretations of self-determination, primarily as criticism of Wellman's argument (Altman & Wellman, 2009).



more institutionalist accounts (Altman & Wellman, 2009; Angeli, 2015; Pevnick, 2011). Control over membership of the self is understood as essential for self-determination of the state, its character and future development. Questions about who is (and can be) the member of the self emerge, which is a question pertinent both to admission and selection of immigrants and their naturalisation. As will be argued, self-determination understood as a discretion in setting membership rules and control over membership in general, refers not only to migrants, but other territorially present members (residents) and citizens as well.

Proponents of the self-determination based argument do not directly offer additional explanation or grounding of this dimension of self-determination. While both self-government and non-intervention may be grounded in protection of individual political autonomy and are connected to the notion of legitimacy, for self-determination as self-composition the same is not the case (Lægaard, 2013, p. 660). Its consequences seem, furthermore, in tension with human rights framework, and requirements of legitimacy. This tension is explored below, first with respect to internal control of membership, followed by external or admission selection criteria.

### ***5.1.1. Self-composition and internal membership - reproduction and expulsion***

Proponents of the self-determination based argument for immigration controls, as explained in the previous chapter, use self-composition to derive the general right to exclude immigrants. However, the consequences of self-composition are also applicable to the internal membership. This part will take a closer look at the implications of self-composition on the rights and interests of existing political members, with the intention to show that this dimension of self-determination is especially problematic and may be at odds with conditions of legitimacy.

Self-determination is, as explained, often seen as connected to the matters of political membership, or the self, which is to self-govern. In this sense, the connection between membership composition and immigration is made. While immigration is seen as one form of adding to the membership of the state, it is not the primary way the society reproduces. Usually, new members are added to the society by existing members giving birth to new ones. The rights of membership are then transferred from the parents to their children automatically. In the context of states, this membership is

often understood as citizenship,<sup>68</sup> which includes full political rights, including the right to vote and run for office. Immigration is another way society gains new members (as new future citizens). For immigrants, the process of citizenship acquisition does not follow immediately. Naturalisation is a requirement for long term residents, which entails extending full citizenship rights to new members, by which they inevitably affect the *self* of self-determining political community. Admission should, therefore, be seen from the standpoint of future naturalisation. Immigrants, then, add to the population number, affecting characteristics of the self, and the way it may develop in the future. These aspects are seen as falling within the purview of self-determination, as self-composition.

Argument from self-determination, furthermore, implies that current membership has an extensive right to set its own membership rules, and decide who is to become a new member. This right is tied to the interests current members have in controlling the way their community looks like and develops. For these dimensions membership plays an essential role. Self-determination as self-composition is then understood as a right to control and determine the self, or its membership composition. It is understood as a liberty and claim right (Lægaard, 2013, p. 659), which means that it gives certain liberties to existing membership over themselves and puts others under certain duties, e.g. not to overstep existing membership rules of the community. As such, it is a non-standard dimension of self-determination.

However, if the right to self-determination is to be read as the right to self-composition, then not only immigrants, but also existing members and their children fall under the purview of this right (Brezger & Cassee, 2016; Hidalgo, 2014; Lægaard, 2013, pp. 660–661). New members of a community, arriving not externally, but as a family of existing members, also affect both quantitative and qualitative aspects of membership. If self-determination is to be understood as giving the community liberty right to shape the membership and rules of its acquisition, then this right extends to control of internal membership as well. This has implications on a) reproduction policies

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<sup>68</sup> Citizenship is generally acquired by birth, including by descent (*ius sanguinis*) and by birth on a territory of the state (*ius soli*). These mechanisms are increasingly under theoretical scrutiny, and other mechanisms of citizenship acquisition are proposed. One example of an alternative view is stakeholder citizenship offered by Bauböck (2008), which highlights stakes which individuals may have in acquiring citizenship status in virtue of their e.g. permanent interests in membership. Permanent residents (aliens) in the society may be seen as persons with real stakes in acquiring full citizenship status. These aspects of citizenship acquisition are overviewed in Leydet (2017).

(Brezger & Cassee, 2016; Lægaard, 2013, p. 661) and b) expulsion of existing members (Hidalgo, 2014).

On the one hand, having a right to self-composition entails that both qualitative and quantitative aspects of reproduction are under control. Thus, the number of children may be politically prescribed, e.g. one child policy in China, but also qualitative aspects may be under control, e.g. deciding what type of children are permitted or required in the society. This means that a number of very illiberal policies may be elected, including extreme examples of bans of racially mixed families, sterilisations, forced abortions and other similar eugenic policies (Lægaard, 2013, p. 661). Apart from selecting the type and number of children to be born in the first place, self-composition may entail the right to deny access to membership (or citizenship) to offspring of citizens, contrary to what is considered a standard and also morally salient practice (Carens, 2016). Brezger and Cassee (2016) aim to show normative considerations employed in arguments for the right to deny immigrants the access to membership, more specifically in the argument from freedom of association (Wellman, 2008) and ownership rights (Pevnick, 2011), also entail denying access to membership to children of citizens. If it is freedom of association which grounds the right to exclude immigrants, then this right similarly extends to associating with new members arriving at birth. If it is the ownership over institutions defined by existing contributions of members, then it may extend to children that, like immigrants, do not (yet) contribute to these institutions.

Hidalgo (2014), on the other hand, argues that self-determination based argument entails that it is morally permissible to deport and denationalise existing members of the state. If citizens have a right to control its membership by choosing whether to admit new members (immigrants) in the society in virtue of their self-determination, then it follows that they have a discretion in deporting and denationalising existing members in virtue of the same right.<sup>69</sup> If self-determination entails the right to control the character, number and future development of the membership, and to enforce immigration policies to respond to these aspects of the self, then it can, following similar logic, offer grounds to deny further membership to those members who do not align with the preferred characteristic of self. Apart from expulsion of members which e.g. do not contribute enough in virtue of their skills, work, taxes, this may extend to individuals and groups characterised by unwanted racial,

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<sup>69</sup> This may include existing citizens with dispreferred characteristics, and also long-term territorially present residents (migrants), or their children (e.g. being the case of Dreamers in the US).

religious, ethnic and other identity affiliations. It may, that is, entail that the majority can exclude minorities present in the territory, which do not align with religious, ethnic, cultural or even racial characteristics of the majority population. In this sense, self-composition may also amount to a range of very illiberal policies. This logic is applicable to the general shape of the self-determination based argument. If self-composition is what grounds immigration restrictions, then it also may lead to an array of highly problematic internal policies of exclusion.

This means that to accept self-determination as entailing self-composition, one needs to accept not only the right of the state to control immigration, but other rights pertaining to the (internal) membership as well. These consequences are, however, at odds with liberal and democratic principles, and human rights framework. Self-determination, read as self-composition, thus entails extensive rights of membership over *itself*, or its individual constituents. These mechanisms, apart from having illiberal consequences to individual members and their capabilities for affiliation, practical reason, emotion and freedoms in other private areas of their life, may affect especially negatively those members which belong to minorities, different cultures or religious affiliations, race or ethnicities, which may, under the right to self-composition, suffer especially severe consequences. Self-composition may, thus, fuel populist sentiments and award the right to the majority to decide who are the *real* people, or real members of the state, offering a ground to discriminate against minorities.

These implications are, clearly, not welcome for proponents of the self-determination based argument, and ways may be offered to avoid these stark conclusions. One of the ways out is to highlight legitimacy requirements (Lægaard, 2013, p. 661). Only states which are sufficiently just and respect human rights of its constituents and foreigners have a moral right to self-determination (Wellman & Cole, 2011, p. 28). States which would elect policies to control their internal membership and its reproduction invasively, or which would opt to deport existing citizens, could not be considered legitimate. They would seriously restrict the human rights of its members. Since self-determination is a moralised claim its exercise is considered constrained by respect of basic human rights of members, and non-members alike. Its exercise is also considered conditional. It cannot, that is, be *legitimately* exercised at such a high cost. This answer, that is, seeks to limit self-determination by reference to conditions of legitimacy. Legitimacy, understood as grounded in protection of human rights, gives moral force to self-determination, but the exercise of self-determination, if understood

as self-composition, directly limits conditions of legitimacy, offering a direct ground to select policies which restrict human rights. In this sense self-determination would contradict legitimacy which gives it a moral grounding and it should be limited not to entail legitimacy limiting consequences. This, however, reduces the meaning of self-composition on which argument from self-determination heavily relies. While self-determination is a right which may in principle be constrained, this move would seem to remove from self-composition its essential aspect, or the idea of membership control. If self-composition does entail this right, then in principle, it is not clear why this right would pertain only to the external potential members and not existing ones. Primary membership is an internal constituency, and not foreigners, and control over membership should incorporate both elements. Additional principles should, in this sense, be introduced to explain why self-composition does not target internal membership, while it targets immigrants, and why legitimacy restricts the scope of this right severely in cases of internal membership, while leaving a wide scope of discretion in cases of foreigners.

Another route to block unwanted consequences of such reading of self-determination is, therefore, to propose additional normative principles, like equality of citizenship, or to argue that immigrants stand in different relationships to the community than existing members and their children (Moore, 2015, p. 202). Other principles, besides self-determination can, that is, be recognized to regulate relationships within society (Pevnick, 2011, pp. 63–66). Existing members and their children find themselves a part of a social scheme which determines their life chances, and stand in different relationships to institutions and other members than immigrants.

Miller (2021a) has also recently offered arguments to counter negative implications of self-determination as a right which entails control over immigration. He mostly aimed to show that while immigrants, arguably, do not have a right to immigrate to some country, residents of this state have rights against expulsion and deportation. These rights are justified with reference to important interests rights against deportation protect, namely, rights of residence and rights of citizens to remain the part of the reciprocal relationship constitutive of citizenship (2021a, p. 179). This reasoning relies on the idea that there is no *general* right to immigrate, since interests it serves are not *generic* but specific. As long as there are adequate options available for immigrants to satisfy them in their home country, the universal right to immigrate

cannot be grounded.<sup>70</sup> Interests which are served by rights against deportation are, contrary to interests which may ground immigration, *vital* human interests. Place specific and membership specific interests to remain resident and citizen are vital and generic, and can only be protected by the state on whose territory the person is located. Individuals, that is, have interests in stable occupancy in places where they have developed their life and plans, and they also have an interest to remain as part of their political associations. Deporting individuals breaches this connection which is not (yet) formed in cases of immigration. This argumentation, however, relies on specific understanding of human rights and interests which may ground them, which for Miller is minimal, and on a claim that human right to immigrate cannot be grounded (Miller, 2016a). Interests of existing (and future) members of the society (and state) can be spelt out as basic interests of occupancy, interests in forming and executing located life plans, interests to enjoy important affiliations and relationships, and even contractual reciprocal social and political relationship of citizenship. It is not, however, straightforward that interests which may ground human right to immigrate are not similarly generic and basic (Brezger & Cassee, 2016; Oberman, 2016a).<sup>71</sup> As proponents of the right to immigrate has sought to show, freedom in immigration may serve vital interests of individuals in forming intimate associations, practice freedom of movement, speech, consciousness, have a freedom to choose occupancy, and a freedom to choose for oneself how to direct one's life, which includes the freedom to choose where to live (Carens, 2013, Chapter 11; Oberman, 2016a; Wellman & Cole, 2011, Chapter 15). In this sense, the defence of the asymmetry between immigrants and residents, which relies on their rights to remain or to immigrate, depends on the claim that while one type of right exists the other is not defensible, and this is response which proponents of the right to immigrate need not accept.

While arguably immigrants and current members (or their offspring) are not entirely comparable in their status or rights with respect to exclusion, overviewed arguments show that understanding self-determination as self-composition is

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<sup>70</sup> The idea being that generic human interests, like interest to form intimate relationships, or interest to practise religion are adequate candidates for human rights protection. Interests which are offered to ground rights to immigration are, however, specific and in principle satisfiable in the immigrant's state, absent situations in which adequate range of options is not available (Miller, 2016a).

<sup>71</sup> The right to stay, which aligns with rights against deportation and expulsion, clearly protects basic human interests as indicated above. It may, however, be recognized as an aspect of general human right to freedom of movement (which may encompass the right to immigrate as well). Oberman (2011, 2015) highlights this interpretation of the right.

potentially at odds with values and rights which proponents of self-determination based argument deem morally relevant. Even if the way out of these implications is available, and even if arguments offered to test exercise of self-composition intentionally overemphasise its negative implications, plausibility of self-determination as self-composition is undermined by these illiberal and counterintuitive consequences. Self-determination understood as a self-composition entails the rights over membership, which may be intrusive and illiberal. They, furthermore, if not properly constrained,<sup>72</sup> may directly restrict human rights. This makes it in tension with legitimacy. In this sense it is not clear that it can be easily grounded in legitimacy, like the external dimension of self-determination is (Lægaard, 2013, p. 259), or in protection of important individual interests and rights, like the interest in political autonomy.<sup>73</sup> Self-composition, additionally, as Laegaard (2013, p. 660) stressed, is not supported by intuitions about colonialism, annexation or the value of democracy and popular sovereignty which are generally mobilised to award value to the right to self-determination. To explain intuitions about why colonisation or annexation are wrong or democracy valuable, it is enough to refer to the value of self-government, or self-rule without external intervention. Self-composition, as a right which gives a wide range of powers over membership composition, is a new and not standard dimension of self-determination, and it should be additionally explained why it is essential for self-determination as a right which protects dimension of self-rule without outside intervention. These connections will additionally be analysed.

Potential of self-determination in having such strong, restrictive and illiberal consequences makes it a subject of legitimate worries. If we wish to retain this right, in virtue of its previously argued positive values for individuals and their political collectives respectively, and not abandon it altogether, then the concept itself should be unpacked and analysed to see if its negative and unintuitive aspects may be kept at bay. If self-determination as self-composition entails curtailment of important human

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<sup>72</sup> Blake (2020, p. 64) also concludes, with respect to Pevnik, that the need to introduce additional ad hoc principles to constrain self-determination and to prevent negative consequences tells us that something is not right with the proposed theory (or interpretation of the right in line with self-composition).

<sup>73</sup> Laegaard (2013, pp. 661–662) argues in detail that for Altman's and Wellman's argument (2009), self-composition fails to make a link with legitimacy. Legitimacy, understood as protection of human rights, explicitly grounds the right against intervention, in the sense that sufficiently just political order has a claim against intervention from the outside. It fails to connect with self-composition. It is not clear that adequate protection of human rights gives permission to political society to have rights over its composition. More importantly, this dimension is in tension with protection of human rights as shown in the analysis.

rights and restriction of important freedoms, like freedom to stay in one's country, freedom to form and uphold intimate associations, freedom to reproduce and other rights and liberties, then, it may be argued, this aspect of self-determination should be relinquished.

Following section aims to analyse implications of understanding self-determination as self-composition with respect to immigrant admission policies, or outsiders which aim to become a part of a self-determining community. While this control over migrants seems less problematic and even a welcome aspect of self-determination, it may also lead to illiberal and discriminatory consequences.

### **5.1.2. Selection criteria and discrimination**

Argument from self-determination, may, together with potential negative consequences for internal membership, lead to the potentially discriminatory and illiberal selection and admission policies. This section aims to show the way self-composition, and the right to determine the character and shape of the membership, may lead to policies at odds with principles that proponents of the argument wish to retain.

The right to control immigration entails the right to enforce admission and selection policies freely. This means that some criteria for admission and selection of migrants needs to be put in place. Some prospective immigrants will be excluded, while others, carrying e.g. preferred characteristics or skills will be more easily admitted and welcomed. Admission and selection policies are then guided by some set of principles. Having a right to control migration, entails the freedom of the collective to choose principles which guide selection. This freedom is, however, generally considered constrained. Selections based on merit or skills are considered acceptable,<sup>74</sup> while selection criteria tied to ethnicity or race is explicitly rejected as unacceptable (Miller, 2016c, Chapter 6; Song, 2018a, Chapter 9; Wellman & Cole, 2011, Chapter 9). As shown in the previous chapter, the right to exclude should be aligned with the possibility to offer explanation to the rejected immigrant which is respectful of her moral equality.

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<sup>74</sup> For purposes of this chapter selections based on skill will not be problematised, since they generally do not entail exclusions based on illiberal grounds like ethnicity and race. Other problems may arise from targeting talents for admission, like much debated *brain drain* and considerations of global justice (Shachar, 2016). Some of these considerations are dealt with in the next chapter, but for purposes of this chapter, it is taken that selections based on skill are generally acceptable.



To this end, reference to arbitrary and ascriptive characteristics as reasons for exclusion or admission is to be avoided. Avoiding discriminatory immigration policies is, furthermore, especially relevant against the background of the history of immigration restrictions which were (and still are) characterised by implicit or explicit racism and xenophobia.<sup>75</sup>

This outright rejection of racist and xenophobic selection criteria is, however, for the proponents of the conventional view, difficult to systemise in the theory itself. Fine (2016) highlighted theoretical preconditions that proponents of the conventional view should satisfy to successfully avoid their theories entailing potentially racist or illiberal selection criteria. They should, that is, be able to 1) acknowledge the problem of racial exclusion, 2) to diagnose it as a problem or explain why such selection is problematic in a way that aligns with the underlying theory, and 3) to offer a prescription to avoid this problem in immigration restrictions. From her analysis it is clear that while almost all of the most prominent proponents of the conventional view admit that exclusion of immigrants based on racial or ethnic background is unacceptable,<sup>76</sup> principled way to diagnose it as a problem and to align this diagnosis with the general right to exclude is not offered. Most authors, that is, merely highlight discriminatory practices as not preferable, without being able to explain how these should be avoided in cases in which states have a general right to exclude. Merely claiming that they are unacceptable does not seem to offer a satisfactory answer.<sup>77</sup>

For proponents of the self-determination based argument this charge may especially be relevant, especially when self-determination is understood as self-composition. If self-determination is to be read as involving the right to shape the membership of the self, with respect to its characteristics and development, then this may be read as involving the right to select immigrants based on those characteristics which are seen as preferable to define the *self* in question. The character of the self, although not clearly explicated in these accounts, may easily be transferred to aspects of race, origin, religion and culture, which are arbitrary characteristics and which have discriminatory potential depending on policies enforced upon them. As previously

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<sup>75</sup> For example of racism in migration policies see Hayter (2004).

<sup>76</sup> Michael Walzer (1983) is highlighted as a notable exception, since he does not explicitly reject exclusionary policies based on race (Fine, 2016).

<sup>77</sup> Lorna Finlayson (2020) has recently launched a rather sharp criticism of political philosophy of immigration more generally, which according to the author, is not properly engaged with existing and historical background of migration and is consequently not adequately equipped to deal with racism implicit in migration policies.

indicated, the character of the community, which exercises self-determination, is highlighted as relevant for the current membership and experience of being a part of the community. The control over this community character is often of importance to existing membership, and it is recognized as an aspect of the right of the current membership to define itself.

This self-definition, however, is taken not to include racial or ethnic selection explicitly. “Turning to consider criteria for selecting migrants for permanent residence, I argue that categorical exclusion of migrants based on race, ethnicity, religion, and sexuality is morally impermissible. Such exclusions violate the basic norm of equality and cannot be tied to any legitimate policy goals” (Song, 2018a, p. 172).

Racial or ethnic backgrounds are not considered relevant in designing migration policies and are claimed to lack the connection with public goals of society. Some other features like skills or language are, however, deemed appropriate in designing migration policies: “I can think of no publicly admissible reason to use racist criteria in designing an important policy - unlike, for example, linguistic criteria or work skills, which might impact differentially on different prospective migrant groups (Moore, 2015, p. 199).”

It is, however, clear that having a right to determine composition of the membership, may entail precisely selection criteria which are racist and xenophobic, especially if we take into consideration the way immigration historically unfolded,<sup>78</sup> with a number of explicitly racist immigration policies. The way migration is perceived and treated in the contemporary world, also often testifies to widespread racism or xenophobia, which was used in political campaigns of populist parties which explicitly targeted immigration, including Trump’s presidency campaign. Matters of national identity, culture, religion, ethnic background and even race, seem to play an important role in the way immigration policies are unfolding in practice (Dummett, 2001; Hayter, 2004).<sup>79</sup> One prominent example of policy which is deeply problematic is US policy of travel (or Muslim) ban, where under a pretext of national security, travel from certain

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<sup>78</sup> Some of the most quoted examples of the racist immigration policies are White Australia Immigration policy, US policy of Chinese exclusion act (1882) which excluded Chinese nationals, US policy National Origins Act (1924), which aimed to exclude migrants from eastern and southern Europe and US policy of travel ban under Trump administration (Song, 2018a, p. 159).

<sup>79</sup> Even though this chapter is mostly tied to non-refugee migrants, this sentiment is evident from the way Europe has dealt with waves of refugees from Syria and Middle East from 2015 onwards, compared to refugees from Ukraine in 2022.

countries (predominantly Muslim) is prohibited, and explicitly discriminatory policy is adopted (Blake, 2020, p. 130; Song, 2018a, pp. 160–161). This policy was used to exclude based not only on nationality, but also on religious affiliation, culture and race.

Grounds used to try and eliminate discriminatory selection criteria, present across different accounts, often invoke notions of respect towards immigrants and respect for their rights (Miller, 2016c, pp. 104–106; Moore, 2015, p. 199), or alternatively respect to members of the community which may share the same race, religion or ethnic background as excluded migrants (Blake, 2020, Chapter 6; Wellman & Cole, 2011, p. 149). Rights against discrimination are as well invoked to prohibit such criteria (Song, 2018a, p. 159). These considerations move from the notion of moral equality, where justification is owed to those excluded, in a manner by which their moral equality is recognized, but also in a manner by which equality of citizens is recognized. Using reasons of race or ethnicity, to reject persons at the borders, conveys a message that some of the co-members as well, due to their (identity or group) affiliations, are unwanted.<sup>80</sup> These considerations are, however, limited, since they do not provide grounds to reject racist policies in homogenous societies (Wellman & Cole, 2011, p. 149), nor they, when focusing on wrongs to existing members of the society, capture how migrants themselves are wronged by adopting discriminatory policies. Taking respect or insult to the migrant as a what grounds prohibition of discriminatory exclusion does not explain what to do with justifiable exclusions, e.g. based on skill, which may themselves constitute an insult (Fine, 2016).

These responses do not, furthermore, necessarily track real sentiments of the existing population, which may be prone to define their belonging and membership by reference to aspects of nationality, origin, religion and even race, and use these aspects to inform immigration policy. If the way existing members define their community and membership gives them the right to freely enforce membership rules and admission criteria, then this, consequently, may lead to highly problematic and discriminatory selection criteria. Reasons for this lie in the fact that, in the context of non-ideal (real world) conditions, belonging and membership are often defined by reference to nationality, religion, race and culture. These aspects are in most accounts

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<sup>80</sup> Amy Reed Sandoval (2020) has recently aimed to show this with respect to US immigration policies, where some groups of citizens and residents, with specific social identities and “appearances” (i.e. Latinx people) are treated as second class citizens and as illegals (or as Sandoval terms them “socially undocumented”). This means that the presumption of illegality is tied to social identity or race, which targets persons that are legal residents of the state.

(nationalist and some peoplehood accounts aside) not highlighted as constitutive of the community in question, but rather reference to institutional and political context, or political culture, is used. They, however, cannot be removed from the theory, since existing membership may well be invested into these aspects of the self,<sup>81</sup> which then falls under the purview of the right to self-composition.

While all of the arguments from self-determination suffer from this charge, in what follows I take a closer look at Miller's argument from cultural self-determination more specifically.

#### 5.1.2.1. Selections based on culture

Miller (2016c, p. 106, 2021b) is as well explicit in his rejection of selection criteria based on race and ethnic origin. These aspects are, according to Miller, not tied to any goals which democratic society may legitimately pursue.<sup>82</sup> They, furthermore, go against showing moral concern to immigrants and providing the reason for rejection which immigrants ought to accept. Such reasons should take the interests of immigrants into the account, as separate moral individuals, and be such that immigrants *could* accept them (not meaning that they will in reality), without having to agree on any notion of their moral inferiority (Blake, 2020, p. 121; Miller, 2016c, p. 106).<sup>83</sup> These reasons then align with the notion of moral equality of persons, but against the background of reasoning which accepts partiality to members and their interests. These reasons should, then, be aligned with legitimate goals of the community. This means that in principle skills or knowledge could be accepted as a reason for admission, since, legitimately, the state may wish to advance economically, or pursue various specific economic policies for which people of different skill sets may be needed. Taking race or ethnic origin in calculation seems not similarly tied to any goals state may *legitimately* wish to pursue (Miller, 2016c, p. 106).

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<sup>81</sup> Butt and Stemplowska (2022) highlight this concern with the methodology of David Miller. While Miller aims to offer a realist approach to immigration, he fails to seriously take into consideration that the public, which should have a say on immigration policy, is often misinformed and prejudicial, or even racist, and that policies which such demos may select could mirror this prejudice.

<sup>82</sup> Miller (2016c, p. 197) uses in this sense, as he himself notes (footnote 35), an intuitive understanding of what legitimate social goals are, with racial purity not being one such goal.

<sup>83</sup> Blake (2020, p. 121) uses the formulation somewhat differently, referring to such reasons as ones which immigrants cannot *reasonably reject*.

Selection based on political and cultural background, including at times religion, is for Miller's account legitimate (2016c, pp. 106–108). Culture is, as previously explained, a matter of identity, and is considered valuable (with respect to roles it may serve), to the extent that democratic societies may freely decide how far they will protect it. Opting to select immigrants based on cultural characteristics is in this sense deemed acceptable. Accommodating migrants with different cultural backgrounds brings certain costs (since immigrants should be incorporated into the society in terms of equality), which is factored in decisions about immigration policies. In this sense, selecting migrants with similar cultural background as the local population, may reduce or minimise such costs of accommodation. Immigrants also clearly affect membership composition and its character, of which cultural make-up plays a significant part. This is especially so in nationalist positions where culture is explicitly taken to constitute national identity. Selections based on culture may, however, lead to the discriminatory migration policies.

Selecting based on culture may be considered problematic and unnecessary (Pevnick, 2011, Chapter 6), and may come close to selections based on origin, ethnicity and even race. Reason for this lies in the fact that culture itself is a blurry concept, often tied to aspects of identity, religion, ethnicity and nationality (Lenard, 2020). It seems hard to, in this sense, define what selections based on cultural background precisely mean. Culture may refer to a general way of life, and be used as a broad concept which encompasses a wide range of aspects of life. It can also be used in reference to language, art, music, tradition and political values. In this sense it is not always clear what selections based on culture may mean. Elements of different cultures also intersect, in the sense that many cultures share common features. Many cultural elements from the outside are integrated into the (national) culture, and one can find instances of different cultures within their communities ranging from fast food restaurants to art and cinema. Cultures also constantly change and add new elements. People also identify with different elements from various cultures, enjoying a wide range of choices in apparel, music, cuisine, art, religions etc. In this sense, it is in principle difficult to pinpoint precisely what elements of culture should inform migration policies. As elaborated in the previous chapter, the relevance of culture for grounding immigration policies is, therefore, problematic, even more so when connected to discriminatory and illiberal admission policies.

Even though Miller (2016c, p. 67) aims to distinguish between public culture, which is more political and refers to the norms of conduct in the public sphere, and private culture, which is more connected to the general way of life, it is practically difficult to separate these notions. Private culture (values and beliefs) affects public culture, political attitude and values. While pluralism of private cultures is not problematic in the context of liberal democratic societies, Miller (2016c, pp. 67–68) argues that significant convergence at the level of public culture, to allow for social cohesion, needs to be achieved. This means that multicultural societies may function, as long as there is significant convergence and commitment to general political (i.e. democratic) values. These political values are, however, generally, not what makes cultures specific and distinctive (Lægaard, 2007b). Political culture may in this sense be interpreted as a rather thin notion. What makes cultures distinctive, and therefore, a subject of protection, is more often tied to aspects of the general way of life, which encompasses religion, social norms, language, values and beliefs, on the one hand, and aspects like cuisine, way to dress, art, music, rituals, family roles, on the other. If selections based on culture have a role in protecting national culture as a legitimate policy of the nation, then not only thin, political aspects are encompassed by this policy, but also more substantive, general aspects of culture. These aspects are, however, often connected to the ethnic origin, nationality and race.<sup>84</sup> This connection may reveal cultural selection criteria as a proxy for potential discrimination. Concepts of culture, religion or ethnicity are not clearly distinguishable from one another. Language is often tied to the ethnic origin and nationality, important aspects of cultural and ethnic belonging refer to religion, ethnic origin and race intersect. Historically, some national cultures are defined with reference to ethnicity and religion (Song, 2018a, p. 169). For example, Croatian national identity is defined by ethnicity and in relevant sense by religion. Croatia is, furthermore, a racially rather homogenous country. Other European countries may be racially more heterogeneous, but are also defined with reference to e.g. religion (e.g. Ireland) or ethnicity (e.g. Germany which also exercised a *Aussiedler* policy - which extended citizenship to ethnic Germans). Taking (national) culture in isolation from these elements may become an arduous task, depending on the culture and nation-state in question. Categories of race, ethnicity, culture and religion are vague and open to interpretation, and are entangled in practice. One often quoted

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<sup>84</sup> Song (2009), in a different context, shows how these aspects are tied together and difficult to separate, culture with religion, with language, ethnicity and nationality, and even with race.

example are Jews, which are identified as a race, nationality, ethnic and religious group (Fine, 2016, p. 147). These aspects are not clear cut at all. Furthermore, as Sager (2020) shows, culture and race based reasons are often conflated in migration policies. Racism is often defined narrowly, by referring to biology, omitting attention to the social aspects of the race, which merge ethnicity and culture with race (Sager, 2020, p. 76). Mendoza (2016) shows, based on US immigration policies, how race becomes entangled with ethnicity, culture and nationality. Definition of whiteness as a norm becomes of importance for immigration, and the way some social groups are excluded from this norm, and some included, referring to ethnic and national belonging. Members of e.g. Latinx population are increasingly deemed non-white and illegal. Race in this sense refers to much more than biology. This often translates to the problematic immigration enforcement policies, like one's which are triggered at the borders based on appearance but connected to the idea of cultural belonging and nationality.<sup>85</sup>

Culture may, therefore, be a proxy for a range of xenophobic and discriminatory policies, precisely due to its relationship with belonging to different identity groups, including on national and ethnic origin. Even if we try to focus exclusively on public culture, even Miller (2016b) accepts that religion may be its relevant aspect. If religion may enter into public culture, why not race or ethnicity (Fine, 2016, p. 147)?

Cultural selection, may thus, also boil down to discriminatory and illegitimate practice. If preservation of culture is a legitimate goal of a self-determining political community, then at times, it will lead to selection criteria based on those characteristics deemed morally problematic and at odds with fundamental democratic and liberal principles. While Miller's account may be selected as the most easy target of such criticism, since his focus on national self-determination and relevance of culture and religion for identity of the self in question is highlighted, other accounts are not free from this charge when putting emphasis on the right of the demos to define itself by among other things enforcing immigration and selection policies to reflect these considerations.<sup>86</sup> While the intention of some authors is to avoid cultural definition of the community in question, some elements of culture (even understood more broadly

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<sup>85</sup> Mandoza (2014) argues that this is the case with persons having "mexican appearance", who, under the presumption that Latinx people are illegally present, suffer more stringent immigration measures and controls in the US.

<sup>86</sup> Moore (2015, p. 199) also explicitly recognizes culture as a justified reason to select immigrants in some cases, in which it can be shown that there are effects of culturally differentiated migration on collective self-determination (e.g. in cases where relationship between cultural groups may become dominating).

and generally as commitment to some general liberal or democratic principles) will enter into this self-definition. In the context of real-world political communities even more so.

In this light, Wellman (Wellman & Cole, 2011, p. 40) asserts: "...I am emphasizing only that citizens will often care deeply about their country's *culture*, economy and political arrangements, and thus, depending on their particular preferences, may well seek more or fewer immigrants, or perhaps more or fewer *immigrants of a given linguistic, cultural, economic, and/or political profile* [my emphasis]." While his approach aims to avoid the relevance of culture in defining the political community as agent of self-determination, Wellman admits that culture may be of importance to members of the political community, and that it may be used to shape migration policies.

Before moving to the next section, one additional criteria of selection should be looked at, which is connected to both the way political community may be defined and aspects of self-government itself. Political background of potential immigrants may become a reason to select or exclude.

#### *5.1.2.2. Admission of illiberal immigrants*

Exclusions based on national security threats, protection of public order or public health are often considered as permissible and defensible. They can generally be aligned with legitimate goals of community and tied to human rights protection. This segment will try to focus on the permissibility of selecting based on the political backgrounds of migrants.

Since national security is generally taken to constitute solid justification for exclusion of immigrants, even when presumption is with freedom of movement, the question arises if selection based on political background is acceptable. Is it morally permissible to exclude illiberal migrants?

Political background is e.g. highlighted in Miller's (2016c, pp. 106–107) argument to be an acceptable selection criteria. This criterion can be connected to the cost of accommodating and integrating immigrants in the society. Individuals which have liberal inclinations and respect for democracy may be more easily integrated in the society whose political culture is defined by these values. Individuals which possess opposing values may, on contrary, not be considered as preferable following



the same reasoning. Illiberal political values may also be perceived as a threat to sustaining liberal democracies. Joshi (2018) e.g. argues that liberal societies may, therefore, to protect liberalism itself, exclude illiberal immigrants. In light of previous discussion, it, however, seems that selection based on political background is hardly void of discrimination.<sup>87</sup> Therefore, for authors which aim to remove discriminatory politics from their general migration policies, exclusions based on political background or political values may pose a problem.

If we put exclusions of individuals who committed serious crimes aside, together with the cases of mass migrations which may in some cases put a strain on liberalism; it is worth exploring the way exclusions of immigrants based on political background may amount to worrisome admission policies. It is not clear, that is, if such criteria of admission can be employed practically, without referring to other characteristics which are rejected as unacceptable, i.e. nationality or origin, religious affiliation and even race. One, already used example, may refer to migrants from predominantly Muslim countries, where presumption of illiberalism is tied to religious affiliation, but also nationality, race and culture. Tying individual political values to these aspects is arbitrary at best, and in effect deeply discriminatory. Employing such reasoning in selection often leans on simplifications of culture or religion in question, highlighting e.g. some negative traits, which may be found in a culture in question (like e.g. sharia law, discrimination against women, intolerance etc), above all others. Sager (2020, pp. 79–80) uses the example of dowry murders which at times occur in India. They are often wrongly assumed to be a constitutive element of the culture. However, they are comparable to domestic murders in liberal democracies. Employing culture in admission policies may also lean on anecdotal situations in which members of some affiliations commit crimes or atrocities in host societies which designates all individuals that belong to them as likely in committing them as well.<sup>88</sup> Reasonings like this omit

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<sup>87</sup> Public health is also one of such reasons to exclude (Song, 2018a, p. 162). Both of these reasons may in practice suffer from prejudicial exclusion and discrimination, as e.g. above mentioned travel ban suggests. Recently, in the context of COVID-19 pandemic which affected migratory movements and enforcement of border controls, justification of exclusion in the name of public health became a prominent topic. Number of contributions aim to show that this rationale for exclusion had negative consequences for the vulnerable, and was abused to serve other goals, including exclusion of dispreferred migrants designated as carrying a risk of COVID infection (Heller, 2021; Ramji-Nogales & Goldner Lang, 2020).

<sup>88</sup> For an especially stark example of this reasoning the reader is referred to Sesardić (2022), who, in his new book *Konsenzus bez pokrića*, argues that immigration from mostly Muslim countries should be approached with caution. Islam is in his analysis interpreted precisely as illiberal by reference to some of its illiberal elements and based on anecdotal events covered by media (which itself may be biased)

taking into account wide differences within cultures as well, and the fact that connection between values a person holds and belonging to the culture is not clear cut, and may depend on other external factors like e.g. education (Sager, 2020, p. 80). Taking individuals who belong to some social or identity groups as potentially illiberal in virtue of this belonging, may entail illiberal and discriminatory policies targeted at mostly ordinary people. It is, moreover, hard to establish, unless a clear connection to certain associations or activities is evident (e.g. terrorist activities or direct support to terrorist organisations), that particular individual necessarily has illiberal inclinations which may be found in particular culture or religious interpretation. It also omits from the view that values change and are negotiated (Sager, 2020, p. 81).

Furthermore, taking one's personal beliefs and values (which need not be manifest at all), as a reason to admit or exclude individuals goes against respecting freedom of consciousness and practical reason. If it is largely immaterial what personal beliefs one present in the society holds (including anarchist or even extremely illiberal), as long as one does not act upon them, it is unclear that the best approach to migrants which *may* hold illiberal inclinations, is exclusion. This is especially problematic when considerations on national security, or protection of liberal and democratic values, translate to policies which directly target some groups of migrants, like muslim ban shows. For an individual which originates or belongs to some of these identity groups exclusionary policies which rest on assumed connections between political values and belonging are problematic. The connection between political values and these affiliations is not straightforward and may rest on false assumptions or ignorance about different cultures. Even if some connections between liberalism and these affiliations are present, this may amount to falsely targeting individuals who do not hold them. For some migrants this may even constitute restriction on exit options from these societies.

To conclude this brief analysis, it is clear that a self-determining community may have a legitimate goal in protecting democracy and its functioning, and that it may define itself with reference to liberal and democratic political values. To argue for selection criteria based on these considerations may, however, leave space to unjustifiable and discriminatory exclusions. As Angeli (2015, p. 103) notes in a different context, as long as (illiberal) migrants act within the law, there is no reason to exclude them based on their illiberalism. Furthermore, as the following discussion aims to show,

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which aim to show that migrants from these countries are unlikely to integrate, and endanger public order or local population.

there is a gap between exclusion and protection of democracy and liberalism. And this gap may be filled by a number of policies to safeguard against erosion of political values of the society, including the policies which avoid discrimination.

Having a right to define itself need not encompass morally problematic aspects of e.g. race or ethnic origin, but may entail aspects of political principles, goals, values, other narratives and traits (like history, symbols, constitution etc) which are used to specify what it means to be this specific community. However, as explained above, considerations of culture, religion, nationality and identity cannot be completely rid of potentially discriminatory consequences, and political philosophy of immigration, if it wants to be relevant, needs to look at these aspects with care. Self-determination based argument opens the door to potentially problematic selection criteria, and its proponents need to take this into account. These considerations put additional burden on the argument and justifiability of self-determination itself.

The worry is the same as in the previous section. Even though self-determination as self-composition may be in relevant sense constrained and limited not to entail policies that would select based on impermissible characteristics, it is questionable if this notion of self-determination is at all justified due to these considerations. This is especially so in cases in which self-determination is understood as a process by which existing members shape the way their membership *looks* like. This analysis, therefore, aimed to show that self-composition is a layer of self-determination which has potentially very problematic consequences and may put a shadow over valuing self-determination itself.

### **5.1.3. Self-composition, illiberalism and discrimination: summary**

Self-determination, as used in philosophy of immigration, is taken to encompass more than self-government, which is its core interpretation. Generally, as we have seen, self-determination is understood as a moral claim of collective self-government. Proponents of the argument take self-determination to entail self-composition, or the right to control membership composition of the community, its numeracy, shape and characteristics. This dimension is not a part of standard understanding of the concept, and as shown, such interpretation may have negative consequences and be in tension with protection of human rights and liberal and democratic principles, which these

authors seek to retain. This leads proponents of the argument to constrain this right by reference to basic rights of individuals and legitimacy. This means that to mitigate the potential negative effects of self-composition a host of other mechanisms need to be put in place, which makes its justifiability wanting. Self-composition seems to be an added layer of self-determination, and it cannot be easily grounded in concern for rights and legitimacy, especially since its exercise is in tension with them. For proponents of the argument, however, it is precisely this aspect that is a core of the self-determination, without which the political community cannot be self-governing in the real sense.

Next section will take a closer look at the relationship between membership control (in the sense of immigration controls) and self-government, as a standardly taken interpretation of self-determination. While self-composition may be sitting uncomfortably with respect to rights of members and non-members alike, it may be justified with reference to its role in securing core value of self-determination, or political freedom. I will argue, however, taking immigration as a core case, that self-government does not *conceptually* require self-composition. It may be a policy which a self-governing community (or a state) wish to control, but it is not essential for it being able to self-rule. Self-composition, that is, cannot be grounded in self-government, since it is not required for a community to self-govern.

## **5.2. Exclusion, self-determination and political freedom**

Self-determination, when conceived as self-composition, may have, as shown before, problematic consequences, which make it incompatible with human rights and liberalism. Self-government is an already recognized understanding of self-determination, grounded in the interest of individuals for political freedom. In this section the connection between self-composition and self-government is observed, with the intention to show that self-composition cannot be justified by reference to self-government.

Self-determination, as explained, is best understood as a collective right to independent self-government. Two main dimensions of self-determination previously recognized, internal and external (Angeli, 2015, p. 101; Song, 2018a, p. 54; Stiliz, 2016b, p. 98), can both be explained in terms of self-government. This points towards the identification of interests that the right to self-determination serves, specified in

chapter 3, and which may be subsumed under the notion of political freedom. Self-determination, as a collective right, may be understood to serve the interest of the *collective* to a degree of political freedom and self-rule. However, it is the interests of individuals as members of the collective, to be authors and not just subjects to political institutions, that self-determination ultimately serves. It is these aspects which are taken to be the core elements of self-determination.

This segment will then try to explore the tension between more liberal immigration and self-determination, conceived as serving the collective and individual interest to political freedom. Following analysis will aim to encompass both dimensions of self-determination. It will be shown that more freedom in immigration, which is understood as incompatible with self-composition, does not necessarily restrict self-government, or political freedom of the community. This case will try to show that the connection between membership control or self-composition and self-government is not as straightforward as is assumed.

### **5.2.1. External self-determination, non-interference and immigration**

The core aspect of the external dimension of self-determination is the possibility of the (political) collective to govern its own affairs independently. This dimension is generally understood as a claim for self-rule without the interference from the outside. This aspect in principle entails that certain political groups, peoples or nations, should be free to determine their political status, and govern over their territory, people and general affairs, without other agents interfering in this process. Self-determination is often interpreted in terms of territorial sovereignty and this external dimension was, and still often is, interpreted as a claim for territorial independence and sovereignty. This dimension is also often interpreted as non-intervention, or claim against outside interference when conditions of legitimacy are obtained.

This dimension of the right refers to what is wrong with acts like colonialism, annexation or unjustifiable intervention that forcibly interfere with the collective. These acts are generally understood as endangering the ability to self-rule and interfering with political freedom of the collective. These acts, furthermore, limit the interest of members of the people to control their political environment and to have the discretion to choose their representatives or being governed by those they identify with. External dimension of self-determination is often understood as referring to the relationship

between collectives or political groups. Territorial disputes, secessionist movements or colonisation, which are often seen as standard examples of restricting self-determination generally include one political group or state, restricting the political freedom of another. Wellman (2016, p. 82), uses the power of these examples, to explain the value of self-determination, but also to explain why unrestricted or unregulated immigration may be seen as incompatible with it. It is precisely the relationship between external self-determination and immigration, that this segment looks at.

Wellman (2016, p. 84) stresses the importance of the freedom of association for political freedom of self-determining states. Legitimate state, which enjoys the right to self-determination, has a discretion in choosing its associations. It seems undeniable that a state, which cannot freely decide whether to enter into association with another state, or other supranational organisation (e.g. European Union), would lack a significant level of its freedom. The examples of such dynamics, where it is evident that important freedom of the collective to self-govern and determine its status is violated by external agents, is used to derive a conclusion that political collectives should be able to reject associations with potential immigrants. Wellman's argument, albeit powerful and straightforward, is subject to extensive criticism (Blake, 2012; Fine, 2010; Lægaard, 2013; Wilcox, 2014). Here, attention will be given to the comparison between state and individual, or more specifically, relationships between different states compared to the standard immigration process relating to political freedom. For Wellman (2016, p. 84) the case in which state A refuses to enter into the political association with state B is perfectly comparable to the case in which country A refuses to associate with prospective immigrants. This analogy may be destabilised by focusing on the political freedom of state and the nature of different processes in these cases.

Potential immigrants, it may be claimed, do not stand in a comparable relationship to a political collective as external state or supranational association does. Immigrants cannot be said to similarly coerce collective into unwilling associations or interfere with their affairs as colonial force or external intervention would. There is no comparable impact between these cases on self-government. Immigrants are individuals, while agents that are *standardly* taken to present such threats to self-rule of political collectives are themselves collectives. It seems that the relationship between potential immigrants and a state, and the relationship between states is not

analogous. Legitimate states are understood as institutional entities which represent its membership and act in their name.<sup>89</sup> Decisions about entering associations like the EU, trade agreements or other forms of economic, social and political arrangements, have a bearing on the state's political members. When states enter such associations they do so as a collective entity, associating with another collective (van der Vossen, 2015 p. 276). Furthermore, absence of the freedom to choose these associations would severely limit the ability of the state, as representative of its political collective, to bring important decisions for its membership and to determine its political status. If another state were to annex the state in question, or impose sanctions, then the freedom of the state and its membership would be limited in the important sense. Individual immigrants seeking admission stand in completely different position with respect to political freedom of the state, understood in the external sense.<sup>90</sup> Immigrants, that is, cannot be said to similarly coerce the host state or limit its freedom. It is, usually, precisely the other way around, since the decisions on admission and enforcement of immigration policies may put an immigrant into a vulnerable position or harm the exercise of their freedoms.

Furthermore, if we hypothesise the case of regular non-forced immigration, where an immigrant signals the intention to settle on the territory and eventually become its political member, the analogy between state-state, and state-immigrant relationship becomes even less clear. Immigrants, it seems, seek not to enter into the association with the state, as an institutional entity, but they seek to become an integral *part* of it (van der Vossen, 2015, p. 276). While states may choose to enter different treaties and agreements with other states, using representatives, negotiations and

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<sup>89</sup> In this sense states are importantly dissimilar both to individuals and clubs, which are also used by Wellman (2011, Chapter 1) to show that freedom of association and membership control are of importance to the state. Restrictions on the freedom to associate between individuals, would, without much doubt negatively affect individual self-determination. Freedom to choose marital partners is one often highlighted example. For expressive associations like clubs, freedom in selecting members, also plays a relevant role, since changes in membership may indeed affect or change the main goals or characteristics of clubs. For states, which are neither intimate, nor expressive, this relevance is questionable (Fine, 2010, pp. 349–353).

<sup>90</sup> Wellman (2011, pp. 42–44), however, anticipates this line of criticism and argues, with the reference to example of corporation like Microsoft and university like Harvard, that if we consider these entities as having a discretion to associate or disassociate with individuals as relevant aspects of their self-determination, we should similarly extend this reasoning to large political units, like states. I am, however, not convinced, since the status of potential employee or student with respect to corporations or universities is not comparable to the relationship of potential immigrants with the state. Membership in state, arguably, has more serious gravity for one's life prospects. While expressive associations may have a more prominent stake in their membership than states, the focus here is on the impact of individuals on self-government of the state. Immigrants do not impact self-government of the state in a comparable manner to the way other collectives can.

diplomacy, as a collective and in the name of its members; the same does not apply in the case of immigration. While states entering into such associations generally remain distinguishable collective entities, successful immigrants become parts of the state as a collective body, and do not relate to the state in question as associates or separate (collective) entities (van der Vossen, 2015, pp. 276–277). Becoming the part of political membership then requires that the immigrants minimally comply with the laws of the state, but even more extensively to contribute to state institutions, by e.g. paying taxes, and more generally by *playing their part* in the political community.<sup>91</sup> For most immigrants that are not born, but enter willingly into some other political community, the consent to institutions of that community can be ascribed much easier than to those born unwillingly into some political structure, where consent is given more implicitly. It is not clear that by satisfying at least minimal requirements of stay in the host society and by becoming a functioning member of it, immigrants threaten self-rule of the collective as colonialism, annexation or military intervention do. While immigrant seeks to become a part of the political society, consenting to the laws, institutional or political order in the society, other collectives undertaking unwilling forms of association with the state in question, generally aim to overtake the institutions of the state, merge the territory and population, change the laws, or subjugate the entire population. Even in a milder form of limiting external self-determination, like e.g. economic sanctions are, the effect on the institutions, population and laws is different then in cases of regular immigration, since immigrants generally aim to observe institutions and laws and settle on the territory of the state, while external agents like other states, at least in these cases of unwilling associations, aim to change or overtake institutions or limit territorial integrity as well.

By becoming new members, thus, immigrants do not seem to seriously challenge the general interest of the community to self-govern, understood in a manner of freedom from outside interference. It is not membership change, but external coercion that is a main threat to the collective interest to self-rule. Like getting new

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<sup>91</sup> Stiliz (2019, p. 120) uses the notion of playing one's part in the political community, to show that political members do engage in political activity together, thereby upholding state institutions. Successful migrants generally aim to participate in joint political activity. I take that the intention to settle consists of at least minimal will of achieving normal functioning in the host society. Thus, immigrants are motivated to satisfy conditions that will allow permanent settlement, like working to self-sustain, sending children to school, obeying the law, and participating in life of the social and political community (Sager, 2007, p. 73). Clearly, not all migrants in non-ideal circumstances will share this intention (like migrants forced to move), however, here I take this motivation as a standard part of the regular immigration process.



members within society, by procreation, receiving new members by immigration, represents adding to the *self*, that is to act politically free. It does not represent coercion over the self externally, as interference from other collectives may represent. Decisions on association with other collectives play an important role for self-rule and violations of a discretion in these matters constitute severe threat to free determination of political status. However, immigrants do not seem to be positioned likewise, since they cannot form associations with the state, but only become a part of the collective it represents (van der Vossen, 2015, p. 276).<sup>92</sup>

Can immigration ever endanger collective self-rule in the context of external dimension? It seems that an adequately homogenous and large number of immigrants distinctly unwilling to become part of the collective would pose such a threat (Carens, 2013, p. 273; Sager, 2007, pp. 73–74). However, if it were the case, then the dynamics between mass of immigrants and the receiving society would become more like cases of external collective force restricting the exercise of self-determination of the receiving collective. This is somewhat distinguishable from hypothesised regular immigration, where individuals aspire to settle and become members of a host community. However, in extreme cases like these even very vociferous defendants of free immigration would agree that the collective in question may justifiably restrict the right to freedom of movement to protect itself (Carens, 2013, pp. 276–279).

Other potential threats to self-government may be identified in cases in which the state comprises plural collective entities. In these cases, as Moore (2015, p. 200) warns, instances of migrations of persons with specific identities (e.g. affiliations to majority group or groups which may dominate other groups), when massive, may lead to imbalance of power in intra-group relationships. This may endanger the ability of some collectives to shape the conditions of their life. These worries, however, as indicated in the paragraph above, justify immigration restrictions, even when presupposition is with freedom to immigrate.

In this sense, the regular immigration process does not seem to significantly affect the external aspect of self-determination as self-government, since it is not

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<sup>92</sup> Van der Vossen (2015, p. 277) similarly aims to show that the freedom of association argument for immigration controls is unsound, for it equivocates between collectivist and individualist readings of self-determination. If it is a state that is self-determining, as a collective institutional entity, then it cannot enter into association with individuals, but only with other collectives. If it is associations of individuals that are self-determining, then the right to associate and disassociate with individual immigrants does not easily translate to the freedom of state to exclude.

comparable to standard threats to it. Determining political status freely refers to decisions about how the collective seeks to be ruled, independently or as a part of larger collectives, and refers to the standing of this collective in the international state system. Having the scope of freedom to rule without interference from the outside generally is not under danger from immigration. Immigration, however, does have some effect on the receiving states, since immigrants inevitably enter the territorial jurisdiction of the state, and subsequent membership.

The next segment looks at the extent of this effect with respect to the internal aspect of self-determination.

### ***5.2.2. Internal self-determination, changes of the character and control over the future***

Internal dimension of self-determination is taken to refer to the way a political collective or the state is politically organised. For a collective to be able to govern itself and direct its future development, a political order that represents the interests of its members must obtain. Internal self-determination requires that political power be derived from and authorised by the people over which the state institutional structure rules. When focusing on the internal dimension of self-determination, the relationship between immigration and political arrangements that allow popular sovereignty are considered. This segment will then provide insight into the important elements of seeing membership changes fostered by immigration in opposition to the possibility of the political members of state to self-govern, or to have the capability to control their political environment. The effect of immigration on democratic or quasi-democratic institutional arrangement of the state is observed, followed by connection of the membership change to control over future development of the society and changes in character, which are for proponents of the argument selected as relevant aspects of self-determination.

#### ***5.2.2.1. Democracy in duress?***

Connection between immigration and self-government of the political collective is often framed in terms of the effect of immigration on democracy (Miller, 2016c, pp. 64–65; Song, 2018a, p. 67), or political arrangements which are supportive of political participation and social justice. These matters are generally reliant on empirical conclusions which are until now, not conclusive, or universally applicable (Banting &

Kymlicka, 2017; Holtug, 2021, Chapter 5). However, *if* it could be shown that immigration negatively affects democracy or other institutional arrangements supportive of internal self-determination, then there would be a case for the right to exclude.

Democracy (or other regimes of popular sovereignty) and social justice, may be seen as important social goals, without which, self-rule and provision of justice for members, would be significantly constrained. The effect of immigration on democracy and social justice is often cited in the liberal nationalist argument for the right to exclude (Miller, 2016c), but also in some cosmopolitan arguments as well (Christiano, 2008).<sup>93</sup> The connection is often made between political stability and trust which changes in membership composition and its character may destabilise (Christiano, 2008, pp. 956–957; Miller, 2016c, pp. 64–65). Lack of mutual trust, and trust in institutions of society, may arise when migrants with different cultural, but also ethnic, religious or racial characteristics, bring diversity to the society and change general make up or character of the society in question. Such diversity may bring about lack of mutual understanding between members of society, relating to e.g. language, but also to the democratic ethos or ways of life. These changes are claimed to have a potential disruptive effect on political stability, may lead to the unwillingness to promote social justice and welfare, and may bring about social tensions and unrest. Since democratic functioning requires a significant level of cooperation, solidarity and sacrifice for benefits of others, significant decline of trust fostered by changes to the make-up of the society may imperil democracy as constitutional arrangement of states in question (Christiano, 2008, p. 955).

If immigration can be shown to have such a detrimental effect on the functioning of regimes of popular sovereignty, there would be a case to show that important interests self-determination serves is imperilled by free immigration. Regimes of popular sovereignty, like democracy, allow individuals (a level of) political freedom, and ability to participate in decisions that guide important aspects of their life. These political arrangements are also connected to the provision and protection of rights and freedoms of members. Only when these conditions are present, can it be shown that

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<sup>93</sup> Christiano (2008) moving from the cosmopolitan stance highlights that e.g. democracy is a goal that should be protected, even by limiting immigration. While free immigration is a way to bring about a more just and equal world, if it can be shown that its exercise limits democracy (and the way forward to its global counterpart), then there is a case to limit and control it.

persons have adequate control over their lives (both personal and collective) and their political surroundings. If changes in membership composition, especially by immigration, are a risk for this functioning, then the right to control membership may be of importance for securing conditions of self-government. Self-composition could then be seen as *supportive* of self-government.

While the effect of immigration and diversity on both social and institutional trust is debatable and inconclusive (Banting & Kymlicka, 2017; Dinesen & Sønderskov, 2018; Holtug, 2021), hard to measure (Bauer & Freitag, 2018) and context dependent (Letki, 2018; Mattes & Moreno, 2018), it is important to stress that it still need not warrant general right to exclude. Apart from the fact that these matters warrant additional empirical research, the connection between democratic functioning and exclusion may be overemphasised.

Thus, even if it can empirically be shown that diversity and immigration affect trust and that trust affects democracy, restriction on free movement is not the only answer in fostering the institutional order of popular sovereignty. Even in conditions of more extensive freedom of immigration, it is ultimately the society that controls the process of integration and subsequent naturalisation that regulates acquisition of the full membership status by which immigrants can potentially affect internal institutional arrangement of the society. Under standard integration processes new members are set on track to come to endorse political processes and institutions of the host community. Potential new members are actively shaped by the policies of society (Sager, 2007, p. 70). These policies, which foster political, social or even cultural integration (Miller, 2016c, Chapter 8) are in the hands of the political collective, and it is not clear that preventing immigration is the only, or even adequate mechanism for fostering trust and protecting the institutions of popular sovereignty. While migrants with different backgrounds may bring changes and different social dynamics, it is the task of society to make sure that these do not negatively affect the democratic ethos or social justice. Collectives have many policies at disposal to foster solidarity (Song, 2018a, p. 68), to accommodate new members in cultural, social and political life of the society, and to shape conditions of their stay. Politics of solidarity is built over time, engaging various actors like civil society and political parties (Banting & Kymlicka, 2017, p. 27). Quality of institutions, their effectiveness and impartiality, provision of social justice and rights protection, with open naturalisation policies, multicultural integration, and political participation, may be used to build trust and solidarity (Banting

& Kymlicka, 2017, p. 33; Nannestad et al., 2014; Zelič, 2020). Democratic institutions also play a role in building trust (Warren, 2018), as much as they are seen to depend on it. Trust is also dependent on the way migration is represented in a society, and on the way national discourse on migration is shaped (Holtug, 2021, p. 139), and these mechanisms are under control of the society. Exclusionary policies, on the contrary, may even have a negative effect on political stability, since at times, they may target groups of immigrants that share cultural, religious or other characteristics with members of the society, which may also create resentment, lack of trust and political and social unrest.<sup>94</sup>

To prevent admission, in function of the protection of what can otherwise be protected, by e.g. selection of different domestic policies, is to unjustifiably overemphasise the connection between exclusion and stability.

Holtug (2021, p. 140) argued similarly with respect to protection of social services.<sup>95</sup> “If negative effects on social cohesion are not inevitable but can be prevented or diminished [by internal policies], states cannot simply appeal to these effects to justify restrictive immigration policies.”

Task of protection of democracy and political participation is, in virtue of the individual interests it serves, of great importance. It should rely on a robust set of policies and institutional mechanisms. While exclusion in some cases may be justified, its relevance is contextual, and reliant on empirical support.<sup>96</sup> It can thus support only the conditional right to exclude, and not the extensive right to control admission of immigrants into the society. Large scale migrations may e.g. provide a stronger effect on the democratic functioning, then more sporadic immigration would. Also the similarities between populations, e.g. their cultural backgrounds, or their willingness to cooperate and participate in political functioning of society, could play an important role for the stability of political functioning. For some societies then, immigration may have more negative consequences on the political institutions, while for others, this impact may be more limited, or even positive. In cases in which the former is the case, and

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<sup>94</sup> Some studies showed that it is not diversity itself, which is driving lower levels of trust, but rather segregation (Dinesen & Sønderskov, 2018; Uslaner, 2012) and discrimination (Levitt, 2015).

<sup>95</sup> Some of these policies may be overly costly or burdensome, and exclusion may at times be a more cost-effective option, but the point is that it cannot straightforwardly be derived from the mere fact that there are some negative effects of migration on trust or social cohesion (Holtug, 2021, p. 140).

<sup>96</sup> Banting & Kymlicka (2017) also conclude that the relationship between solidarity and diversity is contextual. Different types of diversity may affect different layers of solidarity (civic, democratic or redistributive).

immigration may evidently bring about destabilisation of trust, solidarity and by extension social justice and democratic functioning of society, there would be a case to exclude based on the protection of self-determination of the political collective. However, these notions are, as Christiano (2008, p. 961) also concedes, hypothetical. It seems that worry about trust and stability, which are important aspects of political functioning supportive of internal self-determination, cannot ground *a general right to exclude*. The extent of such right is limited to the cases in which it can be shown that trust and stability are under threat from immigration.

This chapter does not further explore the role of trust in fostering democracy,<sup>97</sup> but it is rather more focused on the connection between membership control, character of the self, its future development and self-government, which are recognized as essential elements of the right to self-determination.

#### 5.2.2.2. *Character change, control over destiny and self-government*

The main concern of this segment is the relationship between *character change* affected by migration and ability to *self-govern*, where self-government is taken to entail the control over future development of society or its destiny. First, some consideration is given to the character change in relation to self-government, followed by the analysis of the relationship between self-government and future development of the society.

##### 5.2.2.2.1. Changes to the character of community and political freedom

As previously stressed, proponents of the conventional view, like Miller (2016c), Wellman (2011), and Walzer (1983) worry that changes to the character of the *political community*, which immigration brings, affect its self-determination. Immigrants with different values, culture and goals, are claimed to affect the way community changes and develops. New members bring new values, ideas or political stances, and in turn affect policies that are collectively elected, and with this, the way the community may look like in the future.

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<sup>97</sup> This topic is of great practical relevance for devising and modifying policies that deal with internal diversity and pluralism. Trust is here only dealt with briefly, as a social norm which underlies democratic functioning. Its role in the societies is of great relevance and is subject of further empirical and theoretical treatment (Uslaner, 2018). Holtug (2021) has engaged in extensive overview of empirical literature with respect to the effect of immigration on social cohesion, and has indicated that results in these areas are mixed, but his normative argument does not show that general right to exclude follows from the protection of welfare state and conditions of trust.

Changes in the character of the community therefore become of importance for self-determination. What this change precisely means is, however, left relatively open. It can be interpreted as a change in the public culture of the society (Miller, 2016c, Chapter 4; Sager, 2007) that encompasses political values relevant for internal institutional arrangement, including liberal-democratic ethos. It may, also, refer to other, more general changes in the political community; its economy, social and political functioning, civic and democratic values and its culture. The character of the community may thus entail both more thicker notions, including general culture as a way of life, and thinner concepts of political culture. Here, we can understand it as containing collective goals, commitments, and values, which motivate collective action. These are products of both thicker culture and its thinner, political counterpart. Character of the self may then refer to a number of qualities, cultural and political, including pluralism of cultures, religions and nationalities of its members; but also the shape of public space and general arrangements of the society, including population number and density. These matters may be relevant for the members of the political community (Miller, 2016b, 2021a, pp. 173–175; Wellman & Cole, 2011, p. 40), however, it is not clear that this investment into the shape of the self, in and of itself, when not restricting self-government, warrants exclusion. These authors do not stress that changes to the outlook of the community immigration brings are all negative. New members may fill in workplaces, bring new skill sets and help in institution and capacity building of the society, also having positive effects (via e.g. remittances) on development of sending societies (Oberman, 2015). The real question is whether these changes, being positive or not, affect self-determination. While political society may well be invested into the way its community looks like and how it develops,<sup>98</sup> it remains to be seen if these matters, which are claimed to be guided by membership control, are in relevant sense connected to the central value of self-determination, or self-government.

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<sup>98</sup> For the sake of the argument this collective investment into its outlook or future is here not problematized. It is taken that collectives, irrespective of individual dissenters and disagreements, may hold general aims, values and goals, and may on the general (public) level reflected in political process, be invested in the way its future unfolds. This is, however, a charitable interpretation, for it is not clear that in reality, states can be characterised as communities with common will. Furthermore, internal conflicts around aspects of public culture (e.g. what society should or should not be proud of) and about the direction of future development are evident in the politics of democratic states, like the US (Sager, 2020, pp. 64, 69).

Van der Vossen (2015) claims that character change of community does not restrict its self-determination. He shows, in the analogy with individuals, that not all aspects of one's character can be under control (2015, p. 282). This, however, does not necessarily affect *autonomy*, or self-government.

Without entering into the much debated and complex field of autonomy and its requirements,<sup>99</sup> we can posit that autonomous agency *minimally* consists in an individual acting aligned with his values, commitments and judgments. It is a self-directed agency, or the ability to direct our lives in line with our judgments (Stilz, 2019, p. 101), and our practical reason. It is a form of authorship over one's life (Miller, 2021a, p. 172), consistent with similar claims of others.

Autonomy is compatible with changes that occur in an individual's character. Individual can, clearly, in the course of her life, change her considered values, judgments, commitments, which impact her agency. When the way an individual acts is still in a relevant sense connected to these judgments and values, an individual, it seems, still acts autonomously (van der Vossen, 2015, p. 280). However, the way these changes are acquired and further dealt with is of an importance to individual autonomy (2015, p. 280). Some changes will occur unwillingly, and some may occur via coercion or manipulation. When these newly acquired values, commitments and judgments or changes are evaluated by individuals, and endorsed or rejected freely, changes need not overstep personal autonomy (2015, p. 283). An example might be of help to grasp these ideas. Individual may, perhaps, be a convinced meat eater. By chance, this individual may encounter a convinced vegetarian and form a friendly relationship with her. Vegetarian friend may, by regular communication and interaction, affect a meat eater's values and judgments with respect to her dietary choices. Meat eater may, based on the impact of her friend, come to endorse a different set of values with respect to eating meat, and even change her habits by becoming a convinced vegetarian. In this sense, a meat eater changed her values and beliefs, and her character, under the impact of outside influence. She did not, however, lose her autonomy, since changes in her values (and with it related actions) are rationally evaluated and endorsed by her. She could have freely rejected them as well. As long as she is not manipulated, or forced to accept new values, substantial changes in values and judgments, and the way she acts, are the result of her autonomous choices.

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<sup>99</sup> For overview of the concept and its use in moral and political philosophy see Christman (2020). The core of the most conceptions of autonomy is self-rule or self-government, as highlighted above.



If she were to encounter a group of militant vegetarians, who altered her judgments and values by brainwashing, her newly acquired values would not be a result of her deliberation and rational evaluation and are not under her control, and would therefore constitute the loss of autonomy.

For an individual to remain self-governing, in light of changes to her character, it is, therefore, important that newly acquired values or traits can be reassessed and shed, or that they are not acquired by processes like manipulation or coercion, that bypass standard individual's evaluative and rational faculties. The idea is that an autonomous individual, while unable to control all aspects of the way her character changes, should be able to evaluate and decide upon newly acquired values or aims and to decide whether to keep or reject them and whether to act upon them (2015, p. 283).<sup>100</sup> What additionally may be required, is some level of continuity between versions of the self in time, so that the future self may relate to self in the past (Miller, 2021a, p. 170). Individuals may substantively change their character, values, goals and aims, and remain self-governing, if change did not occur coercively from the outside. Additionally, an individual should be able to relate to the past self, where change is seen as a process motivated by his own concerns, as Miller (2021a, p. 170) observes. In this sense, having a vegetarian friend non-coercively influencing values of a meat eater does not present a disassociation from the former version of herself. Former meat eater's previous values are discernible to her, she can relate to them, and she can understand her changes as her-own, with motivation to change as her-own. In cases of brainwashing, this relationship between her former and newly acquired values lacks this connection.

Similar conditions may be seen to hold for the political community.<sup>101</sup> The right to self-determination of the political collective, or state, protects a form of collective autonomy. It is understood as a freedom, which allows a collective or a state to choose

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<sup>100</sup> Van der Vossen (2015) offers a detailed account of these aspects, and here I mostly follow him and Stilz (2019), who understands autonomy in terms of acting aligned with one's considered judgments. Interestingly, Miller (2021a) uses comparison between individual and collective autonomy as well, but to derive different conclusions.

<sup>101</sup> This claim warrants caution, since seeing administrative and collective entities like state as analogous to an individual, may bring to light strong (not fully justified) conclusions, like those offered by Wellman (2008, 2016; 2011). Using such comparison in this context does not imply that the same rights should be derived for collectives, as for individuals. This comparison is used to highlight what are conditions of autonomous agency, and what are instances which may constitute its restriction. Protecting the autonomy of an individual and collective, respectively, does not require the same rights, or actions, nor should be interpreted as equally important. Collective self-determination and other collective rights are relevant insofar as they protect individual interests and rights.

how to act independently, based on the collective values and goals. It is a form of self-directed life of the collective (van der Vossen, 2015, pp. 272–273). If we understand collective values, commitments, goals, and its public culture as making up the general character of the political community, then in analogy with individuals, changes in these aspects need not be seen as limiting collective autonomy.

For immigration to change the character of the political community more than regular immigration of persons with different aims, goals and political values must occur. These values should, that is, rise to the collective level, and enter into the process of deliberation and decision making (2015, p. 283). Such a process takes time and is contextual. However, even if migration brings changes to the society, bringing about different values that become candidates for collective behaviour, this change is not in conflict with self-determination of the political collective if it is in line with regular procedures by which society chooses, evaluates and acts (van der Vossen, 2015, p. 283). For immigration to bypass these procedures the introduction of new values and traits to the collective should arise by sidestepping and subverting regular decision making and deliberation process, or the ability of members of the collective to assess and choose action upon newly introduced values (2015, pp. 283–284). This means that regular migration, by which different individuals bring new values into the society, by which these values may, gradually, become a part of decision-making process and by which changes in the character of community occurs, need not present the restriction of the autonomy of the collective. Values and judgments of immigrants may affect the collective ones, but this is generally a process that takes time, it is mediated by institutions of the society, and it is evaluated publicly, subject to assessment, choice, admission or rejection. In this sense, the connection between previously held values and judgments may be discernible. Society on a collective level may come to endorse substantive changes to its general outlook or values which guide its politics. As long as these changes were not forced upon, changes in character of the community need not affect its self-government.

The ability to self-govern seems not directly conditional upon the preservation of the character if changes in the community arise through non-coercive processes and are conducted through institutions of the society.

Societies, furthermore, change constantly, by regular generation shifts, by introduction of new technology, cultural traits, values or other effects of globalisation.<sup>102</sup> Not all that affects a community and its character can, or even *should*, be under its control. If a state were to control or potentially seek to limit all outside (or internal) elements which may change its character, its legitimacy could come in danger, since such a state would inevitably be compelled to extensively control and restrict freedom of its constituents to travel, associate, form relationships outside their communities, gain knowledge, enjoy culture and art originating from other societies, etc. Many aspects of globalisation, like cultural influences, technological advancements or business connections bring about changes to the character of the self, introducing different values, commitments and aims to the society. Most of these aspects occur without the political community having a say over these changes or welcoming them, for that matter, and often without even immediately realising that they happen. More traditionalist society may change its values and become more liberal due to different cultural influences. Industrial society may eventually become more ecological, based on cultural impact, business associations, or even actions of global civil society. Changes to the character of societies happen almost inevitably, as time passes, population changes and outside influences, of which immigration is a small part, occur. Focus on changes occurring due to immigration, which is highlighted by proponents of the argument, may be overemphasised, for it depends on a number of different factors, such as rate of immigration, absorption capacity of the society, discrepancy between values and traits of immigrants and host society, overall integration policies and other *empirical* matters (Carens, 2013, p. 285; Sager, 2007).

As the autonomy of an individual is not restricted if changes occur to her character, the ability to self-govern does not disappear if the character of community changes. It is still *that* political community making the decisions for *itself*. In this sense continuity between formerly industrial or traditional societies which have changed their values substantially is present. This is the same society, which has integrated new values, under the external influence. When this value acquisition was in line with

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<sup>102</sup> Local example may in this sense be illuminating. City of Rijeka, which was previously famous for its rock and punk culture, has recently become a city of folk music. These changes occurred by multiple influences and generational shift, and are, while perhaps lamentable for citizens which identified with its former rock culture, a normal process of cultural change, in which e.g. migration did not play a relevant role. Examples like these are everywhere, and they show how cultures and ways of life inevitably change.

collective decision-making and when it occurred without external coercion, it is not incompatible with self-government of this society. If changes in the character of the society which occur by the outside influence by media, relationship with other states, technological advance or changes which occur with generational shift within the society may be compatible with autonomy of the collective, the same seems true in the cases of migration as well.

Two important conclusions are to be derived from this analysis. First is that immigration is only one of the factors which may bring about changes in the society. Traditional values of the society may change by immigration of liberal individuals which endorse different values, but it is often the result of multiple factors, both external and internal to the society. Secondly, these changes need not destabilise autonomy or present the rupture to the continuity of the self, when they are not disruptive of the regular way by which the collective evaluates values and chooses to act upon them. For migration this means that when liberal migrants arrive in traditional society, they may voice their preferences, engage in some liberal practices (which are within the law), even organise to propose them (e.g. by organising protests), when politically accommodated they may introduce new topics in the public debate, vote for representatives which hold them, thereby impacting collective values. They may even simply engage in and live their ways of life without immediate political activities, which also may foster some changes. However, even if this process eventually leads to substantial changes of the society, in which it e.g. rejects its former traditional values to become more liberal, this process did not overstep the autonomy of the collective. New members with different traits, values, judgments or conceptions of the good life and justice may bring changes to the collective, but as long as the change is happening within regular institutional procedure, which allows for collective to assess and deliberate such changes, it is not clear that the political community requires control over membership composition and its character to remain self-governing.

Such changed character of the political society, will, however, lead to changes in the current choice of policies and future development of the community. This change is in focus of the next section.

#### 5.2.2.2.2. Self-government and control over destiny

Future development of the community is seen as affected by changes in its character. New values, goals or commitments present in the society will have a bearing on the way it develops. For formerly traditional societies, introduction of liberal values in the public culture will affect social, economic, educational policies and will affect the development of the society in the future. The question is what to make of these changes with respect to migration and self-government.

Choices of policies, reflecting changes in the make-up of a community (be it cultural, social or political), will potentially be different to what collective aspired to previous to inclusion of new members. This will not only have a bearing on the future, but also on more immediate political choices. When new members arrive they will have some impact on social justice, and may require more direct recognition of e.g. cultural differences and more costs for securing them, contrary to the way it previously aspired (Miller, 2021a, p. 174). This control over the way community evolves, is emphasised as an important segment of self-determination (Wellman & Cole, 2011, pp. 40–41). Political community is understood as invested into the way it *is*, or what are its values, aims, commitments and its general outlook; and the way it develops, or as van der Vossen (2015, pp. 274–274) termed it, *its destiny*. These dimensions are related, and understood as connected to the membership constitution. Control over future development of society may be understood as investment in the political, social, cultural, economic and other future outcomes of the collective (or state). These outcomes are affected by changes in the community and its membership, since new political members will participate in the political process, bring about new ideas on the political agenda, choose political options which better reflect their values and act through other mechanisms, like civil society to put forward different issues, goals and ideas in the public sphere. Immigrants, which bring changes and eventually become political actors, are claimed to affect policies the collective will elect, and which will lead to different future outcomes. Policies, will, that is, change, to reflect changes which occur in the constitution of society, but also to reflect other changes in the general aims, commitments and values the society endorses. Proponents of the self-determination based argument, as explained in the previous chapter, connect the membership change with future development of the society. Self-composition, or the control over membership, seems to be required to have control over the future of the community.

Van der Vossen (2015, pp. 274–275) questions the soundness of the right to control *the destiny* of a community in the first place. The right to control where both individuals or communities end up, does not seem to fall under the purview of self-determination or autonomy rights. While people, as communities, may be invested into their future, and care deeply about them, it is not always the case that them not ending where they intended to constitute the lack of their freedom or autonomy. Not being employed where one intended to, or not being married to person one intended to, while unfortunate, do not constitute the loss of autonomy, or trigger additional rights to protect desired outcomes. This means that the autonomy rights, and self-determination rights, cannot protect against everything potentially affecting us (2015, p. 274). What may fall under the protection of self-determination rights are some conditions that make self-directed agency possible. For an individual, e.g. what is of importance is that some economic or social preconditions obtain which allow autonomous agency. Protection of capabilities or real freedoms and opportunities (instead of functionings, or concrete actions and states of individuals) is an example of this. If an individual does not have enough to eat, or is not physically safe against violence, he can hardly in the relevant sense be free to pursue her desired occupancy, associations, or other different functionings. Political collectives may similarly require some preconditions to achieve free political functioning, e.g. they may require some minimal level of global justice to be able to act politically free. Political freedom need not require these collectives achieve their desired political goals.

However, even if there is a right to control destiny or future development of the society in some manner, if that destiny changes due to non-forced change of the character of the community, in light of newly acquired values and aims that can be reassessed and abandoned, it doesn't seem that the self-government is restricted. The change to the desired political, cultural, economic outcomes rather comes about from the *self*, that, however, changed. Similarly to previous examples of states with changed values, aims and commitments, if a state that wished to industrialise, due to various non-coerced influences, changes its general commitment and policies to sustainable and green economy, it did not experience loss of its political freedom. Its future development changed to reflect changes that occurred in its public character. Such changes often arise due to various factors, immigration being one of them, but also via other internal and external factors, like activity of civil society or even economic incentives from the outside.

The main idea is to show that collective future outcomes may change due to the changes which occur in the collective through time. Some of these changes are not directly under control of society, but when such changes occur within regular political and social processes in the society, and enter the political arena via regular channels, then it is not clear that they constitute restriction of self-government.

Perhaps, the control over the development process itself should be in focus, more than concrete future outcomes.<sup>103</sup> Political collective may, thus, wish to control the process of its political, social, cultural and economic development. Not the concrete outcome of the policies is of main concern, but the political process which leads society to such outcomes. This control, especially in democratic societies, is, however, directly in the hands of the political community (in a limited manner, however, but it is as democracy generally functions). As long as the institutional conditions of popular sovereignty are secured, which allow members of the community to have a say over institutions and policies, it is not clear that substantive changes which may occur in different policies, leading to the changed outcomes, bring about loss of political freedom. Political collectives do generally have some economic, political, and social agendas, but these are often strategically shaped, and integrated into the more general political process, overarching strategic documents, institutional framework, political narratives, and are under the influence of media, civil society, arrangements with other societies, treaties, etc. These agendas may change, and they do, but when this change comes about through institutional process, it is hardly correct to say that such changes constitute loss of self-determination. In this sense, previous examples of changed societies, which will inevitably have different social, economic and political outcomes than ones previously aspired to, show that self-government does not rely on character change and that it may be compatible with changes in future development. What seems to be of importance is the way changes occur. For control over destiny, the process of decision-making is of importance, and it should minimally entail mechanisms that allow political participation to the members. In this sense, members

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<sup>103</sup> Control over future outcomes of the society, or its destiny, does seem to be conceptually problematic. It is not fully clear what this control precisely means. At what point of time is the development outcome to be assessed? Is it overall outcomes in some specified timeframe, or it refers to outcomes of particular policies? Furthermore, how could this control practically unfold? It seems that both individuals, as collectives, may only control their agency, and not the final outcome of it, in sense of where they end up. Understanding control over future development, which proponents of self-determination based argument stress, as control over the process of moving towards some goals, seems better aligned with the way real political agents act.

can change, but they should be the ones that guide the development. And this includes new members as well, immigrants and next generations, which are accommodated into the political process.

Both changes in the character of a community, and changes in its future development do not constitute loss of self-government, when certain institutional preconditions, supportive of popular sovereignty, are present. These non-coerced changes are, that is, compatible with the exercise of self-determination, when this right is understood as primarily referring to self-government of the collective. Control over membership composition in this sense does not seem necessary to secure self-government. Collectives and states remain self-governing even when the character of the membership changes by immigration, and when these changes affect future development. To have control over development an institutional arrangement which allows this control is necessary, and not control over membership composition. As indicated previously, what is essential for self-government is institutional arrangement which allows it. For the ability to exercise internal self-determination, thus, an institutional scheme that reflects the shared commitments of the population is needed, and not control over membership or character of the society.

#### 5.2.2.2.3. Internal self-determination and migration

Where is the place of immigration in such a process? The conclusion seems similar to the one presented in the case of external self-determination. If it is the institutions and political process of the society which is ultimately of concern, then regular immigration, whereby immigrants enter the society to become its part and to endorse its institutions, irrespective of changes they bring, does not restrict self-government. Self-government in this sense does not require membership control. Even when the character of the community is of importance and its future development, membership control is not needed to secure self-government, but the institutions which allow controlled process of the change and development.

This need not mean that immigration may never lead to the restriction of self-government, and internal dimension of self-determination. Changing institutions coercively, when e.g. a large number of migrants with radically different values enters the political process in a short time, presents the instance where internal self-determination is at risk. However, as previously mentioned these instances are more



appropriately described as an outside takeover (van der Vossen, 2015, p. 284), or institutional usurpation comparable to colonial annexation<sup>104</sup> (Stilz, 2019, p. 193), then regular immigration. To achieve such institutional overtake, numbers of migrants, with distinctly different political values, should be massive enough to change institutions *coercively*. However, these are precisely the instances in which restrictions on freedom to immigrate would be justified. If a large number of ecologically disposed immigrants would threaten to overflow the industrial society, presenting a threat to overtake institutions and to radically change the society in question, then society would be at full liberty to prevent immigration. This, however, does not give rise to prevent any migration, especially when it is paced, regular and within integrative capacities of society, and by which threat to political institutions of the society does not arise.

To return to the strains on democratic institutions which immigration may bring, we may hypothesise that changes in character of community may lead to changes in future political development into e.g. political systems which are less ideal, or e.g. which are not liberal or which do not endorse democracy. However, even if liberal democracy is substituted for some other political arrangement as a result of new members bringing new ideas and values, if this change arises through regular institutions, and not coercively, it cannot be said that it came about by restricting internal self-determination of the collective. Rather, though perhaps lamentable, it is precisely the expression of it. As long as there are mechanisms of popular sovereignty present, minimally ones that allow members of the collective to revoke this institutional change or to express dissatisfaction and as long as institutional make-over came about by reflecting shared will of the collective, it does not restrict political autonomy of individuals (Stilz, 2016b, pp. 110–111), nor it disables self-government. Institutional result of internal self-determination, thus, may be an arrangement that falls short of democracy. However, if it came about through the regular process of decision making, it did not sidestep self-government. When certain preconditions obtain, like government accountability, mechanisms to revoke or protest government decisions, protection of basic rights to inhabitants, and possibility to create deliberative public

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<sup>104</sup> Very powerful individuals, or different groups of individuals, may overtake political institutions, as examples of the number of dictatorships and autocratic regimes show. Such institutional usurpation, would constitute loss of internal self-determination, or better said, its negation. This generally obtains within states that have much weaker institutional arrangement than democracy, that are failed, and usually not legitimate to start with. Wenar (2017) shows how some of these processes unfold due to unjust global relationships. It is not clear that such a situation may emerge as a result of migration.

opinion (Stilz, 2019, pp. 127–128; Wenar, 2017, pp. 227–228), then changes in institutional structure do not constitute restriction of political autonomy.

There is a possibility of further erosion of institutional structure to suboptimal political regimes where popular sovereignty is lacking, however, as previously indicated, society has a number of internal policies to safeguard against potential threats to popular sovereignty, both from immigration, and different internal activities and agents, like radical subgroups of citizens. In cases in which democratic regimes would further erode into regimes where institutional preconditions to internal self-determination would disappear, then the political freedom of individuals, and their ability to control their political environment would disappear. Protection against such erosion is warranted, since it would constitute negation of self-determination itself, and values it is grounded on. However, I am not convinced that exclusion of immigrants is the primary policy of this kind, as stressed previously, since immigration is generally a process which entails foreigners aiming to become a part of society, faced with a range of integration policies which shape conditions of their naturalisation. Societies should, moreover, devise policies which safeguard against such institutional erosion, irrespective of immigration. Even in cases where potential immigrants are manifestly antidemocratic, if such migration is not massive, and if it allows for controlled process of integration, the exclusion is not immediately warranted.

### **5.2.3. *Immigration, institutions and self-government – summary***

While the exercise of freedom in immigration and self-determination are generally taken to be incompatible, it is not, as shown, clear that regulation of membership by discretionary immigration is critical for self-government. This segment tried to investigate the links between membership control and self-government to show that self-government does not necessarily rely on membership control.

Self-government and political autonomy, that is, require political institutions being of a certain quality, and not control over the membership acquisition. Immigration represents *adding to* the membership, by among other things, a controlled process of integration, and as long as this membership brings changes and decisions via the endorsed political procedure and recognized institutions, self-government seems not restricted. For self-government of political collective two important conditions seem to be required. On the one hand, external dimension of self-determination requires that

the relationship between collectives is justly ordered, so that collectives may freely engage with others, determine their political status (e.g. independence or mergers), and to have a standing which allows them to pursue their internal matters without outside intervention. On the other hand, the internal dimension of self-determination requires institutional structure which allows political members to control their political environment and decide for themselves. It requires political institutions being of certain quality. Regular immigration, bar extreme circumstances, does not constitute external coercion of the political collective, since migrants aim to become its part. Changes they may bring to the general aims, values, commitments and public culture of society, and subsequent economic, political, social or cultural development of society, when processed through regular institutional structures and decision making, do not sidestep internal self-government. Self-government is, furthermore, compatible with changes in the character of the community, and with changes in the future outcomes or development of the society. Changes in membership composition which affects these dimensions, as long as it is within the regular institutional framework of decision-making, is compatible with autonomy of the collective. Thus, self-government does not *conceptually* rely on control of members or changes in the character they bring, nor is the empirical connection of the two as straightforward as some worry, but rather conditional upon number of variables.

Even if immigration may be claimed to affect composition of the self, its character and continuity in a different manner than generational shift would (Miller, 2021a, pp. 173–174), with profound impact on current and future policy choices, this need not constitute loss of the self, its continuity or its self-government. Absent complete institutional rupture, which is very unlikely, it is still the same (albeit changed) *self*, making policy choices for *itself*.

In this sense, it is worth highlighting, that while self-determination is often stressed as a determination or definition of the self, which then seems to entail control over membership, it is best read as determination of the status and agency of the self. Self-government in this sense, as interpretation of both internal and external dimensions of the right indicate, refers to collective being an agent that freely acts (with the constraints of freedom of others and their human rights). It need not be interpreted as referring to the way character of the community is and who its members are.

### 5.3. Chapter summary and the way forward

Immigration control, this chapter aimed to show, is not *essential* for the main interests of the collective to self-rule without external coercion, nor for exercise of the individual interest for political autonomy. Membership control by immigration restrictions seems not to be an essential part of self-determination. The exercise of general freedom in immigration thus seems compatible with exercise of self-determination, when this collective right is primarily conceived as self-government. This goes against the claim which some proponents of the conventional view endorse, that membership control is at the heart of self-determination. This chapter therefore, aimed to show, first, that self-composition has a host of unwanted consequences and that it should be abandoned as a layer of self-government, and then, that neither external nor internal dimension of self-government requires self-composition.

This analysis is, however, limited. Self-determination is a complex concept and a contested right. Even if it is *primarily* conceived as self-government, additional conceptual layers of this right may be grounded, including the interest to control composition of the community. This, however, requires additional conceptual work. Potentially illiberal and undemocratic consequences of such reading of the right, which sit uneasily with human rights protection, make this task of justifying self-composition especially arduous. Referring to protection of political autonomy and freedom cannot, furthermore, directly ground self-determination as self-composition. While migratory movements in non-ideal context, especially when forced by political instabilities and wars, may negatively affect democratic institutions of host societies, this may ground only conditional, and not general right to exclude.

Though not relevant for preservation of self-government, immigration policies may, however, rightly be seen as policies that, allowing for some restrictions following from global justice and human rights, self-determining collectives have a right to choose and exercise. Status of immigration policies as falling within the scope of self-determination are observed in the next chapter, with aim to show that immigration is emphatically not only a matter of self-determining community, and is to be dealt with taking much wider context into account, including legitimacy of the system of sovereign states.

## **6. SELF-DETERMINATION, GLOBAL JUSTICE AND MIGRATION POLICIES**

This chapter takes a closer look at the argument from self-determination from the standpoint of global justice. Previous chapter aimed to show that self-determination does not automatically entail migration controls, since exercise of political freedom need not rely on control over membership composition. The right to control immigration, may however, still be a policy which the self-determining community (state) has a discretion in choosing, in virtue of it being one of the policies states (or its constituents) may choose when exercising their political freedom. Key purpose of this chapter is to offer reasons to abandon this claim, by analysing immigration and self-determination in the context of wider global relationships. Decisions on immigration are not, emphatically, a purely self-regarding affair of the state in question. To show that this is the case, understanding of self-determination, immigration and the state system employed in self-determination based arguments for the right to exclude will be analysed. In this sense, I will try to show that setting of the stage of the discussion is misleading, and does not do justice in representing the relationship between immigration and self-determination as it unfolds. Furthermore, I will claim that if the exercise of self-determination is dependent on legitimacy of the state and state system, then discretion on migration policies may be additionally limited, by seeing migration as what contributes to the conditions of legitimacy.

This chapter should not, however, be read as offering a comprehensive account of global justice, nor more specifically, an account of immigration justice. Its main aim is to show that understanding self-determination and immigration in the analysed argument should be reevaluated. When these aspects are placed in the context of legitimising the state system and global justice, then *general* self-determination based right to exclude immigrants, does not seem as a viable option.

### **6.1. Self-determination based argument and global justice**

As introduced in the chapter 4, apart from understanding self-determination as self-composition, proponents of self-determination based argument for immigration controls, utilise specific understanding of global justice and role of self-determination in it. In this segment I will try to show that this understanding relies on specific

methodological presumptions, which do not grasp in the entirety the way immigration relates to territorial sovereignty. While theoretical simplifications and generalisations are justified as a strategy in the political philosophy in general, some of these methodological assumptions, however, relate poorly to the political philosophy which aims to be realist (Miller, 2016c, pp. 17–18) and relevant, or which grounds some normative conclusions on certain presuppositions, ignoring or misrepresenting to large extent others, which may motivate different conclusions altogether.

Proponents of the self-determination based argument, to summarise, generally understand duties to foreigners in a sufficientarian manner. This means that some duties are recognized, usually in the form of a respect for basic human rights, while more robust duties of social and distributive justice are reserved for co-members (Miller, 2016c, Chapter 2; Wellman & Cole, 2011, Chapter 2). These differences in understanding what is the scope of justice, depend on the idea that relationships between compatriots are characterised by shared institutions or affinities, which are missing on the global level, or are not robust enough to engender justice claims. Apart from minimal constraint on the conduct of states, which are not morally allowed to directly harm foreigners, there are no further justice claims which foreigners may justifiably direct at legitimate states in question. States are bound by taking all individuals as equals in a moral sense, but this entails merely duties of assistance to the severely impoverished or those facing various plights. Otherwise, states are morally free to pursue their interests, including restricting immigration, apart from cases in which individuals have particular claims to be admitted. This freedom is grounded in the territorial sovereignty of the states, justified by the right to self-determination. If and when it is recognized that fulfilment of some duties on the global level is due (e.g. to eradicate absolute poverty), then self-determining states have a choice in selecting the way to fulfil them. Fully compliant with collective self-determination, states are free to close their borders and offer other remedies for poverty or injustice.

This picture relies on the specific understanding of self-determination and background assumptions on the global relationships in which sovereignty is exercised.

Self-determination is understood as a valuable freedom which allows a significant level of collective autonomy. Exercising self-determination implies having a discretion in arranging internal affairs of the collectives, which means that they will develop freely, and will in the relevant sense relate to policies they elect and in turn

bear some responsibility for them.<sup>105</sup> This means that states may be considered as responsible for some state of affairs which result in their exercise of self-determination. This outcome responsibility, however, is used to inform the remedial, in sense of assigning responsibility to remedy poor outcomes.<sup>106</sup> Self-determination thus entails policy choices, responsibility for those choices barring others from intervening, unless egregious violation of human rights occurs. This understanding of self-determination contributes in understanding duties to foreigners mostly in terms of humanitarianism, which is in principle unenforceable and subject to the benefactor's choice.

To illustrate, a quote from Pevnick (2011, p. 109) is useful: "However, a commitment to self-determination includes allowing groups to pursue their chosen ends and, at least to some extent, to reap the benefits or suffer the consequences that follow. Thus, a commitment to self-determination conflicts with the position that all inequalities are unjust."

Self-determination is, therefore, taken to imply responsibility for outcomes of (internal) policies, and in turn, the choice in the way in which remedial responsibility may be observed.

Apart from commitment to self-determination, the notion of duties to foreigners is reliant on the idea of giving priority to the interests of co-members. This does not imply that interests of foreigners are completely ignored, but that when some level of rights protection is secured for all, then states are free to favour the interests of their members. This explains why it is in principle acceptable to have cultural worries or community character outweighing important well-being and autonomy interests of migrants. Giving priority to interests of co-patriots may also be partly explicable by the way sociology of the state system is conceived (Higgins, 2013, p. 180). If it is the robustness of relationships (together with identity) between individuals that give force to the compatriot partiality, then seeing states as relatively independent and self-sufficient may reinforce the notion that different duties are owed to co-members, and foreigners. In what follows, this background setting is presented and analysed. This

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<sup>105</sup> David Miller (2007a) most notably highlights the relationship between self-determination and responsibility, since he develops an account of global justice and national responsibility, where self-determination implies states having responsibility for their policies. As Higgins (2013, pp. 161, 170–173) shows, other accounts, like Wellman's and Pevnick's (2011, p. 109) also tie these notions together although in a less explicit way.

<sup>106</sup> It is worth recalling that Miller (2007a, Chapter 4) offered an account which distinguishes these two notions of responsibility, with outcome responsibility identifying who is accountable for some state of affairs occurring or obtaining, and remedial being assigned to agents to set negative outcomes right and to offer remedies for them. Bearers of these two responsibilities need not overlap.

setting should, furthermore, be understood as an instance of explanatory and methodological nationalism, as explained below.

Firstly, some proponents of the argument seem to subscribe to so-called *explanatory nationalism* (Pogge, 2002, p. 15),<sup>107</sup> or they tend to explain the causes of wealth and poverty of states and societies in terms of mostly local factors. For some like Miller (2007a, pp. 242–247) and Rawls (2000, p. 108), use of explanatory nationalism is explicit. Others like Wellman and Pevnick use it more implicitly (Altman & Wellman, 2009, p. 146; Higgins, 2013, pp. 160, 166–175; Pevnick, 2011, pp. 40–43, 62–63; Wellman & Cole, 2011, pp. 113–114). Idea behind explanatory nationalism is to show that the plight of foreigners is often related to actions of their states, which are then primarily responsible to rectify injustice occurring to individuals, with other states bearing a duty to assist or intervene where cases of severe human rights violations are present.

One instance of it is recognizable in *Law of Peoples* where it is claimed that: “...the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues.” (Rawls, 2000, p. 108).

This position is used to show that inequalities and poverty on the global level may not be instances of injustice, since their occurrence is mostly tied to local institutions, political culture, tradition and in effect expression of self-determining choices of the community in question. Some societies elect policies with beneficial effects for their general prosperity, while others may opt for policies with more unfortunate outcomes. It is their freedom to choose economic and other policies, or their self-determination, what primarily explains their relative standing and development. It is clear that not all those affected by adverse conditions are capable of self-determination, like e.g. countries marred by constant conflict or authoritarian governments (Miller, 2007a, p. 245). However, where self-determination is possible, then it seems to entail responsibility for choice of internal policies and its effect on the

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<sup>107</sup> Thomas Pogge (2002) uses this term to refer to the explanation of occurrence of severe poverty in the developing world. He is one of the most prominent critics of the domestic thesis, or the idea that local and national factors explain poverty, ignoring the conduct of the developed world and the way global institutional rules are arranged.



general level of prosperity and development. Self-determination, understood as freedom to choose and elect social, cultural, economic and other policies which guide future development of the society, and which implies non-interference from the outside, offers a partial explanation for inequalities on a global level. This, together with the notion of relational justice, or the idea that justice obtains where relevant relationships can be discerned (Song, 2018a, Chapter 5; Wellman & Cole, 2011, Chapter 2) and partiality to those with whom these relationships are formed (Miller, 2016c, Chapter 2), is used to explain why these inequalities need not be instances of injustice requiring remedy, especially in the form of admitting foreigners.

Furthermore, explanatory nationalism, which is a background assumption of some instances of self-determination based argument for the right to exclude, fits into a more general methodological framework, or *methodological nationalism* (Sager, 2018, Chapter 2), which characterises most accounts of immigration justice, both “open borders” accounts, and conventional view. Methodological nationalism, more generally, misconstrues global relationships, taking nation-state as a primary locus of analysis. The general picture of the world against which analysis of migration occurs follows Westphalian sociology, or the idea that the world is carved up in territorially sovereign states, which are mostly independent, separate and fixed units, to which generally fixed membership can be ascribed (Bertram, 2018, Chapter 1). Each person is viewed as belonging to one state, which is primarily responsible for its human right protection, and which is generally free from external influences in conducting its affairs. Immigration in this view challenges the territorial distribution of static and fixed political membership.

Within this picture, migration is often seen as a phenomenon which occurs due to some non-ideal conditions, like poverty or inequality, which for some authors like Rawls, does not even warrant a place in ideal theory (2000, pp. 8–9). It is, furthermore, painted as a phenomenon to which self-determining states react, either as wielders of the right to exclude, or as units which mostly do not possess a moral power in responding to it by exclusion. To illustrate this general tendency in treating migration in relation to understanding self-determination and responsibility against the background of explanatory and methodological nationalism, another quote from Rawls (2000, p. 8) is useful:

“I argue that an important role of government, however arbitrary a society's boundaries may appear from a historical point of view, is to be the effective agent of a people as

they take responsibility for their territory and the size of their population, as well as for maintaining the land's environmental integrity (...) People must recognize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people's territory without their consent.”

Before moving to the idea of justification of the state system, further development of these aspects is due. Following segment focuses on the way elements of this picture of the world may be misconstrued, which informs understanding of duties to foreigners and migration justice. The main intention is to show that immigration policy is an important aspect of understanding justice on a global level, and the policy which cannot be seen as a purely self-regarding policy of a legitimate, self-determining state.

### ***6.1.1. Immigration, global relations and justice***

This segment aims to show that immigration should be observed as an aspect of a more complex global relationships than represented by understanding the state system in a form of Westphalian sociology. Self-determination is, in this view, taken to entail current membership having the right to determine itself, with immigration understood as one of the policies which fall within the purview of the right to arrange self-regarding affairs. Immigration by definition, however, entails crossing of the borders and settlement in other countries. It is thus a matter of wider relationships, minimally including a sending state as well. The claim that immigration is a self-regarding matter of the receiving society may be challenged by the sociology of the way it unfolds<sup>108</sup>. Effect of migration policies extends well beyond impacting particular individuals that opt to migrate, including sending states and those that remained. This segment will engage with the way migration policies are a part of wider global relationships. The following analysis aims to contribute to the idea that migration

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<sup>108</sup> It may additionally be challenged by the potential for harm that selection of different migration policies has on the well-being of migrants (Fine, 2010). It is generally considered that states may freely elect those policies which pertain to its self-regarding affairs, as long as enforcement of such policies does not impact others wrongfully (Wellman & Cole, 2011, p. 15). However, while a number of policies which states elect freely may have a spillover effect on foreigners, like different economic policies do, an important constraint is them not bringing unjustifiable harm to outsiders. Harmfulness of exclusion need not refer only to the (wellbeing or aspirational) interests of migrants in being admitted, but also to the manner in which exclusion occurs, or enforcement of migration policies (Mendoza, 2015b; Sager, 2020, Chapter 4).

policies are not comparable to other legitimate self-regarding policies, like e.g. criminal law, taxation policy, or other internal policies, which the self-determining community has a right to elect for itself. To try and show this, immigration should be observed as a complex global phenomena, both in its causes and effects. Migration policies should, furthermore, be seen as impacting a much wider scope of agents, with profound effect on global justice.

Next segment, therefore, aims to contextualise understanding of migration policies within a wider context of global relationships, highlighting limits of methodological and explanatory nationalism in understanding it. First, some attention will be given to the background understanding of the arrangement in which migration occurs, followed more specifically with explanation of development levels of societies, which are taken to explain migratory movements.

#### *6.1.1.1. Methodological nationalism, self-determination and migration*

The way migration is conceived in the philosophy of immigration is, it may be claimed, at times overly simplified (Sager, 2016a, 2018). Most authors in the philosophy of migration seem to have adopted the Rawlsian description of state as a closed system of cooperation, where people enter by birth and leave when they die (Sager, 2018, p. 18). Each individual is, then, understood either as a member of some political community, or a foreigner (2018, p. 5), with migration understood as unfolding from fixed point A, to a fixed point B. This corresponds to the view of the world consisting in independent and diverse membership *containers*. This view is also used to motivate discussion on duties to foreigners, taking that independent states develop freely, which entails that inequalities are not unjust and that there are no extensive duties of global justice to foreigners (Miller, 2002, p. 83).<sup>109</sup> This idea is often, together

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<sup>109</sup> Wellman and Altman (2009, p. 131) use the example of separated states A and B, with no contact, as compared to individuals which live in the same country, to show that inequalities in the former do not constitute injustice as they do in cases of single society, where mutual relationships are potentially dominating. Even if states would move from exactly the same starting position, exercise of their self-determination would lead them to widely different positions on the global level. Miller (2007a, p. 241) uses examples of Ghana and Malaysia to show this. While these countries were equally poor upon liberalisation from colonialism, one developed significantly better than the other. Rawls (2000, pp. 117–118) also uses examples like these to show that relative differences between societies need not be considered unjust. These examples presuppose that states are relatively independent from one another and develop freely.

with some worries on the efficiency of liberal immigration policy on mitigation of injustice and poverty, used to argue against “poverty arguments” for open borders.

This picture of the world,<sup>110</sup> which often leaves aside more complex social reality, allows us to highlight what are some of the most important theoretical assumptions behind self-determination based argument. State sovereignty, independence, membership and its sedentariness (Sager, 2018, Chapter 2), together with causes of their relative differences figure prominently in the argument and are subject to empirical and methodological doubt.<sup>111</sup> As indicated, the background assumption of the argument is a system of independent and sovereign states with mostly fixed membership, whose members opt to migrate mostly when pushed by some negative occurrences in their states. Similar framework is found in Miller (2007a) when he discusses the connection of national self-determination and responsibility, with states being primarily responsible for outcomes of their policies, and emphatically, not being responsible for plights of needy migrants. Wellman (2008; 2011) offers a similar view when he posits states and its citizens as having complete discretion in associating with foreigners, who need not be included in the membership of the state based on justice claims. Pevnick (2011) who focuses on collective ownership of institutions based on citizen contributions, also omits taking into account that some of the contributions to a state's wealth come from external factors like global trade relationships or non-member migrants, and are not exclusively generated by the intergenerational labour of citizens. Walzer (1983) also sees states as relatively distinctive and independent, with migrants barging at the state's doors as applicants at prestigious universities (1983, p. 32).

These accounts then, it may be argued, at times obscure from theoretical focus the fact that the world is increasingly interconnected, and that states are not neatly divided, economically independent and self-sufficient, nor impervious to the external effects and policies of other states, which should be taken into account in discussions

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<sup>110</sup> The picture of containers is borrowed from Bertram (2018, Chapter 1). It is, clearly, purposefully simplified, since proponents of the self-determination based argument do see that the world is more complex than this framework allows. This idea is taken, not to create a strawman of the accounts in question, but to highlight some of the theoretical assumptions prevalent in the political philosophy of immigration.

<sup>111</sup> Sager (2016b, 2016a, 2018) develops this critique extensively, and his work will mostly be leaned on with respect to discussing some of these theoretical presumptions. This methodology is not endemic to self-determination based argument, or even political philosophy of immigration in general, but was prevalent in social sciences as well. It is, however, now increasingly abandoned in the social sciences, but remains a framework in philosophical discussions on migration (2018, Chapter 2,3).

on immigration justice (Higgins, 2013, p. 2). It may be argued that globalisation is prevalent, trade, production, finances and investment are clearly global (Young, 2000, p. 248). States stand in firm mutual relationships, affecting one another, in a manner in which it is difficult to claim complete self-sufficiency and independence.<sup>112</sup> Policies which states elect are, furthermore, influenced by international institutions and human right norms. States enter into the mutual agreements, associations and treaties which limit and shape their conduct and are impacted by global trade rules, capital flows, and by decisions of other states (Sager, 2018, p. 42). Even decisions on migration are not completely independent, since a number of conventions, most notably 1951 Geneva Convention on refugees, but also other human rights conventions, limit conduct of states. Self-determination itself is, therefore, often under the impact of external factors, including associations and treaties which participant countries enter.

Membership in the state is also much more complex, which occurrence of dual and transnational citizenship testifies to. Migrants are often allowed to retain citizenship from countries of origin or to hold multiple citizenships (Sager, 2016a). They engage in voting from abroad or political activism (Bauböck, 2005; Bauböck & Faist, 2010). Political communities are also settled by various individuals holding different rights, like temporary residents, or permanent residents which lack voting rights (Sager, 2018, p. 22). Some states like Qatar or Singapore are populated mostly by migrant workers and large expatriate populations (Kukathas, 2021, pp. 6–7). Membership-as citizenship is, especially in terms of fixed *container* membership, increasingly problematised.

Associations like the European Union testify to this complexity. Member states are conditioned in their conduct and policies by the EU strategies and general policy guidelines. Admission into the Union, which brings some benefits and protection, also comes at the cost of limiting self-determining conduct of the states both in the domestic and international realm. Member states are also populated by a plethora of individuals not strictly considered political members, students, temporary workers, temporary or permanent residents, etc. This example shows how self-determination may be

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<sup>112</sup> Some argue that the world should be observed as a scheme of mutual cooperation, or that the focus should not rest exclusively on states. The world, due to its interconnectedness, is a form of a basic structure and is therefore a site of justice (Beitz, 1979). This stance is not explicitly adopted in this thesis, but it will be claimed that mutual relationships between states have an impact on evaluating responsibility. This is especially relevant in understanding duties to foreigners and rejecting explanatory nationalism, which is the focus of the next section.

constrained by interconnectedness of member states, and how membership is increasingly reconfigured.

Furthermore, migration is in these accounts often treated as anomaly, contrary to the fact that people move constantly, both locally, regionally, and then transnationally, and that they have done so through history, with immigration controls as known and normatively defended being rather recent development following rise of the modern state in 19th century and development of technology which enables identification and control in 20th (Sager, 2018, p. 38). Other aspects of human mobility are also, in this framework, often omitted from the view, like circular and temporary migration, internal migration, work commuting and other forms of movement. Taking exclusively states, as units in explaining migration, furthermore, often omits from the focus other transnational organisations, sub and supra national associations and networks together with global social and economic structures that shape migration (Sager, 2016a). Migration is generally not seen as a phenomena which occurred historically, and which may be motivated by more than reasons of injustice, or be caused by other factors besides poverty, inequality, political instability or overpopulation, which are reasons Rawls highlights in his treatment of the subject (2000, p. 9).

While some attention will be given below to the way migration may be understood to accommodate these worries, the primary focus of the next segment will be on explanatory nationalism, and the way conditions that motivate migration are conceived. Seeing causes of migration tied with poor development levels and bad governance in sending states, informs the way global justice duties and duties to migrants are understood.

#### *6.1.1.2. Explanatory nationalism, self-determination and migration*

Understanding responsibility to foreigners is partly shaped by an often simplified view on the causes of global poverty and inequality. Explanatory nationalism is generally part of wider discussion of global justice, and not just migration justice, but it is relevant to the way claims of migrants, who are often moving because of inequality and poverty, are assessed.

While severe poverty<sup>113</sup> is for most of the overviewed accounts what warrants treatment, moving to better opportunities or to mitigate global inequality does not put justice pressure on states (Song, 2018a, Chapter 5; Wellman & Cole, 2011, Chapter 2).

This theoretical stance is, however, subject to much discussion. Locating all the reasons for development levels in the hands of local population and other related local factors misconstrues the way states stand in relation to one another. The world is increasingly globalised, and global institutions like World Trade Organization, International Monetary Fund, The World Bank, and also United Nations, NATO or other global or regional institutions affect the economy of states, their mutual conduct and their relative standing (Beitz, 1979; Higgins, 2013; Nussbaum, 2006; Sager, 2018; Singer, 2002). It is not uncommon that these associations and institutions work to protect the interests of more powerful and affluent states, at the expense of the poor. WTO is thus shown to force poor countries to open their economies while allowing wealthier countries to adopt protectionism. Tariffs on imports from poorer countries are higher than tariffs on imports from other affluent countries, with governments of more affluent states offering subsidies to local industries (Higgins, 2013, pp. 39–40). Poorer states are even more affected by external influences. IMF, World Bank and international trade agreements significantly impact wellbeing in poor states, with multinational corporations influencing both poor and wealthy, both in economic and political sense (Nussbaum, 2006, p. 234). Pogge (2002, pp. 22–23) shows how borrowing and resource privileges affect development, economy and politics of the poor states. On his account it is precisely the way global institutions are organised that perpetuates and causes poverty and political instability in developing countries. Wenar (2008b, 2017, 2018) focuses on the resource curse, or the phenomena by which many countries rich with valuable resources are at the same time marred by political instability, violence, human right abuses and poverty. Unjust international trade rules allow unaccountable actors in resource exporting states, legitimised by importing countries, to gain profit, bringing about violence, human rights abuses and war to the local population. International borrowing privilege allows unaccountable governments

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<sup>113</sup> Severe or extreme poverty refers to living on the \$1.90 of purchasing power parity (PPP) a day. Number of people currently living in the conditions of extreme poverty moves around 650 million, with estimates that COVID pandemic and related inflation will make this number even greater (Mahler et al., 2022).

or political actors to borrow funds, usually for private goals, creating debt for people who couldn't authorise the borrowing, but who will need to repay it (Pogge, 2002, pp. 22, 114). It is not, however, denied that part of the responsibility for poor outcomes lies in corrupt and autocratic governments of poor countries, but these are often supported by conduct of the more affluent. One other example by which systemic harm and injustice occurs is traceable to the conduct of corporations and background trade arrangements, like in e.g. clothing industry (Young, 2006). These authors then stress that states (and their membership) may be required, from the standpoint of justice, not only to provide assistance to non-members, but also to refrain from incurring injustice and compensate where compensation is due.

The robustness of the effect of international factors on occurrence of poverty and inequality, which may motivate migration, may be disputed. There are a number of authors who will dispute these effects as being detrimental or profound for the welfare of poorer states (Altman & Wellman, 2009, Chapter 6; Miller, 2007a, Chapter 9; Risse, 2005). What is, however, important to highlight is not that the causes of poverty or instability, and then migration, should be located in actions of wealthier states or global institutions *exclusively*, but that these factors often contribute *in combination* with local factors in fostering levels of development or poverty. Or rather, that the way global institutions and relationships are arranged often aids in perpetuating injustice.

Genealogy of states also may be seen as one of the contributing factors to levels of development, since global relationships were often characterised by oppression, colonialism, exploitation and war. Some populations were systematically oppressed, enslaved and exploited, which contributed to the wealth of some parts of the world, leaving others with underdeveloped institutions and corrupt governance. These factors, together with systemic injustice on the global level, which often follows and to extent mirrors the patterns of historical exploitation (Wellman & Cole, 2011, pp. 220–225), may offer partial explanation as to why some states lack in providing decent levels of opportunities or rights protection to their population. These aspects may shed a different light in understanding responsibility to foreigners, and migrants, which may be motivated to move, as response to poor conditions of their states. If contributions to some harms are traceable to activities of some states, then this may trigger a requirement for remedy.



Even if we concede that global connections are not as robust or prevalent as the state institutional framework is (Miller, 2016c, Chapter 2; Song, 2018a, pp. 80–82; Wellman, 2008, p. 123), there remains the fact that some global institutions have an effect on both politics and economy of states in general. More minimally, what can be claimed is that different societies and states, and other global actors, do stand in relevant structural relationships (Wilcox, 2014). This means that they may be subject to potentially oppressive or hierarchical relationships, which are of special concern to relational justice. As globalisation and the global economy intensifies, individuals all over the globe are placed in relationships ripe with potential for domination, oppression and inequality.

These relationships shed some doubts on the plausibility of explanatory nationalism, and interpretation of self-determination and responsibility in light of it.<sup>114</sup> It is highly doubtful to claim that it is only states and their institutional arrangement, culture and economic choices that can explain the levels of development or poverty. States are not developing independently from one another, and are under the effect of external actors, norms, treaties, conventions, global market and other factors (Sager, 2018, p. 20). The extent to which local or global factors affect local conditions is subject to empirical analysis, however, it is clear that not everything that happens within the jurisdiction of one state can be explained by exclusively focusing on domestic affairs of it. To the extent that poverty or inequality explains some of the migration which occurs, responsibility for it may be assigned precisely to the states that wish to control it.

This segment, thus, aimed to show that states stand in important relationships, and that their conduct is not always limited to their internal affairs. Some states,

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<sup>114</sup> Important criticisms of collective responsibility refer to, on the one hand, the notion of responsibility of individual members for what its state does, and on the other, to the notion of responsibility of current members for what previous generations did. These critiques will, here, not be further developed. For the responsibility of the citizens of democratic states, as explained in chapter 3, institutional arrangement which allows political participation may play a role in explaining the way citizens may be held responsible for outcomes of state policies. Cases of responsibility of current members for the actions of the past is, to my view, more problematic. Miller (2007a, Chapter 5,6) offered an account of national responsibility, claiming that the present population should, since it enjoys the benefits of past actions, bear responsibility for wrongs in the past. For Miller, this is relevant in explaining how self-determination may be used to explain outcome and remedial responsibility. Focus of this part is in showing that global relationships may have impact on the way societies fare which may provide reasons to reevaluate the notion of responsibility to migrants. The discussion mostly focuses on the current global relationships, and not instances of past conduct, so this aspect is for purposes of this thesis not further developed. It is, however, worth noting that assigning responsibility to current generations, including recently born children, for negative effects of policies which some distant generations elected, may be problematic.

arrangements and global institutions may favour some at the expense of others. Systemic harm may be traceable on the global level, with some actors aiding to negative development outcomes in other places. Some policies are bound to affect other states, and some may unjustifiably incur harm to foreigners. While these connections are not as prevalent as state institutions, they, however, place various actors in global (structural) relationships, which may be claimed to be subject of justice. This may shed a different light to thinking about self-determination and responsibility, especially with respect to immigration policies.

In what follows, more attention will be given to explanations of migration to contextualise immigration policy as a choice of self-determining states in the context of global justice. Choices in migration, it will be claimed, do not affect only the receiving state and its population. Migration should be observed in a more complex manner as a wider global phenomena, and thus, not a purely self-regarding matter of the receiving society.

### ***6.1.2. Migration policies, responsibility and choice***

Previous segment aimed to show that migration should be observed against a more complex picture of the world, where it is clear that states stand in relationships affecting one another and where global institutions and arrangements limit and shape their conduct and development. The aim of this segment is to offer support for the view that migration policies refer to more than decisions on self-regarding affairs of the receiving state. Migration has an undeniable effect on global justice, which even sufficientarian accounts should recognize and accommodate in their theories. Special attention is given to the notion of choice view, which characterises the idea that self-determining states have a discretion in fulfilling their duties to foreigners, migrants included, when and if these duties can be recognized.

#### *6.1.2.1. Explaining migration - taking global relationships into account*

Previous parts aimed to show how states stand in relevant relationships, which may partially explain their development and the way their agency is restricted and shaped, both by agency of other states and overarching institutions. Migration should

be observed against such background. This segment aims to offer understanding of migration in relation to global relationships and factors.

As previously explained, migration is often conceived as caused by poverty or inequality in sending states. However, its causes are more complex and transnational. State and interstate policies which are situated into a global capitalist system also explain migration flows (Sager, 2016a). Other actors, besides states, have a role in explaining migration, including business, corporations, transnational state associations and non-governmental agencies. Migration is connected to urbanisation and destruction of rural areas, it follows foreign investment, multinational corporations and resource extraction (2016a). Origins of much of large scale migration may be traceable to efforts of states, corporations and recruitment agencies (de Haas, 2021).

Understanding why some migrants move to specific countries includes understanding of migration networks which originate in past migrations and different government policies, like (past) recruitment policies. These migrations develop (informal) connections between migrants and their communities, allow easier chain migrations, and often include other actors, like NGO's into the complex transnational economic and political systems (Sager, 2018, pp. 56–57). Understanding US-Mexico migration, e.g. should involve understanding of policies of both states, like the Bracero programme and recruitment of workers, but also the effect of NAFTA, and other transnational organisations (Brock, 2020, p. 19; Sager, 2016a; Wilcox, 2014). Furthermore, historical patterns of military involvement or colonisation explain contemporary migration flows (Higgins, 2013, p. 8).<sup>115</sup> Foreign investment is also shown to structure migration, leading to internal movement from rural to urban areas, and then to international migration following export processing zones (Sager, 2018, p. 55). Large urban areas need migrant labour, and have created a market for both low and high skilled labour drawn from abroad (Sager, 2016a). Technological development, and flows of ideas and capital with cultural interchange, also affect migration (de Haas et al., 2020), shaping aspirations and expectations of people, and their ability to use resources to move.

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<sup>115</sup> Migration from Dominican Republic and Korean and Vietnamese migrations may be explained by reference to military involvement of the USA. Migrations to France and Germany are also explainable by colonialism and recruitment of workers (Higgins, 2013, p. 8). Emigration from Croatia to Germany is also partly explicable by history of labour migrations (Jurić, 2017), as is Gastarbeiter programme connected also to migrations of Turks to Germany (Brock, 2020, p. 19).

While poverty, political instability, insecurity and war are prevalent causes of much of migration which occurs today (*World Migration Report 2020*, 2019), these reasons cannot explain why migration occurs as it does. They fail to provide a full explanation as to why persons move to specific parts of the world. International migration is more complex than seeing it in terms of people moving from poor to rich countries,<sup>116</sup> being *pushed* by overpopulation, poverty or persecution, and *pulled* by better economic circumstances (Higgins, 2013, p. 6). Migration is rather more plausibly explained by reference to social networks and various aspects of globalisation (2013, pp. 7–8). Taking historical processes into account, with specific relationships of states, colonial past, global trade policies, trade agreements, labour markets, military connections, transnational associations, recruitment policies, agency of various corporations, and in effect economic, political and social policies of (host and sending) states, provides a more adequate explanation of migration flows. Migration should, thus, be observed as a part of wider social, political and economic processes (Sager, 2018, pp. 54–55). It is both manifestation and cause of global change (de Haas et al., 2020, p. 3).

There are various theories from social sciences used to offer the framework to explain migration (de Haas, 2021). While they highlight different aspects and the way migration may systematically be explained, most theories abandon exclusive focus on states, or push-pull factors dynamics, including in the theories complexity of interstate dynamics and activity of various agents in explaining migration. The agency of migrants is also taken to play a prominent role in the occurrence of migration, since individuals often, in synergy with other global factors (like cultural exchange, previous migrations, media, education etc) shape their expectations and aspirations, and given different capability and opportunity factors engage in migration (de Haas, 2021).

Theorising migration is a complex venture, and it cannot, here, be given proper credit. For purposes of this chapter, what is important to note is that in the analysis of migration, wider global relationships and social processes should be taken into

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<sup>116</sup> Transnational migration more often occurs between the countries of “global South”, or between states which are developing (37%), as compared to migration from South to North, or from developing to developed and affluent states (35%) (Sager, 2018, p. 26).

account. And these are often left aside in deriving normative conclusions on migration.<sup>117</sup>

For considering self-determination in this analysis it is relevant to indicate that states often elect economic and other policies, enter into various agreements and in short act in manners which contribute to migratory movements. This is for example evident in cases of the EU, where agreement between member states facilitated internal migration, at the same time remaining a “fortress” on the outside, filtering desirable migrants, and undertaking actions, like arrangement with Libya and Turkey, to prevent movement of some migrants into the European countries. The Bracero programme is also an example by which arrangement between states leads to migration. Self-determination of (receiving) states itself, which is claimed to provide reasons to control migration, may be part of the reasons why migration occurs in a specific manner as well. The role of self-determination, or the exercise of political freedom (however itself constrained), in occurrence of migratory movements, should not be removed from the analysis of the right to exclude. This is especially so for cases in which it can be shown that states (but also corporations and businesses) contributed to the occurrence of some negative outcomes tied to migration, like in situations in which states acted in manners which incurred harm to foreigners, which in turn resulted in increased migration.

Next parts will offer additional contextualisation of migration policies, which should show that their effect is relevant for achieving some level of global justice. This will, in turn, connect them to the idea that self-determination entails a choice in fulfilment of these duties.

#### *6.1.2.2. Migration policy, development and choice*

In matters of responsibility for foreigners migration policies are often imagined as tradeable with other measures. Self-determination implies that states can select measures of duty fulfilment in line with its more general goals. When focusing on migration, it is taken that states can either offer some form of export of justice, or admit

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<sup>117</sup> Kieran Oberman (2015), Alex Sager (2016b, 2020) and Gillian Brock (2009, 2020) are notable exceptions to this general tendency, engaging extensively with social scientific literature when offering normative theories on migration.

migrants as a remedy for violation of human rights and severe poverty. This section looks at the rationale behind this stance.

For proponents of the argument, closed borders are conceived as payable by alternative measures of global or remedial justice. In place of more liberal migration, it is often proposed that states owing some form of remedy or duty fulfilment can offer material aid, or invest in development programs (Miller, 2005b, p. 198; Wellman, 2008, p. 127). Even a military intervention in states which are actively violating human rights of their constituents is proposed (Wellman & Cole, 2011, p. 121). This means that states can freely opt for other measures in place of more liberal migration policies. This idea is found across accounts of migration justice, and has a prominent role in the conventional view, which often recognizes that some duties to migrants should be observed, but wishes to retain the discretion over migration policies.

“Thus, I once again conclude that affluent societies have a duty to help but that it is a disjunctive duty: just as global poverty requires wealthy states to either export aid or import unfortunate people, the presence of those desperately seeking political asylum renders those of us in just political communities duty bound either to grant asylum or to ensure that these refugees no longer need fear their domestic regimes (Wellman, 2008, p. 129)”.

States are, therefore, understood as having a choice in fulfilment of duties they may have to foreigners. This notion of choice is often supported by some conception of the relationship between migration policy (e.g. liberalised migration, or open borders) and effect on desired outcomes (e.g. alleviation of severe poverty). As indicated, while choice in policies normatively follows from self-determination itself, conceived as entailing a significant level of collective freedom, it is additionally taken that freedom in migration would have negative consequences for alleviation of poverty and mitigation of inequality. This strategy is then used to counter arguments from global justice, which aim to show that large inequalities in life prospects are unjust, and that opening the borders would mitigate them. Even the more cosmopolitan positions see immigration as an ineffective tool in addressing global poverty, inequality or rights deficits in other countries (Brock, 2009; Nussbaum, 2019; Pogge, 1997; Wellman, 2008, p. 128), leading to the undesirable emigration of skilled professionals from poor countries (Moore, 2015, p. 212).

The emigration of skilled individuals, or “brain drain”, is often taken as having significantly negative impact on populations of sending states (Brock, 2009; Brock &

Blake, 2015; Oberman, 2013; Ypi, 2008). Not only that local population remains without vital services, like health care,<sup>118</sup> but developing countries remain without educated individuals which may be critical in fostering political, social and economic changes. Apart from costs of training, sending states lose services and revenue from taxed wages (Brock, 2009, p. 202). These worries prompt authors like Ypi (2008) to stress that the utopian world seems like the one with closed borders.<sup>119</sup> Remittances, which are often seen as a direct benefit of outward migration, are seen as a “mixed blessing” (Brock, 2009, p. 207; Higgins, 2013, pp. 69–70; Pogge, 1997, p. 15). They are considered to mostly benefit the better off families. Since they are mostly spent on everyday life and consumer goods, it is claimed that they do not positively affect the wider economy and that they negatively affect equality in developing countries (Brock, 2009, p. 206). It is claimed, also, that only those much better off migrate, leaving poor in sending states, which reinforces inequalities. Better option is, therefore, to opt for other measures, like contributing to development projects, sending aid, investing, or engaging in the political process to reconfigure global institutions or rules which affect inequality (Wellman, 2008, p. 128).

Scepticism towards more freedom in immigration is not, however, as warranted as proponents of the argument stress. Some studies point to generally positive development outcomes of more liberal immigration, ranging from overall decline of poverty rate, promotion of long term financial development, lower rates of infant mortality and child labour, and higher rates of literacy (Oberman, 2015; World Bank, 2005). Studies from development economy show that liberalisation of migration would lead to much larger economic efficiency, allowing individuals to move to better paid opportunities, thus increasing economic gains (Sager, 2020, pp. 32–33). Increase in emigrants in population is shown to lead to the decrease of persons living below the poverty line of \$1 per day (Adams & Page, 2005). Oberman (2015, p. 242) lists a number of studies showing predominantly positive results of remittances, indicating also that the amount of remittances significantly surpasses official development aid.<sup>120</sup>

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<sup>118</sup> Standard example of severe brain drain is emigration of nurses and doctors from sub-saharan Africa (Oberman, 2013, p. 429 and Brock, 2009, pp. 198–202).

<sup>119</sup> These worries have also opened a space for normative investigation of justifiability in restricting the unqualified right to leave (or exit) the country (Stilz, 2016a; Wellman, 2016).

<sup>120</sup> Oberman (2015, p. 241) cites numbers from The World Bank, where it can be seen that the total amount of money remitted to developing countries totalled twice the amount of official development aid for 2011. It is also stressed that for some countries the amount of remittances totalled for more than 10% of their GDP (35,1 % for Tajikistan, 22,9% for Nepal and 24,8% for Lesotho).

Apart from being directly beneficial to recipient households, remittances are shown to have overall positive effects on the local economy, enabling financial security for recipients and boosting investment (Barry, 2011, pp. 32–33). Barry (2011, pp. 34–36) also uses some studies to show that remittances, contrary to fears that they may reduce the need for local economic and social reforms, increase feasibility of institutional reform, and even have positive macroeconomic effects on the value of local currency, import and foreign debt. They are also directly received by individuals, unlike foreign aid which often goes through corrupt channels. Even brain drain in some countries tend to become *brain gain*, incentivising education in sending states, establishing social networks, increasing remittances,<sup>121</sup> and offering other benefits, like transfer of knowledge and social and cultural capital to the sending country (Beine et al., 2001; Oberman, 2015, p. 243; Sager, 2016a; Stark, 2004). Thus, it is hard to conclude that emigration of skilled workers is mostly negative for countries involved. These effects are context specific, and may depend on a number of other factors, like poverty, malnutrition, lack of supplies and other factors which hinder development and which are not systematically taken into account when addressing it from the standpoint of methodological nationalism, which focuses on the *wrongs* of emigrating (Sager, 2016b, pp. 223–228). It is not, furthermore, clear that the best general policy with respect to emigration of skilled individuals is to introduce immigration restrictions from developing countries (Barry, 2011; Kapur & McHale, 2006; Oberman, 2015). Other policies, both in sending and receiving states, could be elected to mitigate potentially negative effects of brain drain, like various taxation schemes targeting emigrants, conditions on free professional education, compensation of receiving to sending states, lowering taxes for immigrants and taxes on remittances and other similar measures aiming to mitigate the loss of professionals (Barry, 2011, p. 37; Brock, 2009, pp. 46–53; Volacu & Terteleac, 2021). The fact that the nature of migration changes, and that it tends to create networks which facilitate it, may also be used to explain why it is not always the case that only more affluent migrants opt to move (Oberman, 2015, p. 242).

Contrary to worries that proponents of the self-determination based argument stress, empirical findings support the contention that liberalisation of migration may have a positive effect on the sending states. These effects have prompted some to

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<sup>121</sup> The case of Philippines provides an interesting example. The country purposefully trains more nurses than it needs to supply foreign markets, which then translates into remittances as a source of revenue (Brock, 2009., p. 199).



recognize migration as development (Clemens & Pritchett, 2008). Even the economic effects on receiving states are generally positive (Brock, 2020, p. 206), even though these worries are often not stressed by the proponents of the argument when assessing migration policies in the context of global justice.<sup>122</sup>

Legitimate worries may be pressed against seeing liberal migration as a go-to development policy. While economic gains may be largely positive, some social groups may be adversely affected by general freedom in immigration (Higgins, 2013). Some cite local low-skilled labourers as vulnerable to job loss and reduction of wages (Macedo, 2018), even though effects on these groups are not shown to be decidedly negative (Sager, 2020, p. 43). Higgins (2013, p. 65) specifically highlights women, and racialized groups which are often disadvantaged to begin with, which may become a subject to new forms of exploitation in the receiving country. For example, individuals belonging to these social groups tend to work in areas unregulated by labour laws, like domestic or sex work, where they lack access to social services or are subject to low wages, illegal withholding of wages, illegal termination of employment or abuse (2013, p. 66). Family members, especially children, of women providing care work abroad, are subject to trade off among affiliation and family care, and financial gain (Kittay, 2009). Some groups may also suffer from lack of services when skilled labour force emigrates, regardless of other benefits such emigration may lead to. While these considerations should play an important role in thinking about migration justice, it is unclear that the best policy to address this worry is to have a broad right to exclude migrants.<sup>123</sup>

While the effects of migration are empirical matter, and may be both positive and negative, depending on the context, it should be acknowledged that different migration policies have a bearing not exclusively on the receiving, but also on the

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<sup>122</sup> This section thus did not address development effects on receiving societies. Potential effects of immigration on receiving society which are in focus of self-determination based argument were reviewed in the previous chapter. One reason why development outcomes for receiving states is generally not taken into account lies in the underlying assumption about migration occurring from developing to developed countries.

<sup>123</sup> This justificatory strategy may be overly paternalistic (Carens, 1992, p. 34), for comparison (Higgins, 2013, pp. 70–72), and may come off as insincere. To quote data which shows that some social groups may be treated badly in a receiving country as a reason to elect general policy which excludes its members seems deeply problematic. The focus should rather be in dealing with reasons as to why some social groups are disadvantaged in the society in the first place, instead of placing restrictions on immigration. Excluding to prevent disadvantage to groups in the receiving society like low skilled workers, or in sending, like those who may lack social services, places unjustifiably strong burden on an individual who claims to immigrate, instead on the society to provide compensation schemes (if recruiting skilled workers), or social and economic security for its members (e.g. low skilled workers).

sending society, individual migrants, their families, and different groups and affiliations to which migrants, or others affected by migration belong. Different migration policies, then, should be recognized as having a bearing on global justice. It is not clear, furthermore, that global justice would fare much better with other development policies in place of more liberal migration policies. It is, thus, questionable if trading between migration policies and other development measures is justified. This is especially so, if effectiveness and economic gains from liberalisation of migration are to be taken into consideration.

While here I do not have a space to address the empirical data on effectiveness of different measures of development aid, it should be noted that its effects are also shown to be both negative and positive, depending on the specific measure and context (Bourguignon & Sundberg, 2007; Doucouliagos & Paldam, 2009; Moyo, 2010; Nussbaum, 2019, pp. 222–229). Many development measures are, however, rightly seen as essential for fostering a more just world. Examples of these include ensuring fair trade rules or fair global taxation regime (Brock, 2009, Chapter 5,9; Pogge, 2002, Chapter 8; Wenar, 2017), promoting independent media and accountability (Brock, 2009, Chapter 6; Wenar, 2017) or providing effective development aid (Nussbaum, 2006, p. 317; Pogge, 1997; Singer, 2019). Pushing liberalisation of migration in place of these measures may also be problematic. Open borders should not be seen as a solution to poverty and inequality one should immediately endorse in place of e.g. redistribution of resources or structural and institutional reforms on the global level. It cannot on its own solve the problem of severe poverty, or tackle deeply rooted structural inequalities (Sager, 2020, pp. 46–47).

Therefore, what should be derived from this brief analysis is that migration policies should not be read as interchangeable with other policies, but rather as complementary to them. Approaches to development, that is, should consider migration policy seriously (Clemens & Postel, 2018). However, these measures should not be read as an either/or. Many authors, including proponents of the self-determination based argument, advocate simplistic trade off between immigration and aid (Sager, 2016b, p. 233). In the realm of international politics, these policies are not necessarily incompatible (Carens, 1992, p. 35). Those that argue for distributive global justice, even sufficientarian one, should, to quote Sager “argue for both” (2020, p. 46), since migration and other development measures are often mutually reinforceable.

Scepticism towards the place of migration policies within development, which proponents of the argument lean on to reinforce the choice view, is thus not fully supported by empirical studies. The effect of migration policies on development is not negligible and should be given consideration in addressing the needs of those severely deprived.

### *6.1.2.3. Migration policies, choice and remedial duties*

Rectificatory justice may also be seen as falling within the purview of the choice. While the harm to foreigners which occurs through global institutional arrangement, as argued by Pogge (2002) or Wenar (2017), may be seen as highly contestable,<sup>124</sup> there are cases in which the need to provide rectificatory justice is more easily established, like in cases of direct military intervention in some regions or different military actions with harmful effects on the local population (Wilcox, 2007, p. 282).<sup>125</sup> Many of these instances will affect migratory movements.

At times, when the need for remedial justice takes place, when liberal state acted in a manner that deprived foreigners of basic rights by enforcing harmful policies, then the migration, or policies which offer asylum may be used to offer redress (Souter, 2014; Wilcox, 2007). In some of these cases, special connections are established between states that actively engaged or contributed in harming the local population, and those individuals which were harmed. In these cases, assigning remedial justice may be more straightforward, including even offering admission to those individuals which chose to migrate. Walzer (1983, p. 49) straightforwardly claims that for some, who were made refugees due to our actions, responsibilities are similar as those we owe to our nationals. Vietnamese refugees were, that is, *americanized* by the harm the US military actions brought to them.

While the case of refugees may seem as fairly straightforward, in the sense of the need to offer reparations in form of admission, some, like Wellman (2011, Chapter 6), claim that even in this case self-determination entails the choice. States can, if they want, opt for other measures, like providing protection to refugees in their homelands,

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<sup>124</sup> Some authors have, however, indicated that relationships which obtain between countries in the case of international resource trade are clear instances of complicity (of importing states) in human rights abuses (perpetrated by local militias or regimes) in some resource exporting states (C. Barry & Wisor, 2015; Wiens, 2015).

<sup>125</sup> Often cited examples are US military actions in Vietnam (Walzer, 1983), like the example of the use of herbicides in military operations which lead to hunger and disease, as shown by Wilcox (2007).

or even intervene to amend local situation, instead of offering asylum on their territory. However, while at times, offering other non-migration measures and policies will be more appropriate or just, like in times when amendment to the local situation is available and will effectively address the injustice, there are cases in which admission to the territory is more adequate or proportionate. At times offering aid may itself have negative consequences, paving a way to create dominating relationships, and dependency (Moyo, 2010; Wilcox, 2014, p. 129). Aid can, that is, disempower people who are owed redress, can make them dependent, or can be abused by other actors like corrupt governments (Walzer, 2011, p. 76). Aid or reforms as well, may take a long time to yield an effect and amendment to the negative local situation.

In some cases, therefore, when remedy cannot be provided timely, or when it is evident that rights violations will continue for a foreseeable future, admission of harmed individuals may be the most appropriate and just policy (Wilcox, 2007). When e.g. destruction of infrastructure or food production sources (crops) occurs, sending aid need not remove the sources of rights restrictions to harmed populations timely, or address those needs which are harmed. In cases like these it is unclear if sending financial aid through official channels, often bureaucratic and slow, will be an effective or proportionate measure to address loss of infrastructure, food sources, local economy etc. For refugees, or those harmed in a manner in which they cannot reasonably be expected to remain territorially located, admission to the territory of other states may be the only acceptable option.

This means that complete discretion of states, with respect to designing policies of remedial justice, may be unwarranted. States should, that is, integrate some other considerations in the election of the policies aiming at offering remedy for injustice. Effectiveness of the policy should play some role for instance, which means that some empirical data will have to inform policy design. This means that selecting highly inefficient policies, or policies which are of dubious effects, should not be a primary option. Proportionality and adequacy of the remedial measure should, for instance, also figure prominently in the design of remedy. Offering institutional reform to a refugee may not, in this sense, be appropriate, since a refugee needs specifically tailored measures which allow relocation until the risk in the country of origin does not cease.

Before moving to the consideration as to how migration figures in justification of the sovereign state system, additional reasons to destabilise the justification of the

choice view are offered by turning focus on the individual as a recipient of remedy or aid.

#### *6.1.2.4. Individual, choice and migration*

In the discussion so far, migration policies were shown to have an impact on global distributive justice and are highlighted as at times appropriate measures of redress, which are not purely substitutable with other policies of development aid and rectificatory justice. This section offers additional reasons to destabilise the choice view, by placing individuals in the focus.

While those arguing for freedom in immigration are being accused of putting unjustifiably strong emphasis on an individual and his autonomy, ignoring potential effect of their freedom of movement on political communities and common goals which individuals as members cherish (Stilz, 2019, pp. 203–205); proponents of the self-determination based argument tend to obscure an individual and his perspective, when contextualising their accounts in discussions on global justice. This is evident in considering the effect of migration on development, which is primarily taken cumulatively on sending or receiving states, almost completely omitting the individual and his agency from the perspective. For example, when referring to “brain drain”, mostly cumulative effects on sending society are highlighted, and the agency of skilled individuals who chose to migrate, or effect on potentially restrictive migration policies on their well-being are not figuring in the discussion. If it is taken into consideration, limits placed on it are justifiable by the benefit of others or the fact that the person in question does not have the unqualified right to leave the state (Pevnick, 2016). The justification for electing restrictive migration in these cases often refers to the benefit or costs to others, which means that the skilled emigrant is not taken into consideration as a separate moral unit which should not be used for others’ benefit (Blake, 2016).

However, as briefly indicated above, migration does not exclusively occur with reference to global factors and relationships, but is also the result of individual agency, which combines both capabilities to migrate, and aspirations and expectations regarding migration which were shaped by these relationships. Persons, that is, are agents, when they choose to migrate (however this choice may be restricted depending

on the case), and when they receive aid or remedies for harm.<sup>126</sup> This agency is often put aside, when duties to mitigate poverty or provide remedy are analysed. In these cases the focus is mostly on the cumulative effects of policies on sending and receiving states, or social groups to which migrants belong, which often leads to proposing policies that omit taking persons as primary recipients of justice. This is especially worrisome in cases in which states are taken to be at liberty to choose any measure to fulfil their remedial duties, or to retain the right to exclude by offering substitutable policies.

Claiming that one should simply offer aid, and opt to prevent admissions, should apart from effectiveness, also take into the consideration whether proposed policy at least minimally takes into account that recipients are real people, with needs, projects, aims, and affiliations, who should, in the end, be ones which feel the effect of the proposed policy. Many “export of justice policies” are of dubious or long-term effect, which need not significantly improve well-being of currently living individuals which are owed remedy. Sending financial aid or working towards improving global institutions, may all be essential measures, but they cannot completely substitute short term effects on well-being of persons who opted to migrate, and their families, nor ignore previously indicated cumulative effects of migration on sending communities.

This is especially worrisome in cases in which states claiming choice have contributed to harm. Offering other options to individuals which chose to migrate and have incurred related costs, to preserve closure, omits taking their choices seriously, and may harm them additionally, by removing their exit options as well (Wilcox, 2007, p. 287). Offering alternative measures, with dubious or long-term effects, may also omit the fact that it is those individuals that are harmed that should be recipients of justice, and not some other (future) persons, or collectives cumulatively, which many measures of institution building or reforms target. This means that states owing remedy should undertake measures in places in which injustice and harm occurred, to ameliorate the situation, without at the same time preventing relocation to those

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<sup>126</sup> Miller (2007a, Chapter 9) has, but to a different conclusion, argued similarly. Poor people should not be deemed exclusively as victims, but also agents. This for Miller entails that they may also be responsible for their own plights. This claim is meant to imply mostly outcome responsibility, but clearly, individuals may be appropriate agents when receiving remedy as well.

individuals who opted to migrate to improve their position or to secure the exercise of their rights.<sup>127</sup>

Placing individual and his agency and well-being into focus, in cases of severe poverty alleviation and remedial justice, may then offer additional reasons to shed some doubt on moral plausibility of the choice, apart from considering efficiency of the policies or their proportionality. This consideration, however, goes both ways. Preventing migration in the name of global justice may place a disproportionately large burden on those that opted to migrate, like in cases of skilled migration. However, proposing liberal migration in place of other important development policies may also harm individuals. If people are left with no other recourse but to migrate, their important place related interests are harmed (Oberman, 2011). People should not be forced into migrating to secure their basic rights, and states which owe remedy should not simply open the borders (however this seems unlikely), and do nothing else to provide remedy to individuals that remained behind. Migration policies, thus, liberalised or more restrictive, generally have a significant effect on individuals and collectives to which these individuals belong. Their potential harmfulness should, it seems, figure in considering measures of poverty alleviation or redress.

These considerations shed some doubt on the moral justifiability of complete choice in offering measures to assist in poverty alleviation (Oberman, 2015) or in fulfilling remedial justice (Wilcox, 2007). Taking individuals as moral equals should then take into account that they, even when receiving aid and redress, are persons with their agency, practical reason and needs, which should, at least minimally and when feasible, be taken into consideration when devising appropriate policies to fulfil some duties.

While these considerations may seem overly cosmopolitan to those that endorse more sufficientarian accounts of justice, it seems to me that simply taking individuals as moral equals should merit some attentiveness as to how measures to fulfil duties owed to them affect their wellbeing, and how their choice figures in these considerations. This means that self-determining states, which are under some limits

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<sup>127</sup> Some of these considerations were pressed against the choice view in Crnko & Zelič (2021) with respect to policies of remedy which Wenar (2017, pt. 4) proposed in cases of harms incurred by international trade with natural resources. Since proposed “export of justice” policies are mostly long term, taking currently harmed individuals as recipients of justice, it is argued, requires states which owe compensation, to introduce, alongside the reformist Clean Trade Policies and compensatory Clean Trade Trust, more liberal admission policies to those individuals that opted to migrate to avoid harm fostered by the effects of unjust trade relationships.

and requirements with respect to foreigners, should adopt those policies which take empirical effects seriously and consider if these policies negatively reflect on those to whom duties are owed, including the effect to sending and local communities or other groups to which these persons belong.

These considerations, together with previous analysis, show that the self-determination based discretion in fulfilling remedial justice or poverty alleviation may be more restricted than presupposed by the proponents of the argument. Choice is not a morally salient option in all cases.

### **6.1.3. Self-determination based argument, migration and justice: summary**

In this chapter, thus far, self-determination based argument was analysed in the context of global justice and duties to foreigners. To this end, some common features of the argument were highlighted, namely, the notion of responsibility to foreigners and choice view, which were placed into a wider picture of global relationships against which this argument is often understood. The intention was to show that the representation of these relationships is to the extent simplified, which may contribute to the shape of the conclusions reached in the migration debate. To try and analyse some of these aspects, and to try showing that migration should not be observed as exclusively self-regarding policy of the political community, but as global phenomena with important impact on others, some attention was given to social scientific research, and authors which engage with this literature. This allowed a somewhat different perspective on migration and self-determination and the way it is dealt with in philosophy of migration.

First part of the chapter provided some reasons to see the world as more interconnected and complex than the background *container* view of independent states presupposes, which may imply that self-determining states affect foreigners to much greater extent than is assumed, including having some effect on the occurrence of migration. This may give rise to a more complex understanding of responsibility, including responsibility to migrants. Seeing duties to foreigners as merely humanitarian, as shown, is tied to seeing self-determination as entailing levels of development and responsibility for them, which this segment aimed to problematise by offering a more complex understanding of the causes of economic development and migration. It is however, important to note that the nuances of what this may entail in



general, with respect to global justice, including how remedial responsibility should be assigned, which is a task of a more comprehensive account, are here not pursued. The intention was merely to indicate that self-determination and migration, in the analysed argument, are often placed within a somewhat cleaned-up framework, which may, then, lead to somewhat cleaned-up conclusions on migration justice.

Second part aimed to observe migration policy in the context of alleviation of poverty and remedial justice, for which most proponents of the analysed argument agree that some duties should be recognized. In these cases, self-determination is claimed to entail the choice in manners to fulfil them. This choice is conceived as part of self-determination, understood as freedom from interference, including interference in policy decisions, and as a freedom to a discretion over them, especially those which affect the self, and its collective life. Migration is, however, shown to be a policy which is both caused by wider global dynamics, and which in turn has a significant development effect on sending states. It is, thus, not exclusively a self-regarding matter of the receiving society. The right to choose is, furthermore, shown to conflate migration policy with development or remedial measures. It was shown that taking the real impact of policies in consideration, their effectiveness and their impact on individuals as recipients of these measures, may render complete choice in the way duties are fulfilled to foreigners unjustified. These considerations are not meant to be read as implying that liberalised migration policy should be offered as an immediate solution to address poverty or offer compensation for harmful activities. It is simply claimed that it should be recognized as a valid policy of global and rectificatory justice, with traceable effects on sending and receiving societies, individuals which opted to migrate and other groups, associations, corporations and businesses connected to it.

Next section will place these aspects into the normative task of justifying the state system. Since states, even with more limited sovereignty rights, seek to exercise exclusionary rights which impact the life prospects of individuals, they are, together with their self-determination and state system, in want of justification. Migration policies, as will be elaborated, should figure prominently in this task, which may additionally limit the discretion of self-determining choice over them.

## **6.2. Legitimacy of the state system, self-determination and migration**

This part aims to contextualise self-determination and migration into the legitimation of the state system which was introduced in the chapter 3. The focus will be turned to the external conditions of legitimacy of territorial sovereignty. As previously indicated, respecting basic human rights is the main condition of legitimacy. This is, in argument in focus, taken to imply sufficiency level, where considerations to eradicating extreme poverty, and remedying harm incurred by activities of states is recognized. Commitment to human rights, which also entails cooperation between states, is claimed to render the state system justifiable (Brock, 2020, Chapter 3). Different migration policies were shown to impact securing of human rights to foreigners and members, which means that justifying the state system will have to take migration into consideration. As will be argued, this implies that the broad right to control immigration may not be warranted, taking into account the way migration is tied to securing minimal conditions of justifying state's right to exercise self-determination within the legitimate state system.

In what follows, normative requirements of justifying the system of states, state self-determination and following exclusionary rights are observed. The aim of the following discussion is to place self-determination in the context of the state system, to make room for discussing implications of the state system legitimacy on migration justice and scope of self-determination with respect to it.

### ***6.2.1. Self-determination within the legitimate system of states***

This part of the chapter aims to develop what chapter 3 initiated, relating to the self-determination and role of migration in contributing to legitimacy of the state system.

It is, thus, worth recalling that the system of states, and exercise of self-determination within it, required justification. This justification refers to the way individuals could, from a neutral standpoint, accept the way the state system is arranged. The exercise of self-determination and territorial sovereignty rights, some of which are exclusionary, is one feature of this institutional arrangement. This means that some opportunities or options to fulfil different interests are not available to some individuals within this system, which requires, if we are to take moral equality seriously, that such institutional rules be justified, or when unjustifiable, modified.

Before turning the focus to self-determination, it should be reiterated that justification of such a system required both internal, and external or global justice

conditions. Internal conditions were taken to refer to moral grounds of organisation of the world in states or state-like entities. Occupancy rights, basic justice and self-determination were taken to provide firm grounds for this arrangement, as compared to e.g. world state. These were, however, not deemed as sufficient to offer full justification of territorial sovereignty and state system, and a number of global justice duties were singled out, including protection of human rights, observing rectificatory justice, and securing background conditions of self-determination, which will figure prominently in the following analysis.

The main idea behind this part is to show that, understanding self-determination within the larger context of a legitimate state system, may entail much less freedom in unilateral control over migration, than proponents of the argument claim.

Place of self-determination is especially relevant in understanding the arrangement of this institutional system. As previously elaborated, self-determination is claimed to offer grounds of territorial sovereignty in the form of states (Moore, 2015, Chapter 3; Song, 2018a, p. 53; Stilz, 2019, p. 10). It is also a right with bearing on outsiders, both collectives and individuals. Its exercise should, therefore, be observed within the wider context of global relationships. It claims rights to authority over territory and self-government and prevents (unjustified) intervention from external agents. It is also claimed against individuals, like foreigners and migrants, grounding rights which exclude them from territorial membership, resource use, travel and enjoyment of social, political and other rights within territorial jurisdiction. Exclusionary rights of this sort potentially harm the interests of individuals, may impose costs on them and limit the exercise of their freedoms. The exercise of self-determination is also used to offer justification of inequalities between individuals and states, and is, additionally, shaping the response to these inequalities, by allowing states to freely decide how to manage their international responsibilities. Exercise of such exclusionary rights, including the right to control migration, within the system of states, requires that it is justifiable to all individuals within this system, respective of their moral equality. When justified, even those that come to endure setbacks to their important interests by their exercise, ought morally to accept them.

Proponents of the argument sought to justify these rights based on human rights protection and legitimacy of the state (Miller, 2007a, Chapter 8; Wellman & Cole, 2011, Chapter 1). In this sense, they do recognize that self-determination cannot be observed as a free standing notion and right, but that it relates to other agents in the system.

Self-determination, that is, necessarily includes relationships with others, by placing them under duties, like respecting a degree of freedom and refraining from interference. Valuing self-determination, which a number of authors interested in justifying a system of states recognize (Brock, 2020; Rawls, 2000; Stilz, 2019), furthermore, entails that its exercise should be secured, to a degree of feasibility, to all that legitimately claim it (Miller, 1995, pp. 99–100). This means that legitimately claiming territorial sovereignty in the context of a system of states, should include recognition that others are also able to exercise it, when they can claim it legitimately. Seeing self-determination, with rights it entails, as justifiable, requires seeing it in a context of such a system where others claim similar rights and where duties are created to observe them.

Self-determination, thus, has a twofold role within the system of states. It is, on the one hand, what partially grounds it, and on the other, it, together with the entire system, stands in need of justification.

To justify the exercise of self-determination, and exclusionary rights which follow from it, more than just legitimacy of the particular state is required. It was claimed that the state system as well should be legitimate as a whole, and that states should contribute to conditions which could render it as such (Brock, 2020, p. 34). When these requirements are fulfilled, then it may be claimed that exercise of self-determination within the system of states is justified. To achieve this, recognition of some duties of global justice are essential. In this sense, respect for basic human rights is recognized as a minimal requirement of global justice. Protecting human rights to all, and taking self-determination as valuable, which is (also) recognized by proponents of the argument, gives rise to a number of global justice duties, as explained below. These considerations are taken to provide a basis for understanding the state system as legitimate.

Observing basic human rights to all, which is a primary condition of legitimacy, entails that states should engage in transnational institutional arrangements and endeavours to secure these rights to all (Brock, 2020, pp. 34–37). This clearly involves some positive duties from legitimate states embedded within the state system, to contribute to the collective action, institutions, agreements and programs, which aim to secure these rights. States should, furthermore, contribute to the general ethos conducive to human rights protection, and implement policies and measures within their territory which can secure and promote these rights to all individuals (Brock, 2020,

p. 58). This requirement, if it is to be taken seriously, cannot stop on simply abstaining from those activities which may harm the exercise of these rights to others. Apart from the fact that states are significantly interconnected and that contribution in harming rights to others need not be immediately observable or clear, many cases in which human rights are seriously violated, by natural causes or negative local conditions, require positive actions from the part of states to alleviate these harms. Securing basic human rights to all, will, in terms of duties of global justice, minimally entail that severe poverty should be eradicated, and all individuals are lifted above some threshold of minimally decent life.<sup>128</sup> It will, thus, require assistance to the “burdened” societies (Rawls, 2000, p. 106). Respecting human rights also entails that states should refrain from those actions which may harm foreigners or exploit them, and to offer remedy in cases in which harm or injustice occurs (Miller, 1995, pp. 104–105, 2007a, Chapter 10; Pogge, 2007b; Rawls, 2000, p. 106; Wilcox, 2007). Engagement in coordination with others to secure this, as indicated, will often be of utmost importance.

Second important condition of legitimacy is securing and promoting background conditions for achievement of self-determination (Brock, 2020, p. 38; Miller, 2005a, p. 74; Stiliz, 2019, p. 16). This condition minimally entails that agents already present in the state system should be able to exercise their self-determination to the acceptable degree. In terms of duties to others, this may mean that significant inequalities, those which may lead to great imbalance of power should be mitigated (Miller, 2005a, pp. 74–75). Relationships of domination and hierarchy between states should be prevented to this end, and fair terms of cooperation between states, including in cases in which states contribute to collective action problems, observed. When some states have much more in terms of material (economic, military) wealth, they can more easily shape the rules which may place others in unfavourable positions. Gross inequalities, furthermore, make it less likely that those less powerful will be able to enjoy an adequate level of self-determination, or choose their policies without significant constraint from outsiders. This condition may also mean that other groups and collectives, not already recognized within the system, should be allowed to exercise

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<sup>128</sup> While the acceptable threshold is dependent on the notion of human rights and its underlying justification (being needs, interests, capabilities etc.), severe poverty and its debilitating effect on the wellbeing of individuals, falls well below any notion of acceptable threshold. For these reasons severe poverty figures prominently in the analysis of this part, since most authors in the migration debate, and wider, converge on the moral urgency in addressing it. For example, see contributions in Pogge (2007a).

their self-determination to the degree to which significant harm to basic rights does not occur.<sup>129</sup>

Finally, some corrective mechanisms should be put in place when states fail the legitimacy test, not to render the entire system unjustifiable. International community, that is, has responsibilities to manage gaps between threshold in human rights performance and state conduct (Brock, 2020, p. 38). Effective refugee regime is generally understood as one such corrective mechanism (Brock, 2020, Chapter 6; Carens, 2013, p. 196; Owen, 2016). When states are inadequate in protection of human rights, or when they engage in actively harming them, exit options should be recognized, and other agents in the state system placed under the obligation to provide effective remedy.

When these conditions are satisfied, states placed in the state system may be considered justified in exercising their self-determination and exclusionary rights which follow from it. While territorial sovereignty of the state may be unpacked, in sense that states which are not completely adequate in contributing to human rights protection, need not relinquish all of their sovereignty rights (Altman & Wellman, 2009, pp. 148–153), the question remains to what extent exclusionary rights like the right to exclude immigrants is, are in such cases morally justified (Brock, 2020, p. 62). Due to the costs and potential harm they bring, their morality in such cases may seem dubious.

Self-determination is, then, necessarily a part of a larger system of self-determining states. Its exercise is, which is also stressed by proponents of the argument, dependent on some conditions of global justice. These are, for the overviewed accounts, somewhat constrained, partly due to understanding of the context in which different agents claim self-determination, and understanding of what this right seems to entail. Valuing self-determination and taking human rights seriously, as grounds for a legitimate system of states, may however entail more extensive duties of global justice, as indicated above. Migration contributes to these duties significantly, and as will be argued, may place additional restrictions on exercise of self-determination, with respect to freedom in choosing migration policies. In this sense,

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<sup>129</sup> This refers to the cases in which entities like minorities or different people claim territorial sovereignty or greater level of autonomy. System being legitimate should incorporate claims for recognizing self-determination to those groups which have a moral claim to it as well, not just for already recognized states. This in principle means that different forms of authority could be devised, or more flexible border drawing allowed to accommodate different claims for self-determination (Stilz, 2019, p. 153). Here, I do not investigate this further, but aim to show, by this example as well, that a justified system of states could amount to a somewhat changed and more flexible arrangement.

migration policies become what contributes to legitimacy of exercising self-determination in the first place.

In what follows a closer look will be given to migration policies, tied to the idea of the conditions behind legitimising self-determination, or human rights protection and background conditions of self-determination. This part will connect with some of the previously discussed aspects, with the aim to show that migration policies are not a self-regarding affair of receiving society, and that state's general right to freely shape them, is in many cases, heavily limited, and at times unjustified.

### ***6.2.2. Legitimate state system and migration policies***

This section will take a closer look at migration policies in the context of justifying the state system. This segment aims to show that adequate protection of human rights puts significant constraints on migration policies which legitimate states can permissibly elect. Contributing to eradication of severe poverty, or observing rectificatory justice, as already elaborated, may include migration policies, which need not track preferences of the self-determining state as a viable option.

First, migration policies will be observed in the context of their contribution to legitimacy requirements, more specifically alleviation of extreme poverty and securing the conditions of self-determination.

Then, a brief overview of some migration policies, which are aligned with human rights framework will be indicated, mostly following Brock (2020, Chapter 9), in her account of migration justice. The focus will be on the refugee system, as a requirement of legitimacy, followed by some general guidelines regarding migration policies which are human rights compliant.

The aim of this part is to show that, having legitimacy of states and state system in mind, which gives normative ground to exercise exclusionary rights following from self-determination in the first place, implies that discretionary choice in migration is much more constrained than accounts which ground the right to exclude based on self-determination allow.

#### *6.2.2.1. Migration, poverty and remedial justice*

This part will briefly reiterate implications of some global and reparative justice duties on selection of migration policies in the context of a legitimate state system. In this sense, it will be claimed that migration policies play an important role in contributing to conditions of legitimacy, which gives reason to see states as having limited discretion over them. Alleviation of severe poverty, securing background conditions of self-determination, and observing duties of reparative justice will be in focus. First, I will connect discussion on migration policy to development and alleviation of poverty, and then, some considerations will be given to migration in observing some cases or remedial justice. In this sense, this part leans on the previous discussion, where migration is shown to have significant implication for development and reparative justice. It will be claimed that, if securing sufficientarian threshold of human rights protection, including eradication of poverty and securing background conditions for poor societies to exercise self-determination is to be considered as a requirement of legitimacy, then migration policies should be understood as mechanisms which assist in achieving it.

If discussion in the first part of this chapter is correct, then different migration policies should be seen as having a bearing on global justice, with effect on development and poverty alleviation. Much of this effect is positive, with respect to the general development of sending societies, including remittances, brain gain, and subsequent effect on capacity and institution building. Migration, that is, has an effect on severity of poverty and on global inequality. Migration, also, may have a bearing on the exercise of self-determination, not only as proponents of the argument worry, on internal conditions of the receiving state, mutual trust between co-members and functioning of democracy. Their effect is evident on self-determination in sending states as well, with effect on capacity building, local economies, transfer of knowledge and subsequent institution building. Migration may, that is, have some implications on the way poorer societies develop, not limited only to the economy, but including human capital which is essential for fostering internal reforms and institution building. In this sense, migration has an effect on background conditions of self-determination, which require certain institutional preconditions but also adequate levels of economic development and human rights protection, which may allow political participation and self-government.

It is, however, important to highlight that migration policies may also have a host of negative effects on these aspects, which should also play a prominent role in



understanding duties of states with respect to securing conditions of legitimacy. Emigration of skilled workers and professionals, for example, may negatively impact institution building and reforms. Educated individuals are one of the most important factors in achieving better institutional arrangement and needed reforms to make poor societies more stable and able to secure self-government. Emigration of skilled individuals also leads to loss of essential services, which negatively impacts human rights and well-being of the remaining population. These effects, as was shown, are not straightforward. It is, however, clear that migration has an undeniable impact on development and achieving the background conditions of self-determination. Different migration policies may play a role in fostering institution and capacity building, education and general levels of poverty, which those concerned with background conditions of self-determination and development, cannot omit. Societies, that is, should have human and institutional capacities to be able to achieve self-government, especially in cases in which they are poor and badly governed. Very poor societies, furthermore, cannot be expected to achieve self-determination in the real sense, if they lack the ability to form mutually respectful relationships with other states, or engage in fair mutual cooperation. When they are severely unequal to others, and lacking institutional capacities, this seems unavailable. In this sense, the role of migration in securing these conditions of legitimacy should be taken into account, especially if the effects of migration can be traced to positively influencing these capacities and reducing inequality. Discussion in previous parts of this chapter aimed to show precisely this. Effects of migration were tied to brain gain, alleviation of poverty, reduction of inequalities, higher levels of literacy, boost in local economy and host of other positive effects. Negative effects of different migration policies, like in the cases of highly skilled emigration, should also figure prominently in understanding the connection of migration justice and legitimacy. These effects are connected to securing the conditions of self-government and securing the exercise of human rights, which makes different migration policies relevant in securing them. This means that migration policies play a role in securing the conditions of legitimacy. States which aim to achieve internal legitimacy should not act in manners in which human rights of others are restricted, and should act in a way in which legitimacy of the state system is preserved.

Proponents of migration controls may concede that duties to eliminate poverty and severe inequality obtain, and even that they are required as part of the justification of the system of states and exercise of exclusionary rights within it, and still claim that

there are other mechanisms available to secure them. While this is partially correct, and migration policies are not to be considered the sole mechanism to achieve global justice, they cannot be considered completely interchangeable with other global justice policies. As previously indicated, these policies should not be read as replaceable with other measures, in all situations, but should be awarded a place in securing eradication of poverty and subsequently in making background conditions for achievement of self-determination available to those societies marred by debilitating effects of poverty. Alternative development measures may have negative unintended consequences, like dependency and subsequent inequality, and may even hinder institutional reforms, by making poor societies relying on aid in place of working towards achieving internal conditions of development. Migration and development policies should, instead, be taken in synergy, and as supplementing one another. It is also not entirely clear that states can elect some migration policies, like e.g. talent hunting for skilled professionals from very poor countries which may harm human rights and debilitate institutional reform, and claim legitimacy, even if this harm is sought to be mitigated by other measures. Legitimate states should not, that is, be indifferent on the implications their migration policies have on others (Owen, 2021, p. 245).

In this sense, migration policies should be observed as affecting more than local population or receiving states, playing an important role in contributing to global justice and to the conditions of a legitimate state system. States which aim to contribute to state system legitimacy, may be required to engage with others in devising institutional frameworks to manage migration and other related policies in securing these conditions of legitimacy. Securing legitimacy of the system may require that states engage cooperatively to support institutions and mechanisms for human rights protection. Such efforts may remove, to greater or lesser extent, discretion over all matters regarding migration from the hands of the states. This may give rise to devising other ways to manage migration, including arguing for international institutions or frameworks to guide migration,<sup>130</sup> but this discussion is reserved for the next chapter. For now, it is important to note that migration has effects both on severe poverty, and background conditions of self-determination. Migration policies are then a tool in

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<sup>130</sup> Brock (2020, Chapter 9), as will be shown, claims that migration should be managed cooperatively, within an international framework. Christiano (2017) has argued similarly that migration policies should be seen as part of mandatory collective aims, like alleviation of severe poverty is, over which international society of states should have authority. Without good faith cooperation of states in achieving these goals, the system of states cannot be deemed justified.

securing legitimacy of the state system, and it cannot be used in any manner states placed within the system aim to. The moral justification of their exercise of self-determination, including exclusionary rights which follow from it, that is, depend on securing legitimacy, to which migration has undeniable effect.

Migration policies, as explained previously, may as well be a more appropriate option to fulfil some duties of remedy, even when other policies or options are available. Observing fair cooperation, which includes that states are accountable for situations in which their conduct brings harm, is also a part of securing legitimacy. In what follows, the focus will be on cases in which states restrict exercise of self-determination and territorial sovereignty to others, which gives rise to remedial justice. These cases are especially relevant for concern with background conditions of self-determination. Observing duties of reparative justice in other cases, in which e.g. self-determination of others is not directly imperilled, still involves considering migration policies, as explained above.

Case of international trade with natural resources is one example in which unfair mutual cooperation of states may lead to unfavourable conditions to others and limits to their exercise of self-determination. International trade with natural resources, like oil or minerals, operates under the rules which often benefit more powerful states, at the same time contributing to violence, poverty, corruption and unaccountability in many exporting states (Wenar, 2008b). These conditions make the possibility of internal self-determination to local populations of exporting states often unavailable, at the same time providing incentive for migration. Examples are especially prevalent in many resource rich African countries, like Congo or Nigeria, which are at the same time marred by conflicts, inequality and violence. The idea behind the analysis of the international resource trade, most elaborately undertaken by Wenar (2017), is to show that the occurrence of the *resource curse* in many exporting countries is partly due to unjust trade relationships and rules, which affluent states choose and are unwilling to reform. One of these rules is *might makes right*, and it allows importing states to legally obtain resources sold by militias or dictators, often for personal gains, which often contributes to violence and human rights violation. Population of these countries often lacks the capacity to reform their institutions, to elect more accountable governments or to assert control over territory and resources. Assets from the trade in turn often aid unaccountable actors to restrict their human rights, including their interests in self-government. Such arrangements may be seen as contrary to several global justice

duties outlined before, including observing fair cooperation between states, securing background conditions of self-determination, and abstaining from exploitation and harm. While much of this discussion is subject to further analysis,<sup>131</sup> if and when relationships of global resource trade are recognized as conducive to injustice, in which freely elected trade policies of some states negatively affect the background conditions of self-determination in other countries and contribute to harm, then some rectificatory measures are due. Observing remedial duties in this context is necessary to preserve legitimacy of the state system. For timely and adequate remedy to local population, apart from longer-term reforms to the trade system, other measures which may more appropriately address the human rights violation in the resource exporting states may be needed. These measures may combine aid, structural reforms and other compensatory schemes, with specifically tailored migration policies, which may provide more direct and timely remedy to individuals who opted to migrate to better their situation (Crnko & Zelič, 2021; Wiens, 2015). For remedying harm to basic human rights of individuals occurring as a result of unjust global relationships, migration policies may at times be the most direct measure to assist individuals that have engaged in migration, respecting their agency. In such cases, following previous discussion, choice view based on self-determination may be limited, especially taking into consideration that states which claim it, acted in a manner which harms basic interests, including interest in political freedom to local population.<sup>132</sup> This means that states which owe remedy may not be morally justified in preventing migration as a form of remedy offering other policies in their place. If rights which follow from self-determination are to be justified by respect of human rights to others and observing conditions for self-determination, then cases in which states act in manners which restrict them, make claims for excluding migrants and strong choice in providing remedy to them morally unjustified.

Lessons which may be derived from the case of resource curse, where background conditions of self-determination cannot be secured, tied to conditions of

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<sup>131</sup> Not all subscribe to Wenar's description of international resource trade and its implications. Discussion of some of these aspects is offered in Wenar (2018).

<sup>132</sup> Detailed account of this relationship and the way it may restrict basic human rights and exercise of self-determination to resource exporting states is provided, following Wenar (2017), in Crnko & Zelič (2021). In this paper, it was claimed that invoking self-determination of resource importing states as a reason for exclusion of immigrants from resource exporting states is morally unjustified, on the account that conditions for the same right were restricted, by the action of these states, in countries from which migrants arrive.

legitimacy, are as follows. First, this case shows that self-determining choices of some (like election of trade policies) may negatively affect global justice duties and place legitimacy of the system in question. Securing conditions of legitimacy, furthermore, requires providing rectificatory measures. Migration policies may in this sense be an appropriate remedial measure, taking into consideration effectiveness and migrants agency, as discussed previously in this chapter. Additionally, for this case specifically, restriction on migration may be deemed unjustified based on self-determination claims, due to the fact that harm incurred involved contributing to the restriction of the background conditions of self-determination of the sending population. Finally, it may be claimed that remedial justice which should be observed to secure conditions of legitimacy, may at times be more appropriately fulfilled by taking migration policies into account.

Other examples may include climate change migrants, where, it may be argued, self-beneficial policies of some states had a more prominent role in contributing to the occurrence of the climate change. Apart from the number of export of justice measures, admitting climate refugees may be requested by justice, especially in cases in which effects of climate change may render entire populations without territory and possibility to exercise self-determination (Nine, 2012, Chapter 8). Contributing to restricting human rights, including the possibility of the exercise of self-determination to others, may then have a bearing on the migration policies these states elect.

While much of the discussion of precise shape of remedy, including explanation of the responsibility and how it may be assigned is here left wanting, what this segment aimed to indicate is that properly valuing self-determination, and placing it in the context of legitimacy, may entail much less freedom in selecting migration policies than proponents of self-determination based argument argue for. While this warrants a case to case analysis, and serious attention to empirical science, self-determination, when placed in the context of state system and its legitimacy, and duties to global and rectificatory justice, does not, straightforwardly, seem to entail a broad general right to exclude. States should, instead, be sensitive to the effects different migration policies may have on securing the legitimacy of the state system.

Next segment will offer the way respecting human rights may give shape to permissible migration policies in several areas. This part does not provide full account of migration justice (e.g. completely excluding discussion on integration and naturalisation), nor it aims to do it, but it, following Brock (2020), gives an indication of

what policies may be permissible in light of seeing protection of human rights to migrants as precondition of legitimacy. As will be shown, protection of human rights constrains self-determining choice of states in migration to a much greater degree than is recognized by the proponents of the argument.

#### *6.2.2.1. Refugees, migrant workers, and general admission policies*

This part will take a closer look at some migration policies states may permissibly elect if they should track human rights protection as a legitimacy requirement. This part will take a closer look at refugees, migrant workers, and some criteria for general admission policies.

As already stated, while many definitional and organisational aspects remain open, refugees are those individuals for which states are under obligation to either offer asylum or find acceptable long-term solution, which is respective of their rights. Failing that, it is hard to claim legitimacy of the state system. In a system in which there are no mechanisms to protect refugees, basic human rights to all cannot be secured. The right to exit one's country and seek asylum under just and transparent procedures in other countries are recognized as basic human rights, enshrined in the 1948 Universal Declaration of Human Rights, and subsequent 1951 Geneva Convention and its 1967 Protocol. Refugees are clearly individuals whose life, security and basic human rights are under threat in their countries, which warrants protection by the international community. Minimally, states are under obligation not to return refugees to places where their human rights are imperilled, supplemented by other measures of protection, like asylum in the host state, or in other specially designated areas. Standard longer term solutions to refugees consists in voluntary repatriation, local settlement and resettlement, including other options which could provide aid closer to the region where refugees are and where most prefer to remain (Brock, 2020, p. 131). It is deemed morally unjust to keep refugees in an indeterminate status indefinitely, with a request for offering them permanent membership in those states in which they have settled, and which can offer them protection of their basic rights and other important human interests, including work, education, meaningful participation in the community and in due course political participation.

While the case of refugees on the surface seem to be rather straightforward, offering a reason to sidestep a general right to exclude, there are a numerous

philosophical and practical matters tied to refugees, concerning definitional aspects, or questions as to whom should be awarded that status, to more practical matters, like what are appropriate measures and how they should be managed, to address the needs of refugees. Most of these aspects are not settled, and vary even across the overviewed accounts.<sup>133</sup> Proponents of the argument in question generally converge on the non-refoulement principle (Miller, 2016c, p. 78; Song, 2018a, p. 126), and the idea that states are in principle not at liberty to exclude refugees from their territory, once individuals have reached them, and if other solutions are not available in an acceptable time frame, from their membership. There are some differences across the accounts with respect as to who should be awarded that status, most tending to restrict the scope of definition to refer to those that cannot be helped otherwise but by migrating (Miller, 2016c, p. 83), while others in principle allow a much wider scope of necessitous migrants to fall within the scope of international protection (Song, 2018a, Chapter 7). With respect to responsibilities to refugees these authors, bar Wellman (2011, Chapter 6) and to an extent Miller (2016c, Chapter 5), overviewed authors mostly suppress the choice view.<sup>134</sup> If and when claims of individuals at the borders are recognized as claims of refugees, states are under no further discretion to exclude. Wellman (2011, Chapter 6) proposes other measures which will safeguard against continuation of the threat to security and basic rights of refugees, like acting directly in places from which refugees arrive, to protect the discretionary choice of the state not to be under obligation to admit any prospective new members if citizens so choose. It is, then, preferable to find solutions to remedy the state of affairs at the home country, by e.g. “exporting justice” to states from which individuals have fled. This, however, often omits discussion on feasibility or effectiveness, let alone, taking preferences of individuals which were forced to migrate into account. Working towards preventing the

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<sup>133</sup> Some of the philosophical controversies are overviewed in the book edited by Miller and Straehle (2019). The intention behind this discussion is, however, not to offer detailed response to mentioned philosophical issues, but to indicate how state system legitimacy may limit self-determination in response to the protection of refugees.

<sup>134</sup> In a novel contribution Miller (2019) argues for a degree of self-determining choice of the receiving state with respect to different types of refugees, those which require immediate sanctuary, and those whose plight may be solved in a longer term. Selecting refugees is permissible in cases of resettlement, in contrast to cases where refugees seek sanctuary. Adam Hosein (2019) and Richard Ekins (2019), whose contributions appear in the same book, have also argued for a degree of national self-determination in matters dealing with refugees, which may entail the right to exclude some refugees and additionally to expel others.

occurrence of conditions which foster refugee flows may, however, figure prominently in contributing to global justice and securing legitimacy of the system.

Effective refugee system may require a host of solutions and institutional reforms, like aiming to include other stakeholders (like civil society and business) in the process, offer solutions closer to the host state including application for asylum in local embassies, create opportunities for refugees to work, including their capacity building and education which may aid post-conflict recovery etc. (Brock, 2020, Chapter 6). These include positive contributions of self-determining states, by measures such as development aid, capacity building, monitoring human rights conditions in other states, and appointing different bodies and commissions to engage with particular situations (2020, p. 137). Self-determining states are, under this account, placed under obligation to positively assist refugees and cooperate with other agents in addressing their needs. Legitimate states are, that is, not solely responsible for offering humanitarian aid and dealing with refugees who reach their borders, but are required to contribute in creating an effective global system for sharing the responsibility, including working to prevent conditions which foster refugee movements. While some upper limits may be placed on what can be required from individual states as matter of their responsibility, it cannot justifiably be spelt out by invoking considerations of costs to receiving communities and their interests in self-determination (Song, 2018a, p. 129). In cases of refugees, securing their basic rights mostly requires some form of resettlement, and it overweighs the interests of communities to secure their character or control their borders.<sup>135</sup>

Self-determining states are, however, bar refugees, generally considered free to select different migration policies, including recruiting migrants for temporary work. Temporary labour migration programmes, or guest work, are much debated migration policies. While these schemes have been shown to lead to generally positive development outcomes for sending states, and economic benefits for the receiving,<sup>136</sup>

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<sup>135</sup> It is worth noting that to the extent to which treatment of refugees is a measure of legitimacy, the current system falls short of it. Many states fall short of providing asylum where needed, refugees are stranded in encampments with no prospects of continuation of normal life with average period of refugee status extending over 20 years (Brock, 2020, p. 116), many are forced to undertake dangerous trips on which some unfortunately die, and states are engaged in processes to deter refugees reaching their borders. Many of these actions not only fail in providing positive duties to refugees in offering effective measures to protect them, but they also engage in practices which additionally harm them (Hillier-Smith, 2020; Oberman, 2019).

<sup>136</sup> Benefits of temporary labour migration and migration in general depend largely on the way receiving society manages it (Clemens et al., 2018).



a number of negative aspects of these programmes are evident. Temporary migrant workers are often overworked, exploited, with insecure contracts or no contracts at all, unable to change jobs or employers, working in unregulated areas, often in poor working conditions, doing dirty, dangerous and difficult jobs, with no rights protection, subject to deportation and at times abuse (Brock, 2020, Chapter 7; Sager, 2020, p. 44; Straehle, 2019).<sup>137</sup> They often contribute to the economy of the receiving state, working where most citizens are unwilling, but with no comparable benefits (like social services) for their contribution. These workers often lack employment insurance, social services, or other civil rights and freedoms, including any right of political participation. Recruiting workers and offering them a very reduced rights set make these programmes worrisome and unjust (Carens, 2013, p. 124; Lenard & Straehle, 2012; Sager, 2020, p. 49). Importantly for present discussion, human rights of temporary migrant workers are often disregarded by both employers within the receiving state, or recruiters in sending states. One of the most pressing examples in the time of the writing of the thesis is the controversy surrounding a death toll of migrant workers recruited to build football stadiums for the 2022 World Cup in Qatar (Pattison et al., 2021). If adequate respect and protection of human rights to foreigners, also those present in the territory of the country, are to be an important requirement on legitimacy and exercise of self-determination, then many states fail in this regard, which may restrict conduct of states with respect to these migrants.

Proponents of the self-determination based argument generally see these programmes as morally acceptable, if some modifications which could accommodate basic rights of migrants are introduced. Miller (2016c, pp. 96–102) claims that these programmes may be fair when certain safeguards with respect to transparency and better right protection are obtained. For some like Walzer (1983, p. 61) guest work implies the need to enlarge membership, or to award equal rights to guest workers upon a certain period of time. Wellman (2011, Chapter 8) also claims that political oppression of long-term workers is impermissible. It is also claimed that temporary labour schemes may be morally permitted even if they do not presume presumption of permanent residence. Political rights are not necessary to safeguard against exploitation of workers, but protection of a robust set of rights to workers may suffice (Song, 2018a, p. 156). The question of awarding different sets of rights to temporary

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<sup>137</sup> The kafala (sponsorship) system in Qatar is especially worrisome, tying workers to employers and requesting exit visas (Sager, 2020, pp. 48–49).

workers is, however, often presented as potentially at odds with the norm of equality and costly for the receiving state. This debate is often framed in terms of numbers of guest workers vs. the robustness of the rights sets which are awarded to them (Bauböck & Ruhs, 2022; Brock, 2020, Chapter 7), with implication that when the numbers of migrants are greater, the right set awarded to them is more slim, and the other way around. Brock (2020, Chapter 7) has however, argued that this dilemma may be solved by indicating those rights which may be temporarily permissibly withheld, against rights, like those pertaining to life, security, due process and basic liberties, which are non-negotiable. If measures which could ensure adequate rights protection in this area are not enforced, then these programmes shed unfavourable light to the legitimacy of the state and state system. In practice this may mean that a number of principles guided by protection of human rights should be observed, in areas of recruitment, contracting, work conditions and termination of contracts.

Apart from recruiting low-skilled workers to fill in poorly paid and insecure positions, states often engage in talent hunting, directly recruiting high skilled migrants, offering them benefits and much easier access to more robust rights set and more direct path to membership (Shachar, 2016). While some of these activities may have positive effects on sending states, many bring harm to the population of sending or receiving states, including migrants themselves (Higgins, 2013). While I do not believe that these effects alone should be used either to ground general right to exclude or a claim for open borders, they should figure prominently in discussing migration justice. Many justifiable goals of the self-determining states, like ensuring economic development or pursuing technological or scientific advances, may entail migration policies which reflect negatively on rights of migrants or others over which such policies have a spillover effect. Temporary labour migration programmes are also an important segment of securing adequate levels of global justice. In absence of policies which allow free mobility, these schemes offer a legal path to individual migrants to find better work opportunities, and to contribute to development in their states. Some forms of these programmes may on the contrary harm development as well depending on the context. In this sense, temporary labour migrations cannot be a legitimate policy if it only or primarily tracks interests of receiving states (Bauböck & Ruhs, 2022). Contrary to the strong conclusion of the conventional view, discretion with respect to selecting migrant policies, like recruiting migrants to work for “mutual advantage” (Miller, 2016c, p. 95), is not morally justified in cases in which these policies harm individuals and

restrict their basic rights, and in which their effect on sending states are especially severe. Important rights of migrant workers should be protected, and the effects of temporary migration on sending, alongside the receiving state, taken into account. This is especially so if concern with stark inequality and poverty, but also fair terms of cooperation and protection of self-determination, are to figure prominently within the legitimate state system.

Brock (2020, Chapter 4,5,8) has also dealt with aspects of Muslim ban, selection of migrants informed by alleged threat of terrorism and justifiability in deporting illegally present migrants and their children. Many of these policies are unjustifiable from the standpoint of justice and human rights framework compliance. As elaborated in the chapter 5 of this thesis, with respect to selection policies, while many proponents of the self-determination based argument wish to exclude explicitly racist or xenophobic criteria, having self-determination entail discretion in shaping migration policies to reflect on goals of citizens and to shape the character of community, may lead to policies which directly contradict human rights practice and legitimacy. To avoid this, constraints are placed upon admission policies which states may permissibly elect to reflect the preferred character of the community. These cases also show that observing human rights and legitimacy of the state system may require that discretion of states in many areas pertaining to migration and rights of migrants is restricted. Migration policies, including internal policies once immigrants are admitted, are therefore subject to restrictions, if human rights are to be properly observed. All this places a restriction of self-determination with respect to migration policies, and proponents of the argument do recognize some of these restrictions as well, especially pertaining to selection, refugees and guest work. This however, already indicates that self-determination does not give rise to complete freedom in migration.

Generally, legitimate states should, according to Brock (2020, Chapter 9) regulate migration in accordance with human rights practice, which includes following guidelines of international initiatives, like *The Global Compact for Safe, Orderly and Regular Migration*. Fair process in determining migrants rights should also be implemented in regulating migration. This means that state officials should mitigate biases and misinformation which shape migration policies and should be accountable for their decisions. Decisions with respect to migrants rights should be reached under a fair process and should be human rights compliant. This may mean that many reasons proponents of the self-determination based argument for exclusion, like

concern with national culture or preferences for the way community is characterised or is developing, could be, depending on the particular situation, deemed unavailable as a reason for exclusion. Migrants may be excluded in cases in which their number exceeds the numbers states have set to be able to achieve their goals and to protect human rights of their constituents (Brock, 2020, pp. 210–211), but these do not refer to concerns with culture, shape of the community or worries about the impact of migrants on future development. Any rationale for exclusion should be evidence based and states should be accountable for decisions they reach. States, additionally, have obligations to contribute to a fair and human rights compliant migration regime and to cooperate with others to secure it (Brock, 2020, p. 193). This cooperation is necessary for securing the legitimacy of the state system, and it clearly places some restrictions on state self-determination in areas of migration. Without dwelling much further into Brock's account,<sup>138</sup> the general uptake of this analysis is that taking legitimacy seriously, grounded on compliance with human rights, may additionally restrict what is justifiable as a migration policy grounded in self-determination rights.

While the precise shape of permissible migration policies, which should track human rights requirements, will inevitably vary depending on the underlying account of human rights,<sup>139</sup> having *an extensive* discretion in their selection and enforcement is in tension with requirements of state and system legitimacy. This tension is especially evident when migration is understood as a complex phenomena with complex effects on the number of agents, and not just a receiving state and migrant seeking admission.

Connecting discussion on legitimacy with global and migration justice, aimed to show that securing legitimacy conditions should take migration policies into account. Migration policies are not only a self-regarding internal policy of the receiving states, but they have undeniable effect on other agents within the state system. They also

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<sup>138</sup> Brock's (2020, p. 226) position is, by the author herself, indicated as a "human rights oriented middle ground between the positions of those who advocate for open borders and their critics." Song (2018a, p. 77) has used a similar description for her position, as intermediate position of "controlled borders and open doors", as well as Pevnik (2011), who sub-titled his book "Between open borders and absolute sovereignty". Their positions, however, seem to leave much more space for the role of self-determination in controlling immigration and excluding immigrants, than Brock's.

<sup>139</sup> Brock e.g. endorses a more robust account of human rights, based on moral agency needs, as compared to some other accounts, like Miller's or Wellman's. However, even more limited list of human rights, when applied to the context of migration, seems to constrain the exercise of self-determination with respect to migration.

contribute to the conditions of legitimacy, including human rights protection and securing the background conditions for exercise of self-determination. This means that taking legitimacy as precondition to justifiable exercise of self-determination, may require sensitivity to the effect of migration policies on legitimacy conditions, and may therefore curb state's unilateral choice in selecting them.

### **6.3. Chapter summary and the way forward**

In this chapter, first, some attention was given to the background assumptions of the self-determination based argument for exclusion, mainly concerning the way migration, state system and self-determination are conceived. The intention was to show that some of the underlying assumptions fall short of the way migration occurs in the real world. These methodological shortcomings may place self-determination, migration and duties to foreigners in somewhat misleading relationships. Some attention was given to methodological and explanatory nationalism, which are present in self-determination based argument, and which shape the way responsibility to migrants is understood. This segment leaned on some empirical work to indicate the way some of the deeply ingrained background assumptions of the argument are faulty. Seeing migration as a global phenomena with complex causes and effects, opened a space to see self-determination and responsibility in a different manner, with other actors and relationships, apart from self-determining choices, contributing to causes of development and migration. Migration was also presented as a complex phenomena, which has an impact on development and poverty alleviation, being at times adequate measure of rectificatory justice, which problematised the choice view that self-determination entails.

Second part of this chapter, placed self-determination based argument in the context of the state system legitimacy. It was claimed that justifying the exercise of the exclusionary rights requires that both states and the system of states are legitimate. Following Brock (2020), this was shown to entail concern for human rights and global justice, to a much greater scope than it is generally envisaged by proponents of the self-determination based argument. Valuing self-determination was taken to entail universal stance, which means that some background conditions for its exercise should be secured to others, placed in the state system. These considerations are shown to have implications on migration policy which self-determining states may permissibly

elect, including considering the role of migration in contributing to securing legitimacy conditions.

Both of these parts aimed to show that self-determining states are not at complete liberty to choose any migration policy which may reflect their interests and preferences, when other considerations enter into the picture.

The intention behind this chapter was not to give any precise account of global justice, or proposal of guidelines to shape just migration policies. However, while this chapter aimed to be mostly critical of the way self-determination and background assumptions of the argument are understood, some indications of what justice in migration may entail have emerged. To this end, the next chapter will, apart from proposing the way self-determination may be reconceived, offer a brief blueprint of what I take to be a more just migration regime.

Selecting and enforcing immigration policies freely, as an expression of self-determination, is then heavily constrained, and more limited than proponents of the argument acknowledge, especially when migration and self-determination are placed in a much wider context of global relationships and state system legitimacy.

## **7. RECONSIDERING SELF-DETERMINATION AND MIGRATION JUSTICE**

As previous chapters sought to show, self-determination, as used in migration debates, does not provide a firm ground to establish the state's general right to exclude immigrants from settling on its territory. Its connection to the right to control migration is conditional, and relies on the effect that migration may have on the core value of self-determination, or political autonomy. The intention behind this final chapter is to offer the reassessment of self-determination, as a right which is more supportive of a more liberal migration regime. Even though the main focus of this thesis was a critical assessment of this argument, this chapter seeks to offer some positive contributions in reassessing self-determination and offering a tentative proposal of an account of migration justice and place of self-determination and the right to exclude within it. First, attention is given to self-determination and the way it may be reimagined. In this part some open questions of the analysis undertaken in the thesis will also be addressed. Then, the outline of the account of migration justice is provided.

### **7.1. The right to self-determination in accounts of migration justice: a reassessment**

This part focuses on the concept of self-determination in migration justice. First, it recapitulates the way this right is used in migration debate, and the way it was critically examined, offering a brief reminder of some of the most important points from the analysis. Then, some aspects of the analysis which were left open are covered, and others which may be addressed in the future research are indicated. In the final part of this section, the way self-determination may be reconceived, to be more aligned with previously indicated global justice requirements and duties to migrants, is offered.

#### ***7.1.1. Self-determination and migration debate: an uptake***

Self-determination is, as explained, a collective right which protects a freedom of political collectives to self-govern. It gives political collectives the right to freely determine their political status and to pursue their development. Its external dimension, close to the notion of sovereignty, refers to independence and non-interference, while

the internal refers to people having a final political authority, choosing and supporting institutions which can reflect their judgments about how they should be governed. Self-determination is, therefore, tied to political freedom of collectives and political autonomy of their members. In this sense, exercise of self-determination implies some institutional preconditions which allow individuals to participate in creation and upholding of institutions and laws. Self-determination is, furthermore, seen as offering a grounds to divide the world into a system of states, and against this background the critical analysis of this thesis took part.

It was claimed that the exercise of this right may be justified when conditions of human rights protection and legitimacy are obtained. When these conditions are met, self-determination is understood to give the collective (or a state) authority over self-regarding matters (Altman & Wellman, 2009, p. 162), to which matters over migration are also seen to belong. The right to exclude is therefore understood as one of the policies which self-determination entails. This thesis sought to show that this right is derived from the way self-determination is understood in the accounts of the migration justice, and that these understandings of self-determination should be a subject to further evaluation.

Self-determination is on the one hand understood as self-composition, and on the other as a right to self-govern.

Self-composition, or the right to control membership composition, is understood as a key component in a state's self-determination. Political collective should, that is, be able to define itself. This is relevant for the collective to be able to successfully determine its character and future development. Proponents of self-determination based argument for the right to exclude are shown to engage this understanding of self-determination (Altman & Wellman, 2009; Angeli, 2015; Miller, 2016c; Song, 2018a; Walzer, 1983) to argue that the right to exclude is a necessary component of a state's self-government. Irrespective of other moral considerations, like claims of migrants, self-determination gives grounds for states to exclude immigrants even if it is a morally suboptimal policy. This right is deemed as an aspect of self-determination, and if this right is to be endorsed, so is this aspect of its functioning.

Self-composition is, therefore, seen as an essential part of self-determination. Apart from the ability to control the way the community develops in the future, which falls under the direct definition of this right from international law, control over the shape and character of the self, and its membership is of importance for this right. Control



over these features play a role in ensuring that the agent of self-determination remains stable and continuous (Altman & Wellman, 2009, p. 163; Miller, 2021a; Wellman, 2008, p. 115). Since members are bound to change, control over how this change occurs and what is the character of the self seems to be understood as securing that the same agent is governing itself through time. This layer of meaning of self-determination, which refers to the control of the self over itself, is added to the standard interpretation of the right as non-interference and self-government. In this sense, self-determination, as Laegaard (2013, p. 659) observed, becomes not only a matter of relationship with other agents, but also an internal matter, and an internal matter that does not only seek that membership is the primary subject of self-government, but that it controls its own composition. It is, therefore, not a standard interpretation of self-determination, and it may entail much more than control over which outsiders may become members, leading to significant control over internal constituents as well. The analysis in this thesis aimed to show that self-composition is not necessary for the ability of the collective to govern itself. Institutional preconditions and protection from interference are in this sense of importance, and not control over membership composition. This analysis sought to show that self-government is compatible with more liberal migration, which may imperil its conditions only in narrow cases.

Control over migration, however, need not be seen as necessarily following from self-composition. It may be seen as one of the policies over which members of collectives (states) have an authority, as over a number of other policies of relevance for the collective. To see if this is the case, the self-determination and migration were placed in the context of wider discussion on global justice. In this sense, it was shown that self-determination is standardly conceived as awarding a minimal conception of duties to foreigners (Altman & Wellman, 2009, Chapter 6; Miller, 2005a). Self-determination, understood as self-government and non-interference, implies that political choices which lead to development are chosen independently, and that choice should entail responsibility for policy outcomes. Interference in internal affairs of other societies is not welcome, and their self-sufficiency, independence and choice limit what can be requested from others as a matter of justice. Self-determination is, however, not deemed to be unlimited and some minimal duties to foreigners, subject to state's choice, are recognized (Miller, 2007a, Chapters 7, 9; Wellman, 2008). Self-determination, understood as non-interference and self-government is, therefore, taken to imply choice and responsibility, which informs the position of different agents

within the system of states, their relationships, and conception of duties among them. This notion of self-determination, but also of a setting in which it is conceived, was subject to extensive criticism in the previous chapter. It was claimed that self-determination should be understood within more complex global relationships, where freedom and choices of some affect others, and where development is the result of numerous factors, and not simply of poor internal policies. In this sense, the relationship of self-determination, global justice and migration is more complex, and should be understood as part of much wider dynamics, where having self-determination entailing complete choice, independence and self-sufficiency is not available. It was argued that self-determination should be observed as a right with effect on other agents within the system of states, and a right which is legitimised by taking this wider context into account.

Self-determination is, therefore, in most of the arguments overviewed in this thesis understood as: 1. freedom of the collective to control the conditions of the collective life and its future, free from unwarranted outside interference (non-interference and self-government), 2. freedom to shape the character of the self and its composition (self-composition), 3. as a right entailing responsibility for policy choices (choice view and responsibility).

Many of these features have come under criticism within this thesis. Especially conceptions which see self-determination as entailing the right to control membership composition (2), and status of self-determination within the context of global justice (3). It was claimed that self-determination should not be understood as a right which awards complete independence and choice, and which precludes any (but most minimal) duties to foreigners. It should, that is, be understood as a more relational concept and therefore less tied to notions of choice and responsibility. The way it may be re-conceived will be indicated below, but first, I will try to clarify some parts of the discussion within this thesis, which may have remained unaddressed in the preceding chapters, relating to the analysis of self-determination and argument for migration controls based on it.

### ***7.1.2. Self-determination based argument: some additional questions***

To show that self-determination does not entail the general right to exclude migrants, this thesis sought to put self-determination, as explained in the section

above, in focus of the analysis. It was shown that understanding of this right as used by proponents of self-determination based argument is problematic, since it either diverges from the standard understanding of this right by introducing self-composition, or places it within highly sanitised context in which consequences it entails do not live up to the complex reality in which it is exercised. This section will address some questions, relating mostly to the agent of self-determination and conditions of legitimacy, that have emerged in the course of the preceding analysis.

While chapter 5 mostly dealt with the effects of migration on institutional conditions of self-government, it did not provide an account as to how changes in membership composition relate to desirability that the agent (self) of self-determination remains bounded, stable and continuous. More precisely, a critic may point out, the substantial changes in the political membership may lead to the disruption and discontinuity of the agent of self-government. Miller (2021a, p. 173) has pointed out these considerations by highlighting that migration does not only affect numeracy of the population but also the character of the existing demographics, which affects continuity of the self. Moreover, if political freedom requires some degree of solidarity, affiliation and cohesion between members, can this withstand changes in the membership composition?

While some of these worries were touched upon in the preceding analysis, especially relating to the changes in the character of the self, the worry that an agent of self-determination will lose what may be considered as important conditions of its agency should be additionally addressed. It was shown that self-government primarily relies on functioning political institutions which enable political participation. These institutions can sustain changes in the character of community, if they occur free of institutional usurpation, coerciveness from a part of the new members, or direct manipulations which amount to disruption of regular deliberation and decision making process. Unless massive and very homogenous, it was argued, migration presents incorporation of new members into the *self*, generally by mechanisms controlled by existing members, like integration and naturalisation. If this occurs in a pace which correlates with integration capacities of the society, then it is not clear that stability of the self, or its continuity is the issue. This means that the standard migration process, by which migrants are integrated into the the civic, social, economic and political spheres of the society, does not necessarily lead to the disruption of the self.

Regular migration should also not present a real threat to the potential of the collective (or in this case state membership) in having clearly identifiable members or boundedness. In the event of more liberalised migration, clearly, membership may be much more fluid, with more migrants entering the state, and requiring inclusion into the political membership. It may also entail more people leaving in order to settle elsewhere. Some may enter for a limited period of time, to work or study, and others may engage in circular migration. In this sense, when migration is liberalised, the decision making body of the society may be constantly changing. However, this problem can also be surpassed, especially if membership is divorced from the notion of citizenship (Song, 2018a, Chapter 10), and full political rights are tied to longer term residence. In this sense, immigrants who are permanently (or for a longer period) situated in the territory may be awarded full political status, with the ability to vote on the national elections and to run for office. Others which remain for shorter periods of time need not participate in this sense, but should not be excluded from normal participation in the community, and should be awarded a standard socio-economic rights to protect them in virtue of their agency in a society (i.e. as workers) (Ottonelli & Torresi, 2014). Political participation may also be deemed voluntary, in the sense that not all those migrants that came to work should be set on path to citizenship if they do not have intention in staying.<sup>140</sup> Categorisations on the part of states should in this sense be more flexible and track what migrants choose and plan (Ottonelli & Toressi, 2022). The main precondition of boundedness is that it is clear who belongs and who does not, and who is eligible to participate in the decision-making on the behalf of the group (Miller, 2020a, p. 49). While this may be more complex in cases in which population is more fluid, it does not seem unachievable. It rather requires that individuals are assigned different status according to their territorial presence or roles in the society, according to some administrative key, by which it may be clear who is to participate in which decision making, and who belongs to the community. This still allows that the group is identifiable and bounded, which may be required for it being an adequate agent of self-government.

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<sup>140</sup> There are a number of proposals which move away from seeing any potential migration as informed by a duty of full political incorporation into the membership of the state. This position, as explained previously, holds that territorial admission of immigrants requires future membership admission (Angeli, 2015, p. 94), which then explains why territorial admission is relevant for political membership and self-determination. However, rights can be disaggregated and not all need to be tied to full citizenship status (Song, 2018a, p. 175), as indicated above. Many ways can be conceived to accommodate those that are present only temporarily, in contrast to those that settled permanently.

This all may entail a much more complex administration process, or devising alternative modes of political participation,<sup>141</sup> but it is hardly so that freedom in migration is necessarily disruptive of essential characteristics of the self to render political self-rule of the state, in the sense of having a stable and bounded agent of self-government, unavailable.

The problem may arise if these aspects are to be considered as reliant on seeing membership as homogenous or tightly knitted around some set of goals, values and commitments of the society. Continuity of the self is at times understood to be connected to the cohesiveness of the group, and its ability to relate to the policy choices and goals intergenerationally, which may be seen as requiring bonds of solidarity and mutual understandings and shared underlying conceptions of future direction of the society and its aims (Miller, 2021a, pp. 170–172; Moore, 2015, Chapter 3; Walzer, 1983, pp. 28, 62). “Self-determination assumes that there exists a group - the “self” - that is sufficiently *cohesive* that one can attribute to it *a range of aims and values* that the members recognize as part of their collective identity, even though no individual member is likely to subscribe to all of them” [emphasis mine] (Miller, 2016c, p. 69). It is taken that a self-determining group acts on behalf of these commitments and values to shape its future development. Migration of individuals with different values and commitments may disrupt the cohesiveness of such an agent (Miller, 2016c, pp. 67–69). It may lead to discontinuity, in which members lose the sense of belonging to the community and in which they cannot adequately relate to the policies and the way society develops.

This conception of the agent of self-determination as sharing strong bonds of mutual understanding and as having values, will or commitments to some common aims and goals, which is present in overviewed accounts (Miller, 2016c, p. 69; Moore, 2015, Chapter 3; Wellman & Cole, 2011, pp. 39–42), is, however, problematic. Sager (2020, Chapter 5) and Kukathas (2021, Chapter 7) have stressed that the interpretation of state, or agent of self-determination, as being cohesive or having a common will according to which its future development can be guided falls short of the reality. Modern states lack unitary will, or convergence around general values and aims, or

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<sup>141</sup> For overview of this complexity reader is referred to Leydet (2017), where notions of different modes of political participation are indicated aligned with increasing globalisation and immigration of individuals, like e.g. transnationalism, or modes of decision making which extends above, but also below a nation state.

even ideas about where they should be headed (Kukathas, 2021, p. 205; Sager, 2020, p. 64). Self-government, in the sense of real political process and participation, unfolds against a background of immense division between members around most policies, values, or goals, including a great number of members which resent and abstain from political participation. Even the sense in which members decide on migration policies is not unitary, with different agents (parties, associations, business, minorities, individuals) disagreeing on the shape of the migration policies which society should elect. Policy choices do not arise organically, as a result of the real will of the people, but are shaped by a lobby, elites and other parties, more often than not against sentiments or popular opinion of the majority of population (Kukathas, 2021, pp. 204–205; Sager, 2020, p. 64). In this sense, e.g. having a vision of political members deciding jointly with whom to associate or disassociate (Wellman, 2008), to relate to ideas of future development of the society (Miller, 2016c, Chapters 4, 7), is a simplification of real political decision-making. Even though political theorists in migration debate often rely on this idea of societies being transgenerational and exhibiting shared political projects and bonds of solidarity (Moore, 2015, Chapter 3; Song, 2018a, Chapter 4), or seeing these agents as extending through time continuously (Miller, 2020a, p. 50; Pevnick, 2011, p. 11), the reality is more complex. States and societies often emerge contingently, and are shaped according to the workings of powerful elites which mobilise the masses (Kukathas, 2021, pp. 194–201). Genealogy of states or political collectives is often tied to myths of common descent or culture. This genealogy is, however, often engineered, and states and societies often emerge based on chance or political agency of a fraction of individuals. Having the idea of these entities and their members having common political projects may be misleading, together with ideas that such political societies are self-sufficient and independent (Kukathas, 2021, Chapter 7). States, and their membership, therefore, should be seen as complex and heterogeneous. This is especially so for multicultural societies, which apart from conflicts of interests within individual members, are characterised by internal cultural differences. In this sense, it is hard to claim that society as a whole has strong shared idea about values which should guide the development of the society, or even convergence about what should society be proud or ashamed of (Sager, 2020, p. 79), as a part of widely shared public culture (Miller,

2016c, p. 67).<sup>142</sup> These differences, however, mostly do not stand in the way of self-government, since they are filtered through the mechanisms of political decision making. States act as complex institutions with a task of negotiating competing interests (Sager, 2020, p. 64) and resolving such conflicts on a regular basis. In this sense, admitting migrants with diverse values need not endanger self-government. As argued, what may be required is some very general commitment to the political institutions of the society (like commitment to democracy or constitution), through which decision making can occur (Stilz, 2019, p. 108).

Continuity of the political societies may then be sought elsewhere. It may be argued that continuity of the political membership, as in cases with some other associations (like universities or NGO-s) rests on institutional structures that arrange these associations (Stilz, 2019, p. 133). This means that, while individual members may change, which may lead to changes in the community, as long as there is an overarching institutional framework to which political members relate and through which they participate, an agent of self-government is present. The self in question is continuous, even facing significant changes, as long as it still can be clearly identifiable, and as long as institutional structures which define it (e.g. constitution) are present. For states this is especially straightforward. Citizenship is mostly defined by structures which give it expression, which are territorial, institutional and clearly definable. Migrants become part of this structure, and they do not, bar extreme cases, pose a threat to this institutional arrangement. Their integration is also a controlled process. For purposes of discussion on agents of self-determination, understood in terms of membership of existing states, continuity, boundness and stability are primarily connected to functioning political institutions, and are not necessarily disrupted by migration, even if it is very diverse. Some instances of migration may affect the community negatively, and will be given some space below. The idea behind this

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<sup>142</sup> This divergence may be briefly illustrated by the example of Croatia, where a minor part of the population does not find any problems with fascist episodes of Croatian history, while others rightly hold that these episodes citizens of Croatia should be ashamed of. The same may be claimed for the USA, where there can be significant divergence on taking colonialism or imperialism as a shameful history or something that current citizens need not be ashamed of (Sager, 2020, p. 79). Great number of countries may have such opposing views on number of topics, including what is the position states should take with respect to many contested issues, like e.g. abortion, gay marriage, capital punishment, immigration and many others. Opposing views are also prevalent at the level of general idea about the character of society. Citizens tend to disagree should e.g. state like Croatia be defined as Catholic and traditional or rather more liberal.

exposition was to show that the agent of self-determination, understood as citizenship of the functioning states need not be disrupted by more liberal migration.

Additionally, it may be claimed, as Sangiovanni (2020) indicated with respect to Brock's account,<sup>143</sup> that this image of self-determination is overly thin. It does not rely on any notion of affiliation, apart from thin institutional affiliation, largely omitting the relevance of shared culture, common political endeavours, identity and belonging, which may be discerned in projects of political self-determination which occurred historically and which often resulted in bloody events and violence. It may be claimed, furthermore, that self-determination is, as proposed in this thesis, conceived as overly restricted, and reliant on robust conception of legitimacy. As a result, not much power is left with self-determination.

Matters of identity, culture or belonging should not, clearly, be left aside, and are not irrelevant in discussing justice in migration. Many people identify with culture, religion, ethnic descent, nationality, way of life, and other identity affiliations. Many of these affiliations shape the standpoint of individuals on many political issues including migration. However, while these solidarities may be relevant for identity of individuals belonging to some groups, if used to justify exclusion they are especially problematic, since they may give rise to highly illiberal policies, or serve other functions (like hidden animosity or racism), which liberal states (especially culturally heterogeneous) cannot endorse as a legitimate policy.<sup>144</sup> These affiliations may, however, give rise to bonds of solidarity and trust which are needed to sustain healthy political structures. In this sense, migration policies may be shaped in response to some of these worries, especially if the negative impact on conditions needed to achieve self-government are real. While matters of cultural, national or ethnic identities, or other bonds of solidarity are important for some conceptions of self-determination, the focus of this analysis was

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<sup>143</sup> Brock (2020), as is evident from discussion in chapter 6, finds self-determination as heavily limited by human rights, especially with relation to migration justice. She also makes robust conditions to its legitimate exercise (in the form of the legitimacy of the entire state system, which was adopted in this thesis as well).

<sup>144</sup> Here I will not address in detail the exclusions based on culture in general. Chapters 4 and 5 offered the way cultural (nationalist) claims are tied to self-determination, and some reasons why culture should not be used to shape migration policies. A more detailed account of why culture should not ground exclusionary policies can be found in e.g. Kukathas (2021, Chapter 6) and Sager (2007, 2020, pp. 74–81). The focus of discussion is rather on the conditions of self-government, and while some accounts of self-determination do give some relevance to shared identity (including cultural) (Miller, 2016c; Moore, 2015; Walzer, 1983), most overviewed accounts stress institutions of the state (Angeli, 2015; Miller, 2016c; Pevnick, 2011; Song, 2018a; Stilz, 2019; Wellman, 2008) as what is either defining of the agent of self-determination or necessary for achievement of self-government.



on states and their stability, continuity and boundedness, which is related more to institutions than to cultures or identities. This is especially so in multicultural liberal states, which are characterised by plurality of identities, affiliations, and values, and which should, if they are to be respectful of these differences, seek to be culturally neutral (Stilz, 2019, pp. 142–148). Self-determination is primarily connected to the functioning of political institutions, and not protection of culture or identity. When these are relevant for self-government then this may give rise to some reasons to restrict migration, but this will mostly occur in limited cases.

Self-determination, furthermore, as understood in this thesis, is a heavily restricted principle. Its legitimate exercise relies on firm compliance with human rights framework and justice, which was also extended to the idea of legitimacy of the entire system of states (Brock, 2020). While some requirements and limits are placed on the exercise of self-determination in the overviewed accounts, understanding rights to self-determination as reliant on legitimacy of the entire system of states may be overly strong.<sup>145</sup> I believe, however, that this worry relies on taking self-determination and the system of states as starting position (Brock, 2022b), without acknowledging that it is an institutional arrangement which should be justified. The fact that this arrangement is a contingent human design, even though it embodies important values like occupancy and self-government, requires justification to all as moral equals (Bertram, 2018; Brock, 2020, 2022b; Stilz, 2019). This means that individuals which are placed within this system, need not accept policies which exclude them, based on the claims to self-determination, unless some institutional preconditions are put in place to secure their fundamental interests. Protection of human rights and some duties of global justice are in this sense required to see a system of states as having legitimate authority over individual lives. Persons behind some version of the veil of ignorance would accept a system of states, with exclusionary rights, only in a situation in which their basic rights are properly protected. Without such justification, *exclusionary* rights (not necessarily other internal policies) based on self-determination do not carry a moral strength (Brock, 2022b), and I do not believe that they should be accepted by

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<sup>145</sup> Higgins (2022) was critical of heavy investment on legitimacy in Brock's account on migration justice, in the sense that legitimacy was perceived as unnecessary to select just migration policies, and even an obstacle for states which are not perfectly legitimate to elect them freely. However, while it is clear that states will, irrespective of their legitimacy, exercise political power over migration, the core issue of this analysis was to show under which conditions states are *morally* justified in exercising this power. Legitimacy here seem to play a role, even if it may entail that many states lack moral grounds for their exercise of exclusionary rights.

prospective migrants which are potentially harmed by elected migration policies. Individuals, that is, would in this case, be under a full right to resist unjust migration laws (Hidalgo, 2015). Without legitimacy, many exclusionary rights would seem as mere effectiveness, and this is not what is the intention behind a normative discussion on migration. The extent of limits depends on the underlying notion of human rights and global justice, but as argued, these considerations also include migration policies, and place some limits upon discretion on enforcing them.<sup>146</sup> Legitimacy of the entire system of states, and not only one state which seeks to exclude based on its self-determination, relies, furthermore, on the concept of self-determination which was adopted in this thesis. Self-determination, as argued, should be seen as a right which necessarily entails relations with other collectives and individuals, and which is exercised in the context of the system of states. For this reason, as well, justifying its exercise should take into account a wider system in which it is embedded.

A critic may furthermore wonder, why is this attention given to the legitimacy, and conditions of making exclusionary rights of states justified, if these rights are to be negated in the end. In the response I stress that taking legitimacy in focus of a significant part of discussion relies, as indicated above, on seeing rights to self-determination as embedded into a wider context of global relationships and system of states which should be justified to all that belong to it. This discussion aimed to show that a system of states featuring exclusionary rights like the right to control immigration cannot simply be assumed. When some conditions are satisfied then states may justifiably exercise their self-determination. However, as I tried to show in discussion in chapters 5 and 6, self-determination first, need not straightforwardly include control over membership as its standard feature, and then, even if it does entail control over migration, discretion over it is restricted by the role migration serves in satisfying conditions which give rise to legitimate exercise of self-determination. Self-determination does not only refer to control over migration, but gives the political community freedom to engage in associations, projects, programmes with other agents in the system, and the right to determine political status and other internal policies for

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<sup>146</sup> It is, however, worth noting that global justice conditions which were deemed necessary for legitimacy of the system were mostly those around which there is a general agreement that some duties should be recognized, like alleviation of severe poverty, protection of background conditions of self-determination, protection of human rights and remedial justice (Miller, 2005a, 2007a; Song, 2018a, Chapter 5; Wellman & Cole, 2011, Chapter 2). The manner in which these duties are to be fulfilled are however left open and subject to minimisation.

its membership. Some of these policies are rightly seen as exclusionary, and involve a degree of discretion in a number of aspects. Therefore, it makes sense to discuss justification of such a right in a form of legitimacy, even if wide discretion on migration policies is not seen as a prerogative of self-determination. In this sense, furthermore, even if this discussion limits the scope of self-determination in some aspects, others are rightly left under the purview of this right. Self-determination, which does not immediately entail strong rights over migration need not be seen as powerless or overly restricted. It still preserves a wide range of other liberties legitimate political collectives can exercise.

This opens a space to indicate a way this right can be reconceived. Self-determination, that is, understood as not entailing discretion over migration, may be seen as diverging from conceptions which often see self-determination as entailing standard sovereignty powers.<sup>147</sup> Below, I will indicate the direction in which self-determination may be re-defined. It is, however, essential to note that my intention is not to provide a full account of this redrawing, but to merely indicate a way, following some other authors, in which rethinking of self-determination can proceed. This rethinking remains, limited to the issues of migration, and cannot offer a place of self-determination in wider discussion on global justice.

### **7.1.3. *Self-determination re-imagined***

This part will open some space to reimagine self-determination, following discussion within this thesis and leaning on the work of other authors on democracy and global justice (Banai & Kollar, 2019; Young, 2000, 2007). Some modelling of the concept has already begun in this thesis, and this segment will open some additional (although limited) space to reconceive it.

To even begin re-imagining self-determination, it is worth observing that this concept is mutable. It underwent substantial changes, from the right which was almost

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<sup>147</sup> To illustrate, note the following quote from Murphy (2014, pp. 323–324):“(T)he collective capability for self-determination encompasses the freedom to determine the character and boundaries of the political community itself, including the criteria for membership and political participation; the freedom to establish institutional mechanisms of collective deliberation and decision-making; and, perhaps most importantly of all, the freedom to make decisions as a community in the absence of external interference or domination. There is nothing especially radical or revolutionary about this claim, for each of the freedoms comprising the collective capability for self-determination is already within the *possession of peoples who control sovereign democratic states* [emphasis mine].”

exclusively tied to the notion of territorial sovereignty and statehood affirming the existing distribution of states, to the concept which was tied to decolonisation and creation of new states from existing colonies, and more contemporary, to understanding it as allowing a form of internal autonomy to minorities. In the contemporary context, it may even be claimed that self-determination has lost its practical relevance (Morss, 2016). Currently it is not considered possible that every people has a state of its own. In this sense, self-determination, as a concept which entails collective autonomy, may be seen as coming in degrees (Stilz, 2016b, p. 98). It cannot assume complete independence for all peoples, and is often understood as satisfied when some forms of internal autonomy for peoples within existing states is achieved. Self-determination is, however, in academic writing often tied to the assumption that self-government should mirror sovereignty (Young, 2007, p. 58), offering a wide range of rights to those that claim it.

Self-determination, however, has a great potential to be reconceptualized. This thesis opened a way to do so with respect to its connection to migration controls, and this segment will address the notion of non-interference and relationship of self-determination with global justice.

Young (2000, Chapter 7, 2007) has contrasted self-determination as non-domination with the way it is standardly conceived, especially in its external dimension, or as non-interference. Non-interference entails the independent control over a territory over which others have no authority (Young, 2007, p. 63). Self-determination, understood in this manner, also seems to imply that there are no duties to outsiders, and that outsiders cannot have substantial moral claims upon self-determining states (Young, 2000, p. 257). Under this conception collective entities are seen as independent, each tending to what happens within their own jurisdiction, with freedom to engage with others in forms of mutual conduct, from which duties of justice may arise, but which are otherwise minimal. This conception mirrors the way self-determination is understood in the analysed argument. Conceptualising self-determination and what it may entail needs, however, to be attentive to the way different peoples relate to one another (Young, 2000, p. 258). Peoples are often territorially dispersed, in tied relationships, or territorially overlapping, and understanding their self-government in the form of independence and sovereignty (over contiguous territory) is generally unavailable, and not even claimed as such. Their freedom is better understood as entailing non-domination, or protection from

other agents having the power to arbitrarily interfere with them (2000, p. 258). Non-domination entails that there are social conditions and institutions which make domination of some over the others unavailable (Young, 2000, p. 259). Domination is possible in the context of a single state, where political and socio-economic context is created in which minorities cannot flourish or achieve autonomy. The same holds for complex relationships between states, where decisions of some affect others, and where corporations and different transnational organisations affect states and their politics profoundly. More powerful states often shape the rules of mutual conduct in areas like trade or finance (T. Pogge, 2002; Wenar, 2017), even without direct *interference* or challenges to territorial sovereignty of other states. Military, diplomatic and material wealth and power are enough for some to shrink options of others, in the institutional context which allows dominating relationships. Conceiving self-determination should, therefore, be attentive to the context of the mutual conduct of various agents (Young, 2007, p. 65). Self-determination should in this sense be interpreted as a right to self-governance, free of domination, subjugation or arbitrary interference from others (2000, p. 259). It should not, however, be conceived as entailing strict independence and self-sufficiency from other agents, but should recognize their interdependence. To secure non-domination, outside agents should be able to make legitimate claims to negotiate terms of mutual relations, when decisions and activities of some agents affect them profoundly, or lead to harming the interests of their constituents (2007, p. 65). To achieve the environment in which agents can be effectively protected against domination, it is required that they are not conceived as autonomous exclusively when protected from outside interference.<sup>148</sup> Terms of mutual relationship should be implemented to ensure that one does not dominate others. This, furthermore, may require some common institutions through which matters of common interest may be negotiated and decided (Young, 2007, p. 66). If self-determination is defined along these lines, then outside interference, especially in cases in which matters of common concern are to be decided upon, does not constitute infringement on collective freedom. At times it is even required to ensure non-domination.

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<sup>148</sup> Young (2000, pp. 258–259) argues that freedom and non-interference are not the same. Domination presents a greater threat to freedom, in the sense that it entails the power of some to interfere with others arbitrarily, without any consideration of their interests. Domination may arise even when there is no direct interference in the internal affairs of others, but in cases in which some can determine the conditions in which these agents act (Young, 2007, p. 64).

This analysis refers both to indigenous peoples and minorities, and also to the relationship between states. It can inform understanding of global but also of migration justice. In discussion on migration and self-determination, it was already shown that migration policies have a significant effect on the number of agents. For that matter, migration does not seem to be a purely self-regarding affair of the receiving state. This means that migration policies should be understood as common matters of relevance to these agents. In light of interpretation above, this may entail that self-determination allows some form of mutual decision-making in the context of migration governance (Christiano, 2017). If self-determination can be reconceived in a manner in which some decisions are seen as mutually negotiated, and if it can be interpreted in manners in which it does not imply non-interference, then decisions on migration may be reached in collaboration with other actors to which these decisions have effect, without infringing on their self-determination. Some of these forms of migration governance will be indicated below.

Understanding self-determination as non-interference, furthermore, gives rise to conception of global justice which may leave some without the claim for aid, even when mutual interaction has led them to poor conditions (Young, 2007, p. 149). Conceiving self-determination as non-interference gives rise to understanding duties to foreigners as minimal. Egalitarianism and equality of opportunity especially seem to be in tension with self-determination, for they imply redistribution and interference with policies of states. Understanding self-determination as non-interference, therefore, seems to be in tension with requirements of global justice, but also with the requirement that all peoples should be able to exercise self-determination (Young, 2000, p. 237). To achieve moral justification in exercising a right to self-determination, it was, however, claimed that background conditions for others to exercise it should be secured and some global justice duties observed. This can be more available if self-determination is not understood as non-interference and independence, but as a relational concept which recognizes that interdependence need not stand in a way of freedom and autonomy. While this interpretation is compatible with the analysis of the background conditions in which migration and self-determination are exercised, some other authors have also sought to connect this right with more substantial duties to foreigners.

Contrary to simply seeing self-determination and global equality of opportunity as incompatible, it was argued that self-determination may be reconciled with more

robust duties to foreigners. In the analogy with family in the context of domestic equality of opportunity, Banai and Kollar (2019) aimed to show that national self-determination may be reconciled with global equality of opportunity. According to these authors equality of opportunity may be compatible with some inequality enhancing activities. Within the family context reading bedtime stories to children may be one such activity. Reading bedtime stories is shown to increase opportunities of children by enriching their vocabulary and imagination. Later in life, these children may have some advantages compared to other children which did not enjoy this activity with their parents (often due to poorer living and working conditions or lower material and social status). These activities are, however, justified based on the value of the relationship between family members, even if it may contribute to some inequalities in opportunity between these individuals. Clearly, self-determination may also lead to some advantages and benefits being reserved for members of the collective (nation or state) compared to foreigners, which inevitably leads to some inequalities on the global level. However, self-determination is arguably valuable for members of the collective and in this sense, some activities which enhance opportunities to co-members in relation to foreigners are justified based on this value. In this sense, self-determination may be considered compatible with global equality of opportunity when it allows activities which prioritise co-members, when this prioritisation is of value for the specific relationship between them. It need not extend to all areas which are generally seen as tied to self-determination, especially when conceived as non-interference. The idea is to show that some activities which may confer advantages on some parties may be acceptable from the standpoint of equality, if they are necessary for the value of the relationship in family or international context. To reconcile self-determination and global equality of opportunity, some of their parts need to yield when confronted with competing claims. This means that *each* should be reinterpreted by accommodating the core value of the other (Banai & Kollar, 2019, p. 11). If the value of self-determination is in the political autonomy and political participation, then self-determination should be seen as awarding protection to this sphere, i.e. protection of institutions of self-government,<sup>149</sup>

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<sup>149</sup> Self-determination is valuable for other reasons as well, some of which are stressed in chapter 3, but which are subsumed under the notion of political autonomy and freedom. Banai and Kollar (2019, p. 15) also stress: “freedom (as experienced by individuals), ‘maker’s’ freedom, a sense of authorship and affiliation to a polity, and development and expression of political identities.”

and not in preventing mitigation of any inequalities between self-determining polities.<sup>150</sup> Other goods may also be seen as relevant for self-determination, and these authors stress fulfilment of wellbeing, sense of collective autonomy, possibility to express political identity and political projects, and solidarity (2019, p. 16). Protection of these goods that self-determination serves can be compatible with a wider range of duties to foreigners. This means that some nationality tracking-inequalities will be acceptable when important for the good of the relationship between members of a single state (polity). Amassing of the extensive amounts of wealth may not be (2019, p. 17), especially if it is then guarded jealously from outsiders by exclusion. The scope of self-determination, is in other words, limited by its value (Banai & Kollar, 2021, p. 191). Freedom to decide on internal policies, which is part of the value of self-determination, that is, does not necessarily require that decision-makers exclusively bear costs and benefits of their decisions, nor does it require that others do not aid in mitigating results which are poor (2019, p. 19). While there is a value in making decisions on the way the community develops, this value need not require that all benefits or costs resulting from this process are reserved exclusively for co-members. Some inequalities may be mitigated without the value of self-determination being reduced. This is, I believe, especially so, if understood that the exercise of self-determination which may lead to inequality is under the effect of numerous global factors, as explained previously.

For the relationship between migration and self-determination, this may mean that to justify exclusion, evidence should be produced that immigrant admissions would infringe on the values which collective self-determination serves (Kollar, 2017, p. 8). As discussion in this thesis aimed to show, this is not as straightforward as implied in the number of accounts for the right to exclude based on the value of self-determination. Clearly, the intention of this part is not to argue for global equality of opportunity, but to indicate that self-determination has a potential to be remodelled even in a way in which it is more compatible with seemingly competing values.

The analysis in this thesis sought to offer the room for self-determination to be re-assessed. First, it showed that self-composition is not not essential for self-determination understood as self-government. Political freedom can be exercised even if the collective does not exercise extensive freedom in shaping its own constitution. Then it showed that understanding self-determination as entailing non-interference and

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<sup>150</sup> Equality of opportunity should also, in this sense be remodelled, to allow the scope for permissible inequalities derived from self-determination. This is, however, not the focus of this discussion.



self-government, together with choice and responsibility, does not easily align with the complexity of the context in which self-determination is claimed, where it should be observed and legitimised as a part of complex global dynamics. This opened a space to understand self-determination better aligned with proposals described above. Self-determination should, that is, be read as self-government, but with some caveats with respect to the context in which it is claimed. Its external dimension should, that is, not be conceived as complete non-interference. It should, that is, mirror the fact that collective entities stand in complex relationships with one another. Presumption should still be with non-interference (Young, 2000, pp. 258–260), but it should be modified in a way that it allows other agents to place legitimate claims on self-determining agents on matters which are common. This is better aligned with seeing the world as interconnected and mutually dependent. This also means that some decisions should be reached cooperatively. Self-government may, in this sense, be compatible with cooperative decision making on some matters, like migration is. It may also be understood as compatible with extensive duties to foreigners (and migrants), as long as its value is not infringed. Seeing that foreigners may have claims on other states better mirror the way the world is organised, with self-determination as independence and self-sufficiency being more an aspiration than a reality.

I believe that self-determination can be reimagined in a way in which it is more open, interdependent and subject to the degree. While some of its aspects, like internal dimension which protect institutions of self-government, should be protected, some of its other aspects like non-interference may come in a degree, depending on the context and competing claims. It need not be considered as all-or-nothing matter. This may render self-determination more flexible and more applicable in the contemporary context, where it is difficult to allow embodiment of territorial independence for all, or to claim complete responsibility for policy choices and levels of development. It may also better mirror the necessity to govern over some matters cooperatively. Understanding self-determination in this sense may allow reconciliation of migration and self-determination, and provide space for other forms of migration governance. Second part of this chapter will offer a way migration justice may be reconceived in light of these considerations.

## **7.2. Blueprint of migration justice - international governance and the right to exclude**

Discussion on self-determination based argument thus far, aimed to show states may lack the moral justifiability in selecting migration policies freely. Migration policies, as was argued, are not to be considered as an exclusively self-regarding matter of a receiving state. Migration unfolds against a much larger context, and migration policies which states elect are potentially very harmful to the interests of individual migrants, and other affiliations to which they belong, including sending societies. Self-determination is proposed to be observed within this wider context, allowing for more substantial duties to foreigners and cooperative decision making on migration. In what follows, a proposal of migration governance in light of these considerations is offered, with some considerations to the content of admission policies and the right to exclude. It is important to note that the following analysis does not seek to offer a complete account of justice in migration, but a very general outline of the direction in which it may be developed, as a part of a much wider project.

### **7.2.1. Authority over migration and self-determination**

Governance over migration is in the international law, and normative discussions on migration, mostly conferred on states. Proponents of the conventional view believe that states should have authority over migration exclusively, constrained by some consideration to human rights of foreigners. On the other side of the debate, proponents of open borders believe that states are not justified in *excluding* migrants and enforcing exclusionary policies. This stance does not necessarily offer the conception of other legitimate authorities over migration, or negate the state as being such an agent (Carens, 2013, p. 7; Oberman, 2016a). In this sense, matters of justification of specific policy and matters of authority over some set of issues may be treated separately (Christiano, 2017, pp. 241–245). This thesis offered reasons to abandon the idea that the right to self-determination offers moral justification for a state's unilateral control over migration, and this opens a space to address the question of the proper bearer of authority over migration.

Apart from assigning authority over migration to states, other international or subnational entities (Christiano, 2017; de-Shalit, 2018; Hidalgo, 2016), may become

available candidates; or even more radically no-one in particular, which position of no-borders seems to entail.

#### *7.2.1.1. Towards an international governance over migration*

In what follows some options of governance over migration, other than unilateral state authority, will be looked at. These include: transferring some of the power over migration to specifically tailored global institutions (Hidalgo, 2016; Wellman & Cole, 2011, Chapter 15) and allowing for states to retain the decision making power over migration, but heavily constrained by global regulatory framework (Bertram, 2018; Brock, 2020). Some decision-making powers could be transferred to other sub-state entities like cities (de-Shalit, 2018). For the position this thesis focused on, or contextualisation of self-determination and migration in the wider state system and global justice, the first two options seem more pressing in discussing.

This thesis aimed to show that migration policies engage and have effect on a number of agents within the system of states. Migration is also recognized as a phenomenon with impact on global justice, which makes it of concern for international society (Christiano, 2017) These considerations gave rise to the idea that states should not be deemed as the only, or the most appropriate, agent, to make decisions on migration. Apart from these considerations many authors stressed that states (and their officials) may be subject to bias and epistemic defects which may lead them to select morally unjust and harmful migration policies (Brock, 2020, Chapter 9; Hidalgo, 2016; Stiliz, 2019, Chapter 7), including discriminatory criteria in admission, or talent hunting at the expense of the sending states. Other bodies, like international organisations, could in this sense be proposed as a mode of migration governance.<sup>151</sup> Migration, that is, may be seen as a matter states (and some other agents) should deal with cooperatively. This opens the possibility to see international institutions as either having authority over migration, or providing a firm framework within which states can make limited decisions on it.

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<sup>151</sup> Global state, where migration would be treated as internal movement of population, is however, removed from the analysis, based on the worry that it would significantly constrain self-determination. This thesis does not seek to investigate if this arrangement could be upheld in the situation in which self-determination is re-invented. Young (2000, Chapter 7) has sought to connect reimagined self-determination with global democracy, but this vision does not entail distant and centralised global state.

International migration institutions could take various forms, including world migration organisation with multilateral framework for negotiating migration between states, regional migration organisations which could manage migration in the specific regions and between countries of similar income, or international migration courts which could impartially determine if migration policies are unjustified (Hidalgo, 2016, pp. 157–160). Other options include development of international mechanisms, initiated in e.g. *Global Compact on Migration*, or other human rights conventions, which could more firmly guide the state's conduct with respect to migration (Bertram, 2018; Brock, 2020). These institutions could be envisaged as having the authority to regulate migration or as offering mechanisms of oversight and accountability, including forums which can enable deliberation and contestation of competing interests, and impartial adjudication through courts (Hidalgo, 2016, p. 154).

This type of government over migration would require that some, or most, of the decision making power over migration is transferred to other bodies. If appropriately arranged, these could offer impartial decisions on migration, which takes into consideration interests of all parties involved, consider evidence and empirical support for the effects of different policies on various agents involved in the process of migration, and correct for biases which may affect unilateral decision making from the part of the state (Hidalgo, 2016, pp. 155–156). Especially bias with respect to selecting preferable migrants, in terms of cultural or other impermissible selections, may be mitigated. Such institutions could, furthermore, have a potential to bring about more balanced policies with respect to global justice (Christiano, 2017). If interests of all parties involved could be taken into account in a relatively unbiased manner, then the effect of migration on sending states could as well figure prominently in decision making, which could give some weight to contributing to global justice and poverty alleviation.

There is, however, a legitimate worry that such global institutions could be under influence of more powerful states, at the expense of those poor and less influential, like in cases of e.g. UN Security Council or WTO, where it is clear that powerful states influence decisions to be better aligned with their goals (Singer, 2002). Global or regional institutions are, as well, subject to potential bias, and may fall under the influence of more powerful elites or interests of more wealthy states (Hidalgo, 2016, pp. 162–163). In this sense migration policies may still be designed in a way in which blocks of more powerful states, corporations or business elites prefer, at the expense

of interests of migrants and their families, or interests of sending states, especially if they are poor, which may make them less able to properly represent their interests in forums or migration courts. In this sense, it could be claimed, that only in conditions in which states are of relatively similar income levels and development, such organisations could work to the greatest benefit to all (Hidalgo, 2016, p. 157). While institutions may be designed with flaws, and may be subject to some interests and lobby, they still may be seen as less partial than states, when deciding migration unilaterally. Such institutions would comprise representatives from different parties, which could help mitigate the bias, and their decisions could be publicly criticised. Even if biased, such institutions may be seen as better in reaching fair and impartial migration policies than if these are placed in the hands of the single state unilaterally (Hidalgo, 2016, p. 163). This is, furthermore, better aligned with the explanation of migration as a complex, global and regional phenomena with effect on a host of agents, then seeing it as a matter of receiving state exclusively.

While global institutions may be one way to govern migration more aligned with its character, other options are as well available. These include states making decisions on migration, but within a robust international system of initiatives, treaties and principles which guide migration decisions and bodies which provide oversight (Bertram, 2018; Brock, 2020; Christiano, 2017). Bertam (2018, pp. 70–71) argued that a convention with a set of general principles on migration should be devised based on involvement of interested parties (like migrants, states, NGOs and business). This convention could be administered by some international adjudicatory agency, which could assess migration policies of states. Global Compact for Safe, Orderly and Regular Migration, United Nations and International Organization for Migration, may serve a similar function (Brock, 2020, Chapter 9). Conventions like this can offer a number of guiding principles, which states that ratify them, should follow in their design of migration policies. This means that states may be the primary agents in designing and enforcing migration policies, but that these are to be designed in accordance with international law and guiding principles of agreed-upon conventions. International organisations have a role in ensuring that states act under the principles of a just and transparent migration process, which means that they offer guidance, but also oversight, review and accountability mechanisms (Brock, 2020, Chapter 9; Hidalgo, 2016, p. 154). States, that is, are accountable for the migration policies they elect, and may be subject to sanctions or diplomatic pressures in cases in which they fall below

agreed-upon standards of migration justice. International organisations with a role to ensure that migration unfolds according to human rights and general guiding principles, should offer mechanisms in which competing claims of migrants and states can be assessed fairly, especially in cases of disputes and contestation.

While most of the power would still be retained in the hands of the state, according to this account, the mere existence of institutions with authority to oversight and review can incentivise the states to self-regulate and enforce more just migration policies (Brock, 2020, p. 216). Thus, even in cases in which these institutions cannot legally enforce some policies in place of states, they can offer a firm framework in which states can act and offer strong incentives for states to comply. This framework may be considered more feasible in the more proximate future, than states transferring much of their legal power over migration into the hands of international institutions. These options are, regardless of this concession, often placed in tension with self-determination of the state, and this specific worry,<sup>152</sup> is analysed below.

#### *7.2.1.2. International regulation over migration and self-determination*

International regulation over migration may be seen as in tension with the exercise of self-determination. The main reason for this lies in conceiving self-determination as entailing the right to regulate migration and seeing the state as having an appropriate authority over it. Other international bodies interfering in this process would therefore infringe on the state's self-determination. This claim has been, however, challenged through the thesis, especially if self-determination is conceived as not necessarily entailing control over membership composition. Additional reasons to see self-determination as compatible with previously proposed initiatives are offered below.

While having international institutions constraining state's choice in selection of policies may negatively affect state's discretion over some matters, this need not entail impermissible infringement on state's political freedom. Self-determination is not

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<sup>152</sup> There are clearly a number of other worries, including above mentioned feasibility of such a project, where states (and their demos) transfer much of their power elsewhere, especially with respect to migration, which fuels much of the heated debate within population, and gives rise to populism and increasing animosity towards migrants. Feasibility of this project is, however, not under the discussion of this chapter primarily, since it aims to provide merely an indication, or a blueprint of what just governance over migration might imply, and how it relates to self-determination. Brock (2020, Chapter 9) has offered elaborate responses to some of these worries.

absolute. In this sense, it is clear that some norms or principles, like human rights, permissibly restrict conduct of states in most matters. States cannot justifiably exercise their political power in any manner they please. In cases in which this is the case, states risk justified sanctions and interventions, from the part of other agents within the state system (Brock, 2020, Chapter 3). In this sense, states do not exercise self-determination in an unconstrained manner, to begin with, but are heavily constrained and influenced by numerous international organisations, conventions and treaties. For example, matters of climate and climate change, which are properly understood as collective matters, are to the extent regulated by international agreements, e.g. United Nations Paris agreement. The United Nations International Court of Justice and European Court of Justice have some jurisdiction over criminal justice. Even economic policies, which are rightly seen as important parts of self-determination and future development of states, are partially regulated by the World Trade Organisation. Global institutions or arrangements guide and shape political choices for states in a number of aspects, and migration in this sense, may be recognized as one such matter which should be guided by international bodies and conventions. The Global Compact for Safe, Orderly and Regular Migration already recognizes that migration is a transnational phenomena which no state can properly address on its own (Brock, 2020, p. 197).

Membership in transnational associations like WTO, NATO, EU or other international arrangements are, furthermore, generally, not primarily considered as infringements on self-determination. Even if they constrain it in some manner, they do not invalidate it. One reason is the fact that self-determination is compatible with self-binding (Brock, 2020, p. 217; Hidalgo, 2016, p. 162). This means that states can freely enter into various agreements, or sign treaties and conventions, which may, as a result, restrict their conduct. This restriction, however, under these conditions, does not affect self-determination negatively, but is, moreover, a result of it. In this sense, when states willingly and under full information opt to sign certain conventions and treaties, or place themselves under the regulation of international framework, then this framework offering rules or guidance, or even imposing sanctions for non-compliant states, does not infringe on their self-determination or freedom. What seems to be an important condition, however, is the ability of states to enter these binding agreements freely (Brock, 2020, p. 260; Christiano, 2017, p. 250). They should not be, that is, coerced in signing or ratifying certain agreements and treaties, which subsequently place heavy

limits on their conduct, and should, also, be able to opt out. This need not preclude diplomatic pressures or incentives for states to join these initiatives. Other states or agents may, abstaining from coercion or manipulation, provide incentives to join. Exit may also bring some costs to states, like e.g. in case of Brexit. These, however, do not stand in tension with self-government, when the choice in entering was free.

Even proponents of self-determination, claim that some national sovereignty powers can be translated to international organisations, like e.g. in cases of environmental issues (Miller, 2005a, p. 74), or addressing refugee problem (Wellman & Cole, 2011, Chapter 7), where some international body could manage responsibilities to achieve these collective aims fairly. International bodies, with some authority over particular issues are, therefore, compatible with self-determination. In this sense, global regulative mechanisms over migration, which bind states or influence them heavily need not be seen as incompatible with state's self-determination.

Another reason to see self-determination unobstructed by strong regulatory framework over migration is seeing that control over membership composition is not essential for self-determination. Self-determination does not immediately entail control over migration policies, since political freedom is conceivable without this self-composition. Freedom in migration, when not excessive or overburdening on institutions of receiving states, is not incompatible with self-government. The fact that migration is a transnational phenomena which influences not only receiving states, but also other global agents and actors, also speaks in favour of having some international arrangement guiding decision-making on migration. European Union, and European Court of Justice, exemplify this regional governance over migration, where freedom of movement does not curb self-government and political freedom of member states. The European Court of Justice, furthermore, has a right to invalidate migration decisions of member states, if they fail to observe the legal right of the citizens of the EU to migrate (Hidalgo, 2016, p. 158). Furthermore, if self-determination is to be observed more aligned with the notion of non-domination (Young, 2000, 2007), where agents enter into mutual agreements over important decisions applicable to them, then deciding on migration multilaterally or in cooperation with others does not involve curtailment of self-determination. If we interpret self-determination as not requiring freedom in selection of important policies without the interference from the outside, but as allowing that policies which affect other actors besides state are reached cooperatively, then some mechanisms which allow this cooperation are required. Moreover, it is important



to note that states have strong moral reasons to support similar arrangements and frameworks of governance over migration. It was claimed that legitimacy of states and the state system, requires protection of human rights and securing some level of global justice, of which migration is an important part. States have responsibilities to support arrangements which allow adequate protection of human rights as part of their legitimacy requirement (Brock, 2020, pp. 56–58, 217). Positions which highlight the relevance of legitimacy have reasons to support cooperation between states on matters on migration (Owen, 2021, p. 247). This is especially so when migration is understood as an important element of global justice. This means that legitimacy may require that states enter into some scheme of international governance over migration, or to transfer some of their authority over migration to other bodies. This could better mirror both the nature of the migration, which inevitably includes a number of parties, and adequate human rights protection which is a requirement of legitimacy and precondition for states to legitimately exercise their self-determination. States then may be considered as having strong moral reasons and responsibilities to contribute to the just migration regime (Brock, 2020, p. 217).

One important caveat is, however, in order. Previous discussion mostly referred to the state's admission policies. It is clear that migration policies also consist of integration and naturalisation policies, and other policies which refer to the rights and obligations of both migrants and states upon admission. It is clear that these policies should, as well, be regulated with respect to human rights framework, or in some particular cases, like temporary work programmes, by overarching institutions and conventions which regulate fair terms of cooperation. However, while these policies were not part of this thesis explicitly, it is important to note that while states should regulate their general policies in compliance with human rights, discretion in arranging their internal policies with respect to accommodating migrants is allowed. Global regulatory mechanisms and institutions should not be conceived as permitted in interfering on all matters on migration, especially those that fall within general internal policies of the state, like designing social and civic integration policies, allocating specific social schemes to migrants, or designing different naturalisation requirements. What may fall within the purview of international conventions pertaining to migration, is allocation of membership status, or prevention of statelessness or alienage to permanent residents (Bertram, 2018, pp. 72–73). Not all other policies which states

elect to arrange the mutual conduct and functioning of the members (including admitted migrants) should be part of such external regulation.

This part offered a very general idea on other forms of regulating or overseeing migration and its relationship with self-determination. The intention was to show that migration may be managed alternatively, and more in line with understanding migration as global and regional phenomena.

### ***7.2.2. Just admission policies and the right to exclude: an outline***

Previous segment offered a proposal of understanding the authority over migration in a form of an international institutional framework, which can better mirror the nature of migration as a complex global phenomena with effect on the number of agents, and its contribution to the conditions which make the system of states legitimate. For conceiving justice in migration it is important to indicate the status of the right to exclude. Below, I will offer what I take to be instances which give the right to states, within some form of regulatory frameworks as indicated above, to restrict migration. This proposal will, furthermore, be connected and contrasted to the accounts which argue for freedom to immigrate. This part should be read as a tentative proposal and not a comprehensive account of migration justice. In this sense, what is offered is not a discussion on the potential shape of migration policies, but the outline of some very general principles which could guide this process.

#### *7.2.2.1. Instances of just exclusions*

When inquiring about which migration regime may be justified to all persons as moral equals, presumption is often seen as lying with the freedom of movement. Bertram (2018) evaluated four possible migration regimes, ranging from (1) state's unilateral control over borders, (2) its modified and more limited version,<sup>153</sup> to (3) open borders regime, and (4) a global procedural system. The final (4), as the migration regime which awards priority to movement, but is regulated by procedures guided by a set of institutions and conventions, was selected as the most just. The idea was to

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<sup>153</sup> This version is what most of the proponents of the conventional view argue for, where the right to exclude is not absolute (like in the first case), but conditional and subject to limits. However, in this position presumption is with states and their rights over migration. And as shown, this position may lead to a very constrained understanding of duties to migrants, and substantial discretion in excluding.

show that people, not knowing their particular skills, assets, relationships, preferences or nationality, and knowing that their life prospects may be determined by the happenstance of membership in the rather unequal states, would choose a system in which freedom to migrate would be a presumption. Exclusion would at times be justified, by reference to important interests of communities. Such a system would enable people to exercise their vital interests, both in virtue of their roles as potential migrants, and in virtue of their particular social memberships. In this sense, the right to exclude migrants conferred upon states would not be justified as a general right, but only conditionally, when migration would pose threat to important interests tied to the belonging to particular societies or states. Decisions on migration would also not be reached unilaterally but in accordance with some overarching institutional framework.

However, as recognized within this thesis, it is claimed that persons would, from a similar standpoint of above indicated neutral position, choose a system in which self-determination would have a prominent role. This right is, however, claimed to give a moral justification of states to control migration, subject to the constraints of human rights protection. If the argumentation in this thesis is correct, then self-determination, while valuable for the interests of individuals, is not sufficient in providing moral grounds for state's unilateral control over migration. Self-determination, in most cases, does not give strong reasons to exclude migrants, and may, understood as self-government and not self-composition, even be compatible with regimes of more liberal migration, regulated by some international institution. This is especially so if it is understood that exercise of self-determination should be legitimised within the wider (global) context. There are, however, cases in which exclusion of migrants may follow from self-determination. If self-determination provides only conditional rights to exclude, then it is important to see when these situations arise.

#### 7.2.2.1.1. Self-determination and legitimate reasons to exclude

Self-determination, as argued, protects important interests of individuals to exercise political autonomy and to control one's political environment. This freedom is understood to require a political arrangement which can reflect interests of individuals to a significant degree and allow them to have a possibility to participate in the political process of the society. While the control over migration, as control over the membership composition is not essential for this freedom, there are instances, e.g. in

cases in which migration puts a strain on political institutions, in which these interests are imperilled by migration. States may, therefore, taking their self-determination as a reason, limit migration which leads to the restriction of the conditions necessary for current members to exercise their political freedom. In other words, self-determination grounds the right to control immigration in cases in which this control is necessary for protection of the underlying values of self-determination.<sup>154</sup>

In this sense, 1) protection of security and safety of members of the political societies provides legitimate reasons to control migration. This condition is the one most of the proponents of freedom in immigration endorse. If immigration poses threats to social order, security and safety, then states are morally permitted (and required) to restrict it (Carens, 2013, p. 177; Oberman, 2016a). Threats to security and safety are, however, often used to justify problematic policies, like e.g. muslim ban (Brock, 2020, Chapters 4, 8). Exclusion of individuals that are affiliated with some social or identity groups perceived as illiberal or undemocratic, cannot be justified with reference to self-determination, unless their immigration presents the real threat to the political functioning of the society. Protection of security, as following from self-determination, mostly refers to the cases in which massive migration, or migration of individuals and groups which are militant or criminal, can lead to destabilising of political institutions of self-government or threat to social order. In these cases limits to migration are justified.<sup>155</sup>

Additionally and related to the first, 2) instances in which institutional usurpation or threats to (democratic) political functioning of the society emerge as a result of immigration, give rise to the right to exclude. As discussed in chapter 5, these are the cases in which migration may bring about subversion to the political institutions of the

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<sup>154</sup> Stilz (2019, p. 194) also highlights this condition. Self-determination, that is, can only limit migration in some instances which are connected to what self-determination is taken to protect. Stilz (2019, pp. 199–202) also offers an analysis of the conditions which may give rise to legitimate exclusion, referring to national security, institutional subversion, public services, welfare state, protection of the way of life, obligations to the domestic poor, backlash and social cohesion. Some of these will be discussed in this chapter as well. Wellman (2020) also overviewed some of these reasons, since they are often used to argue for the right to exclude.

<sup>155</sup> Exclusion of criminals or terrorists is, however, a permissible policy based on the protection of national security and social order. This exclusion should, however, be the result of background vetting of potential migrants, and not on their belonging to different identity groups. It is, however, worth noting that much of the fears that mass migration poses a threat to security, rests on the eurocentric idea that migrants (mostly from poor countries) would flood liberal democracies leading to security threats or collapse. Some studies and polls indicate that most people, even in cases of open borders, would not elect to migrate at all, or in cases in which they would choose to migrate it would be to neighbouring countries and not to western liberal democracies (Sager, 2020, pp. 67–70).

society. This mostly occurs when migration is massive and homogenous and when migrants hold radically opposed political values and do not wish to integrate, or in the cases in which society lacks integrative capacities to accommodate these migrants. To pose such a threat, immigrants must seek to change the political institutions by coercion and imposition, and not through the regular political process or persuasion (Stilz, 2019, p. 193). This however, does not seem likely in the instances of regular migration, where migrants become a part of political process gradually, and through regular process of integration in the society.

Related to the changes in the institutional arrangement of the society, which is often described as decline in democracy, 3) social cohesion and trust become of importance, with 4) potential of internal backlash as a result of migration.<sup>156</sup> As chapter 5 showed, decline of social cohesion or trust, often connected to the increased diversity, is tied to the functioning of the democracy and welfare society (Miller, 2016c, pp. 64–65; Putnam, 2007). Immigration, which results in internal diversity, is considered a danger to social cohesion and trust necessary for stable and robust welfare programmes and democratic political arrangement. These connections are, as argued, not straightforward as may appear (Holtug, 2021), and are not reliant on the exclusionary policies exclusively. In this sense, migration fostered decline of cohesion and trust, when of such degree that self-government is seriously imperilled and when other mechanisms to mitigate these conditions are unavailable, may provide reasons to limit additional migration in the society, at least until other mechanisms become available to secure proper functioning of the institutions of self-government.

Backlash, which may result in institutional instability, may also be the reason to limit migration (Carens, 1992, p. 32; Stilz, 2019, p. 201). It may occur as a reaction of citizens to increased migration and policies which are pro-migrant. It may result in the rise of the populist parties, in selection of illiberal political options,<sup>157</sup> or even in disruption of political stability if the push back is widespread. Backlash is, however, often the result of misinformation, prejudice, fear and dislike, which are often fuelled by the activity of various political options. In this sense, backlash occurs when current

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<sup>156</sup> These two candidates for justifying the right to exclude Stilz (2019, pp. 196, 201–202) designated as non-ideal reasons, for they occur when agents are not willing to comply with their moral duties. Decline in social cohesion or backlash may occur in the context of the real world, where migration is highly contested, and often approached based on prejudice, bias, or intolerance.

<sup>157</sup> Election of some political parties or candidates, most notably Trump in the US 2016 elections, was to a significant degree fuelled by anti-immigrant rhetoric and sentiments.

members are negatively disposed to the migrants, due to various reasons, including xenophobia and direct dislike towards different religions, ethnicities or race. Fear that the way of life or culture may change, gives rise to resentment. Aversion to migrants may also arise as a result of the fear for social security, stability of wages, or job loss. In this sense, resentment to migrants is often the result of misinformation and false beliefs about the effect of migration on the local conditions (Brock, 2020, pp. 204–205). The correction of misinformation, bias and prejudice is, however, a task of the government officials and other agents within the society (Brock, 2020, pp. 206–207; Stilz, 2019, p. 196). Exclusion of migrants cannot be the primary cure for treatment of conditions which give rise to the backlash, or justified by its occurrence. What a widespread backlash, which poses a threat to political stability may justify is conditional limits on migration until internal mechanisms to deal with instances of potential backlash are instituted.

Furthermore, while the character change, or change in the constitution of society, was rejected as a reason to justify the general right to exclude based on self-determination, self-determination is conceived as protecting a sphere of political autonomy of a particular group. There is, that is, a value in participating in common political institutions *together* with others seen as belonging to the same group. However, while the group may be defined by reference to 5) common culture or general ways of life, these notions do not necessarily constitute the grounds to enforce exclusionary migration policies based on self-determination. Self-government is compatible with changes in the way of life and constitution of a community, if these changes occur within regular mechanisms of political decision making, and are not as profound and rapid, to bring about the loss of self-government or destabilisation of the group that is to self-rule. While culture or the way of life may be important for individual members and the group, changes in them seldom constitute a danger for self-government. Dangers to self-government may, however, occur in cases of migration into small, homogenous communities, or states consisting of indigenous groups and minorities, where migration may lead to domination or intra-group power imbalance (Moore, 2015, pp. 199–200). In these cases, exclusion of migrants seems warranted on self-determination grounds.

Related to this concern, 6) continuity and stability of the group, may provide reasons to exclude migrants on grounds of self-determination. The agent of self-determination, as shown, need not be considered as culturally defined, however, clear

boundaries and identification of group membership which is engaged in the process of self-government is needed. As indicated, especially when the group is understood as citizenship, it is not clear that regular migration, by which migrants become part of the group, presents danger to its stability. However, in cases in which migration would bring about the disruption to the continuity of the group, like in cases in which migration is so massive, or homogenous, or unable to be accommodated, states have a right to limit it.

Finally, since self-determination is recognized as a universal value, besides internal conditions which give rise to justifiable exclusion, 7) protection of the background conditions of self-determination, may give rise to control some of the migration, which seriously destabilise conditions of self-government in sending societies. This may occur in cases of severe brain drain, or increase in severe poverty. However, as argued previously, other policies should be used to prevent this, and more liberal migration is often tied to improvement in development of sending societies. In cases in which alternative policies are not available, and sending society is imperilled by massive emigration, then receiving states may, until alternative arrangement is devised, prevent migration on self-determination concerns. This should not be read as giving a right to receiving states to opt for migration restrictions on behalf of others, unless it is clear that this option is a policy of last resort.

Aforementioned reasons do not exhaust potential grounds for legitimate exclusions based on self-determination. What is important to take away from this analysis is the general principle which may guide exclusions based on self-determination. It is not, that is, that self-determination gives moral grounds to have a general right to exclude, but that states may conditionally limit migration, when political autonomy and self-government are imperilled by it. These dangers that migration may pose, should, additionally, be impartially adjudicated and assessed using strong evidence, to avoid bias and abuse.

In what follows, an outline of additional reasons used to address the status of the right to exclude are provided, with indication of interests which more liberal migration may serve and its comparison with taking migration as a basic human right.

#### 7.2.2.1.2. Exclusion, harm, and more liberal migration

This part will turn its attention to some other grounds, besides self-determination, for legitimate exclusion of migrants.

Self-determination is not the only value which grounds the territorial sovereignty, with occupancy rights and basic justice playing a relevant role.<sup>158</sup> Legitimate states, that is, should secure not only conditions of self-government, but should protect occupancy rights and other fundamental rights and interests to its constituents. These responsibilities of states, to recall, include protection of basic freedoms, like freedom of association, movement, occupation, conscience; rights to subsistence and access to basic services like health; political participation, fair trial and equality before the law; and provision of stable living environment (Christiano, 2017, p. 255). In cases in which migration would imperil these interests, then states could, based on the role they are instituted to serve, claim some limits on migration harmful to these interests.

In this sense, protection of 8) welfare services and social justice, may provide reasons to limit migration. It is often claimed that one can either have liberal migration, or a strong welfare state, but not both.<sup>159</sup> Migrants are often perceived as using social services to gain benefits, without necessarily contributing to their functioning. Integration of some migrants in the society is also often seen as burdensome on these services (Stilz, 2019, p. 199). In addition to these economic concerns, diversity which migrants bring may negatively affect trust and solidarity which are necessary for sustaining the welfare state (Miller, 2006, 2013). Migration, which is uncontrolled or massive, could, furthermore, potentially imperil the sustainability of these services and functioning of the welfare state in general. The extent to which migration presents the dangers to social services or the welfare state is subject to empirical research. However, recent study on these effects does not show that the negative effect of migration on social cohesion is prevalent, but is rather contextual (Holtug, 2021, Chapters 5, 6). Albeit, in situations in which the significant pressure is placed on the social services by migration, states are permitted to restrict it, to ensure that their current population may enjoy adequate levels of protection of their interests. These situations will mostly occur in the cases in which these services are overflowed by a

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<sup>158</sup> The role of these aspects was not given a proper place within this thesis, but it was assumed that a legitimate state system serves important interests of individuals to have their basic rights protected, including their occupancy. This thesis in this sense followed Stilz (2019), Brock (2020) and Moore (2015) who have elaborated on these matters extensively.

<sup>159</sup> This worry that free migration is incompatible with a strong welfare state is often termed “progressive’s dilemma” (Holtug, 2021, p. 125).



large number of migrants arriving at the same time, where states are unable to maintain provision of their services.<sup>160</sup> Regular migration mostly does not have a detrimental effect on the welfare state, when migrants are integrated into the labour market, which the example of Scandinavian states testify to (Hajighasemi & Oghazi, 2022). In cases in which mistrust and resentment, which affect trust or solidarity, arise in local population, as a result of negative dispositions to migrants or prejudice, states should ensure internal mechanisms to correct these sentiments, including education, transparency and adequate provision of information (Brock, 2020, pp. 205–207), including other mechanisms to ensure that the local population is adequately provided for.

Related to the protection of vital services and welfare, 9) obligations to the vulnerable may also play a role in limiting migration. This is often understood as obligations to the domestic poor (Macedo, 2018; Stiliz, 2019, p. 200). This concern is often connected to fears that immigrants, especially low skilled, will lower the wages in the domestic labour market, or replace the domestic workers, making their position worse and strengthening inequalities in the society. There is also a worry that migration may contribute to worsening the position of disadvantaged groups in the society, including members of different minorities, and disadvantage some groups in the sending societies, like e.g. local poor that lack services due to the brain drain (P. Higgins, 2013). These effects of migration, as discussed in the previous chapter, are not straightforward, nor should their mitigation be seen as relying exclusively on migration restrictions. This means that states, in virtue of their role in securing basic justice to their constituents, should ensure mechanisms to protect the interests of the most vulnerable (Song, 2018a, p. 167). Similarly, they should, in virtue of their duties of global justice, offer some compensation, when it is available or proportionate, to countries facing negative effects of migration. When these alternative mechanisms are unavailable, restrictions on migration seem permissible, based on the protection of the fundamental interests of the vulnerable. However, mostly, if properly tailored, more

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<sup>160</sup> I take that adequate levels of services need not mean prevention of general (short term) lowering of the quality of the services, especially in cases in which the current population enjoys a substantial level of the provision of social services (like in liberal welfare democracies). What is important is that migration does not lower the quality of these services substantially, so that the current population loses access to protection of their important welfare interests. The precise threshold which may trigger migration restrictions is clearly subject to further theoretical engagement.

liberal migration policies may bring advantage to the vulnerable instead of placing them in a worse position (Clemens et al., 2018).

It is, furthermore, worth returning to the 5) or the interests that individuals have in protecting their culture and their way of life. While this interest is recognized as contributing to individual well-being, and may, therefore, be recognized as important for the current population, I take that this interest cannot ground the right to exclude. Concerns with respect to culture figure prominently in public debates on migration, and nationalist positions seek to build upon culture to argue for control over migration (Miller, 2016c; Walzer, 1983). Immigration inevitably brings changes to the culture and the general way of life of the community, and members of the society may be invested into its protection. As argued previously, changes to the culture or way of life often occur regardless of migration, and it is questionable if the community can or even should act to prevent these changes from occurring. However, while culture or way of life do not generally give robust rights to control migration, in some instances in which the culture or established social practices are under threat of disappearing (like e.g. national language), some limits on migration may be justified (Stilz, 2019, p. 200). Minority or indigenous cultures, or societies which are culturally rather homogenous, may in this sense be particularly vulnerable to the changes which migration brings. Serious disruption of traditional ways of life and social practices may give rise to some limits to migration. Other mechanisms should also be implemented to protect these valued practices in public life, like education, cultural events, funding for programmes that protect traditional culture etc. For multicultural societies, and most liberal democracies, taking culture and the way of life, to justify limits on migration, is often not available, since these societies are heterogenous and have mechanisms at disposal to ensure integration and cultural accommodation, and mechanisms to protect their valued practices.

Migration may be justifiably limited in cases in which 10) public health is under threat from immigration (Song, 2018a, p. 162). Protection of public health with migration restrictions will probably not occur often. In the instance of a disease outbreak it may be permissible to regulate migration to protect local population and health services. These considerations, however, give rise only to conditional and short term restrictions on migration, and may also place limits on internal freedom of movement or other liberties, until the crisis is mitigated.

Limits on migration may also be enforced when 11) important occupancy rights of current inhabitants are imperilled. The latter is connected to the protection of the way of life, for as Stiliz (2019, Chapter 2) shows, occupancy rights give rise to the claim that individuals have some stability for their important life plans, which are often territorially located. They should also not be forced to leave those areas to which they are attached. Gentrification is an example of threat to stability of occupancy (Moore, 2015, p. 44) and it may arise by fluctuations in the market affected by migration. Stability of living and working environments may also suffer from overpopulation, and massive migration may be especially worrisome in this sense. The need to protect occupancy and a stable living environment for the population may give rise to some limits on migration, if other public policies are not available to secure against these threats. However, as in most of the overviewed cases, these limits are justified temporarily, and until other measures of protection are not instituted. They do not provide justification for the general right to exclude.

Even though this worry is not often stressed, migration may be seen as having an 12) impact on protection of the natural environment and climate, and some like Miller (2016c, pp. 65–66) claim that having interest in environmental protection give rise to the limits of migration. Protection of the environment is a valuable goal, and some communities may be especially invested in protecting their unpopulated natural habitats. Apart from protection of natural habitats, it is often stressed that increase of the population in higher income countries will naturally lead to an increase in the number of consumers and therefore have a higher negative impact on climate and environment (Miller, 2016c, p. 66).<sup>161</sup> In cases in which this effect is detrimental, there may be a case for some limits on migration. For most liberal democracies, this will probably not arise by regular migration. For cases in which occupancy claims may be imperilled (e.g. in cases in which indigenous populations have formed especially firm relationships with some area), there is a case for some limits on migration. However,

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<sup>161</sup> While I do believe that the protection of the environment and working towards mitigation of climate change are immensely important, I find this particular argument for migration restrictions unconvincing. While having increased numbers of people that pursue a highly consumerist lifestyle will have some effect on the climate and environment, I do not believe that restriction of migration is a policy which should curb these effects. Rather, states should work cooperatively to reduce their climate impact, by reforming production, turning to sustainable energy sources, by educating their population not to enjoy highly consumerist lifestyles, and by a number of other policies dealing with trade, industry, production, technology etc. Excluding prospective migrants from the potential to work and achieve a better life, under the worry that they will consume more, on a par with local population, is, to say the least, hypocritical and unjust.

these will mostly not be widespread and environmental and climate protection should primarily rest with internal policies or international cooperation in solving these crises and not on migration restrictions.

For most of the threats to basic justice or occupancy, where alternative domestic policies are available, the right to exclude should only figure as an addition, and not a policy of choice. Limits on migration are permissible in a number of cases in which relevant interests of the local population cannot otherwise be effectively protected, but these limits should be imposed based on a fair procedure and the reasons which are publicly defended, transparent and tied to fundamental interests of the population (Brock, 2020, Chapter 9).

Finally, concerns with 13) global justice, as argued in chapter 6, should include migration policies, alongside other development measures. It was shown that migration is an essential aspect of development and that state's unilateral discretion on migration is not justified if legitimacy of the entire system is to be taken into account. Concerns with global justice, while mostly giving rise to liberalised migration, as argued, in principle entail that migration policies be tailored and combined with other measures of development. This may imply that at times, some of the migration may be prevented. This, however, should arise only in instances in which other measures are unavailable or ineffective. Taking global justice as giving rise to exclusionary migration is, as argued, often paternalistic, one-sided and omits taking into account any preferences or agency of migrants into the account. For these reasons, global justice may better be served, by taking all involved interests impartially and cooperatively in reaching decisions on potential limits on migration or for its shaping, then it is unilaterally, as a policy of the receiving state.

Generally, and as a matter of principle it may be claimed that states are morally free to limit migration which can pose harm to important interests of their population, or other involved agents. Otherwise, states are not considered at liberty to restrict it unilaterally.<sup>162</sup> This implies that decisions on migration, in cases in which important

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<sup>162</sup> Stilz (2019, Chapter 7) offered a similar account of migration justice, or a conditional model, in which states are placed under a duty to "allow harmless migration" (2019, p. 188). Harm is in this sense understood as a setback to moral interests which should be protected as a matter of justice (2019, pp. 187–188). I have, following Stilz, taken that the cases in which migration poses significant harm to basic justice, occupancy or self-determination merit exclusion. Difference between her account and the proposal put forward in this thesis is the status of self-determination and presumption on which decisions on migration should rest. While Stilz (2019, p. 188) believes that it is states, or citizens, who should have procedural rights to decide on migration policies, in virtue of their self-determination, I have argued that

interests of sending and receiving societies conflict with those of migrants, should be reached impartially, taking all involved considerations into account. Reasons for exclusion should, furthermore, be public, transparent, unbiased and supported by evidence (Brock, 2020, Chapter 9). For a number of cases in which migration may pose a threat to some interests of the local population, alternative mechanisms may be available. In this sense, restrictions on migration should not figure as a policy of first choice if other mechanisms to secure protection of important interests of sending or host states are available.

#### *7.2.2.2. Interests in migrating and resolving the conflict*

Previous part offered some reasons, based on self-determination, occupancy and basic rights, that states may have in restricting migration. Apart from indicating these interests, devising just migration policies will also involve interests of sending states (and other involved agents), but also interests of individuals that seek to migrate. All these should have a place in reaching a just migration policy. Below, I will indicate some of these interests and the manner in which they may be balanced.<sup>163</sup>

First, it is important to note that the perspective of individual migrants should figure prominently in migration governance. “Migratory projects” (Ottonelli & Torresi, 2013) of individuals are generally motivated by strong individual interests. Accounts which argue for the right to immigrate have listed a number of human interests which may be served if migration was recognized as a basic human right (Carens, 2013; Oberman, 2016a; Wellman & Cole, 2011, Chapter 15). Migration is costly (emotionally, socially, materially) and has a profound effect on the life of an individual and others associated with him. In making decisions on migration, especially if migration is to be limited or shaped to contribute to other weighty interests, the perspective of an individual should figure prominently. As explained in the previous chapter, the focus should be on an individual and her agency and choices this individual takes in migrating. Seeing an individual as being a centre of our moral consideration should

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states cannot claim this authority based on their self-determination, and that migration justice is better served with some overarching transnational principles and institutions guiding decisions on migration.

<sup>163</sup> Examples of the way this adjudication between sending and receiving society and migrants may be found in Christiano (2017, pp. 252–265) and Bauböck and Ruhs (2022). Stiliz (2019, pp. 208–214) has also offered some indication as to how these competing interests may be balanced, with a conclusion that where harms to receiving states are not significant migration should mostly be allowed. Interests of sending states, however, do not figure prominently in her account.

incorporate human agency and wellbeing into an account, especially if policies are tailored with a goal to contribute to protection of human rights, alleviation of poverty or remedying the harm. Migration should not, that is, be seen merely as a policy which blocks of powerful states shape and decide upon, nor as a part of the global justice toolkit which can be used to reach desirable goals. It should also be understood as an individual project which may contribute to the wellbeing and flourishing of an individual, and his empowerment.<sup>164</sup> Decisions on migration should, therefore, take the perspective of migrants into account. This includes recognizing that not all migration (like temporary labour migration) requires permanent incorporation into citizenship of the receiving state (Ottonelli & Toressi, 2022). It also requires acknowledging that migration may be a way for individuals to lift themselves out of poverty (Christiano, 2017, p. 253), and a choice which has an important impact on individual life.

It is, however, clear that interests which individuals have in migrating, while rather diverse, may be distinguished along the lines of urgency or gravity for an individual involved (Stilz, 2019, p. 205). Refugees, to take a most direct example, often have very urgent interests in relocation. It is often the security of their fundamental human rights which is at stake. Other migrants may also have strong interests in migration to work for decent wages, or to escape poverty which significantly restricts their life options, or life options of their families. Migration may, in these instances as well, serve important well-being interests. Migration may also serve more aspirational interests, in individuals pursuing their life projects, from realising occupational and associational freedoms, to simply pursuing opportunities which are more aligned with their goals. In this sense, host states may be providing an adequate range of life options (Miller, 2016a, pp. 21–22), but settling in other countries may serve personal projects individuals have. All of these reasons for settlement are weighty and migration may contribute to the well-being and autonomy of migrants. However, in the instances in which migration brings harm to other parties and all potential migrants cannot be accommodated, the conflicting interests should be assessed in some manner. For purposes of this adjudication, more weight may be given to migrants which have

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<sup>164</sup> Cole (Wellman & Cole, 2011, Chapter 15) has developed an account of freedom of international migration as one of the human rights, which should, together with other rights, be conceived as offering empowerment to individuals and protection of their agency. Freedom of international movement should, according to this account, protect capacities of an individual to be authors of their life stories. This means that in the international realm the individuals should have some control over their choices and life circumstances, to which freedom to immigrate would contribute greatly.

subsistence claims, or are moving to secure their most fundamental rights, as opposed to the migrants which seek better life options or are pursuing better careers, cultural opportunities or education. For individual life projects these interests are essential in both of these situations, but for purposes of the cases in which not all migration can be permitted, some manner in which migration of some can be prioritised is needed (Wilcox, 2007).

Secondly, interests which states have in having some control over migration and to limit it at times, like ones listed (1-13) above, should also figure prominently when devising migration policies. States should be seen as primarily responsible to protect vital interests and rights of their population, and in cases in which migration is harmful to these interests states (sending and receiving) then claims can be made to prevent some migration into the state territory (Stilz, 2019, p. 211). The question which may be asked is are states justified in giving more weight to interests of their population than to the interests of migrants. I believe that some prioritisation generally should be recognized. States are organised to protect and serve basic interests of their constituents. Fulfilment of this role gives legitimacy to the political power and authority over individuals. The relationship which obtains between co-members may also give rise to more stringent duties of justice. Prioritising co-members does not, however, entail the rights to harm foreigners, or to disregard duties owed to them (Brock, 2020, p. 203). Fulfilling these duties is one of the conditions that makes the system of states legitimate. However, states do have more stringent duties to those it represents in securing their fundamental interests. When it comes to claims of migrants, this was often interpreted as states giving much more weight to less urgent needs of their constituents, including protection of culture, the way of life, selecting highly educated workers to contribute to the economy etc. Only in a narrow case of refugees, it was recognized that states should prioritise their claims against non-vital interests of their constituents (Miller, 2016c, p. 71; Song, 2018a, Chapter 11; Wellman & Cole, 2011, Chapter 2). Generally, the shape of the migration policies, bar human rights protection, is taken to be aligned to interests of the population of the receiving states. When global justice is of concern, it is also often taken that goals in achieving it outweigh the interests of individual migrants (Wellman & Cole, 2011, Chapter 2). Contrary to this general stance, I take, following Stilz (2019, p. 211), that migration justice may entail states giving more weight to interests of their population when migration threatens harms to interests identified above. This prioritisation does not extend to cases of very

urgent migration, where migrants have high stakes in migrating. Giving priorities to co-members need not be at odds with more liberal migration (Carens, 2013, p. 275). In this sense, states may be attentive to some of the essential interests of their population against non-urgent claims of migrants to migrate. But when alternative mechanisms to exclusions are available to secure these interests of the local population, states do not seem to have a strong claim against more liberal migration.

Third, the interests of sending states should also figure prominently in reaching decisions on migration (Bauböck & Ruhs, 2022; Christiano, 2017). Sending states have similar interests to the receiving, in providing for basic justice, self-determination and occupancy to its constituents, and in reaching adequate levels of development (in case of poor states), which may protect them from domination in the international realm. In this sense, these states may also have some interests in specific shape of migration policies, either policies which allow more liberalised migration and more flexible temporary migration programmes, or policies which temporarily curb detrimental brain drain. The effect of migration on development of these societies and well-being of their constituents should therefore also figure prominently in devising migration policies.

Finally, as indicated previously, situations in which claims of migrants and states are in conflict should be resolved by mediation of some international agency. This agency, whose role is oversight of the conduct of states (and other agents like business and NGOs) in migration, may provide a forum where conflicting claims of interested parties are analysed, and decision reached by an impartial and transparent procedure, by which reasons and claims of all parties can be analysed taking evidence seriously (Brock, 2020, Chapter 9; Christiano, 2017; Hidalgo, 2016). As indicated, these institutions need not be envisaged as having a final authority on decisions on migration, but they may put pressure on states to elect policy that is most just, and to be accountable for their decisions. In the cases of conflict, these institutions may allow for decisions on migration to be reached cooperatively, and not unilaterally, which is better aligned with the nature of migration as described before.

Under the procedure indicated above, it may be possible to have a more just migration regime, which takes involved interests into account and which may protect both interests migrants have in relocating, with interests of societies to which they claim entrance and the societies from which they leave.



The proposal of migration justice in this sense comes close to those accounts which argue for accommodating both interests of migrants and members of different communities and agents affected by migration (Bertram, 2018; Brock, 2020; Stiliz, 2019), and which should be guided by impartial transnational framework (Bertram, 2018; Brock, 2020; Christiano, 2017; Hidalgo, 2016). Clearly, this entails reconceiving the state system, and sovereign powers within it, to permit more liberal migration, and in this sense, to restrict the power of states over migration. While this account is subject to constraints, including feasibility, and legitimate worries in this arrangement institutionalising domination of more powerful states over those poorly situated (Wellman & Cole, 2011, p. 222), it still has potential in providing a more just migration regime which can better accommodate interests of parties involved than regime in which states make decisions on migration unilaterally.

### *7.2.2.3. The open borders position?*

The outline of the position I have presented above may be compared with open borders positions and positions that argue for the right to immigrate.<sup>165</sup> It has been argued that the general right to exclude, based on self-determination, does not hold, and that global justice often requires more liberal migration policies as one of the conditions for a legitimate system of states. Presumption is, furthermore, given to the freedom in movement, which is to be restricted in cases in which competing interests of the communities and their members are imperilled, similarly to accounts that argue for freedom in immigration which also take that this right should not be absolute (Carens, 2013, pp. 266–267; Oberman, 2016a).

One important distinction between the position I have proposed and accounts which take that freedom of immigration is basic human rights, is the fact that the above indicated proposal lacks a positive argument for such a right. It merely indicates that migrants have important interests in migrating, but which could be distinguished on a basis of urgency and overridden by competing considerations. The proposal, while giving some priority to human agency and choice in matters of migration, does not seek

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<sup>165</sup> There are subtle differences between these positions, since having the right to immigrate need not imply that borders are completely open, but that it should be recognized that people generally have a right to move and settle in other countries (Oberman, 2016a). This right is claimed to be protected as any other human right, which means that it can be restricted in cases where conflicting interests are present.

to show that interests motivating migration give rise to protection by a human right. Incorporation of freedom to immigrate in this account would require additional argument, to show that this specific right is on a par to other, already recognized human rights.

The argumentation in this thesis, also, relied more on the relationship between global justice and migration, and in this sense, it was claimed that migration policies should be seen as an important aspect of global justice, which implied that migration in some cases may be restricted or controlled. I have also proposed that migration should be managed by some institutional mechanisms which surpass state institutions, and which can more neutrally adjudicate competing claims of individual migrants, their states and the receiving societies, together with other agents included into the migration process. States are, therefore, not justified in excluding unilaterally, but individual migrants also cannot claim entrance to some communities without regard to competing interests.

I believe, however, that these distinctions are not insurmountable, and that this account can be supplemented by a positive argument for the right to immigrate as a human right. This is especially so if human rights are understood not as providing the minimum of decent life, but as giving power to human flourishing and agency, as proposed by Cole (Wellman & Cole, 2011, pp. 293–299). Seeing rights in such a manner, does not need to imply that important interests of communities should be left aside, but that these should be properly balanced against migrants having a general right to freedom in migration. The proposal described above have left ample space for both receiving and sending communities to voice their worries with respect to the impact of migration on them. In this sense, the often stressed worry that freedom to immigrate as a basic right is disregarding interests of communities or is only beneficiary oriented (Stilz, 2019, p. 203), for this account does not hold, and I believe that it does not have much teeth for other accounts which argue for freedom in immigration, if this freedom is conceived in non-absolute manner. Having an international organisation with the power to oversee migration also need not be an insurmountable difference between this proposal and accounts of open borders, since these institutions need not be envisaged as freedom limiting distant authorities with power to shape migration flows and destiny of individuals and communities. If it is conceived as mediator in cases in which conflicts of interests arise and as a platform in which unbiased and informed decisions can be reached cooperatively, with choices and interests of migrants figuring

prominently, then it is not necessarily incompatible with general freedom to immigrate.<sup>166</sup>

These considerations are, however, to be considered as candidates for the future research. In this thesis, the focus was not on freedom to immigrate as a human right, because more space was intended for global justice considerations, moving from the stance which explicitly rejects this right. In this sense, the inquiry within this thesis remained agnostic to this right. The final result whether we develop the notion of migration as a human right, or argue for global justice accommodating more liberal migration policies, may end at similar positions, but there are important differences with respect to focus on different matters or principles. For purposes of this thesis the focus rested with self-determination and its relationship to global justice, and not on the account of the human right to migrate.

### **7.3. Chapter summary and future research**

The aim of this chapter was twofold. First, it turned its attention to the concept of self-determination which was in focus of this thesis. The way this concept is used in the migration debate was briefly summarised, focusing on notions of self-composition, but also on self-government and non-interference which entail specific understanding of global justice. It was argued that while self-composition should be abandoned, understanding self-determination as non-interference also requires modification, to make self-determination more flexible and better aligned with the context in which it was claimed. It was, therefore, argued that self-determination should be understood as self-government with a presumption of non-interference, but which should allow other agents legitimately placing claims on self-determining states on matters of mutual concern. This may entail cooperation in governance over some matters, like migration. Self-determination should also be understood as more aligned with duties of global justice, which is available if the focus of this right is on what is its core value, which is self-government, and not on independence, self-sufficiency and non-interference, which entail choice and responsibility. In this sense, it is possible to see self-

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<sup>166</sup> An example of this compatibility may be found in Cole (Wellman & Cole, 2011, p. 224), who is a proponent of the idea that freedom to the international movement is a basic human right, at the same time arguing that an international organisation should have an authority over migration, and not individual states. Owen (2021, pp. 247–250) has also indicated that cosmopolitan positions of freedom in immigration are compatible with some forms of global migration governance.

determination as allowing for protection of the sphere of co-authorship over laws and institutions, together with providing ample space to mitigate some global inequalities, and address claims of foreigners.

This part also addressed some of the worries and open questions which emerged in the course of the analysis of self-determination based argument for the right to exclude. In this sense, the focus was on conditions of self-government connected to the agent of self-determination, or its stability, boundedness and continuity, which was not explicitly dealt with in preceding chapters. It was shown that more liberal migration does not necessarily pose a threat to these conditions of the agency of self-governing states, which should be seen as related to the functioning political institutions. It was claimed, furthermore, that the way these agents are conceived falls short of the way in which real collective political agents like states act. Some concerns with focus on legitimacy and scope of self-determination were also addressed. In this sense, self-determination should be understood as related to robust conditions which give moral grounds for its exercise. While this requirement may circumscribe the scope of self-determination, it is required to make institutional arrangement which reflects it justifiable to all belonging individuals as moral equals. Even if this leads to seeing extensive control over migration as not available, a wide scope of freedom and rights related to self-determination are preserved.

Second part of this chapter offered a tentative proposal of an account of migration justice which could incorporate conclusions following from the analysis in this thesis. This means that the state's general right to exclude was deemed as morally unjustified. Self-determination offers a ground only for the conditional right to exclude, for cases in which migration poses a threat to core values this right protects. In this sense, legitimate grounds for exclusion were connected to conditions of self-government of the receiving or sending states, which mostly revolved around public order and security, conditions of democracy and agency or protection from profound disruptions in the political functioning of the collective agents. Some other concerns, tied to the protection of occupancy and basic rights were also deemed as legitimate grounds for exclusion. While these interests mostly award a limited scope to legitimate exclusion, it was claimed that when they arise, conflicts between different parties, which minimally include prospective migrants, sending and receiving states, should be impartially adjudicated under the guidance of international migration governance framework. However, it was stressed that presumption should mostly be tied to

migrants, which is a reason why this proposal may be closely aligned with positions that argue for the right to immigrate. While the research undertaken in this thesis, which was primarily critical of self-determination based argument for the right to exclude, may have come close to the more open borders account, it did not aim to provide a positive argument for the right to immigrate. It aimed to observe migration justice from the standpoint of global justice and legitimate exercise of self-determination, which has, in this process, reached the conclusions which may be closely aligned with these positions. The motivation behind the analysis was to incorporate both the interests of individuals to self-govern, and their interests to migrate freely, which, it is argued, modified conception of self-determination may be compatible with, especially when it is seen as reliant on achievement of legitimacy.

The research in this thesis has, however, opened a number of questions which have remained unaddressed and which merit additional research. This part offered only an indication of the direction in which self-determination and migration justice may be reconceived, which means that this relationship can be investigated further. In this sense, further reconceptualisation of the state system and place of self-determination and migration within it may take place. Full account of migration justice should also include analysis of the policies of integration and naturalisation, and internal policies of the receiving societies. Integrating immigrants and incorporating them in political membership is of utmost importance, if more liberalised migration is to be conceived as supportive and not opposed to conditions of self-government. This relationship, I believe, merits an extensive study, to further our understanding of migration and self-governance in the contemporary context. The role of other agents, like proposed institutions, should also be further elaborated, to be clear how these institutions interact with states and other relevant agents in electing just migration policies. Elaborating on the precise status of the right to freedom in migration and the right to exclude, is also important for this project, since a full account of migration justice should take a definitive stance on these rights. Incorporating different methodologies may also be of assistance in this task, including abandoning some of the presuppositions of methodological nationalism under which most of this thesis operated, due to its focus on state and state system in relation to the argument under analysis. Full account of migration justice could, however, benefit by having some of these considerations rewritten in a manner in which other agents relevant for migration process are more highlighted (including social groups affected by migration, international associations,

business and others) and in which assessment of competing interests as proposed above takes into account different types of migration, and potential reconceptualisation of political membership. Much of this discussion should, I believe, lean on at least some consideration to empirical evidence which may aid in guiding the normative analysis, as this thesis aimed to incorporate to an extent.

Before proceeding to conclude, it is worth indicating that discussion on migration and self-determination will probably continue to engage scholars that work on migration justice, leaving space to accommodate both claims that migrants have in engaging in migration and claims that individuals that belong to self-determining communities have to remain self-governing. This relationship, however, as was hopefully shown in the course of this research, need not be understood as in unsolvable tension, but may provide space to further elaborate on alternative models of migration governance.

## 8. CONCLUDING REMARKS AND THE WAY FORWARD

Primary task of this thesis was critical. It sought to examine one of the most prominent arguments within the philosophical debates on migration for the state's right to exclude immigrants. As shown, some of the most prominent scholars writing on the ethics and politics of migration, take that migration should be controlled in virtue of the right to self-determination that legitimate states hold. Self-determination is understood as the right of the state or political collective to determine its affairs and future development, and to self-govern without unjustifiable interference from the external agents. Freedom in selection of migration policies is taken to be an important element of the state's right to self-govern. States, which satisfy conditions of legitimacy, are, therefore, claimed to be morally justified to elect exclusionary policies with respect to foreigners.

Focus of this thesis was on self-determination based argument for the general right to exclude immigrants. It aimed to show that this right does not immediately follow from the state's self-determination. Self-determination can, at best, ground a conditional right to exclude, for those cases in which it can be shown that migration poses a threat to the core of self-determination, or for self-government.

To show that this is the case, strategy which combines conceptual analysis and arguments from global justice was selected as the most fruitful. To reach this conclusion, the self-determination based argument was extensively analysed, and it was shown that the notion of self-determination used by proponents of this argument is specific and merits additional attention. First, it was shown that self-government, which is the core of self-determination, does not necessarily entail self-composition, or the right to define and control the membership composition of the self-governing agent. This dimension of the right is for proponents of the analysed argument taken as a core understanding of self-determination. It was shown that migration controls are not a key component of self-determination, nor are they essential to preserve conditions of self-government. Following this discussion, it was shown that migration policies are an important aspect of global justice, which should be taken into account in understanding limits and prerequisites of the legitimate exercise of self-determination. This right should necessarily be observed in the wider context, where migration has a discernible effect on global justice and human rights protection. Protection of human rights and (sufficient level of) global justice, in turn, figure prominently in securing conditions of

legitimacy that give moral force to self-determination. In this sense, the relationship of migration and self-determination is more complex than understanding migration policies as any other self-regarding policies which self-governing collectives should have a discretion on. The focus of this thesis was, therefore, on the notion of self-determination employed in the analysed argument and on the contextualisation of migration and self-determination into a wider context of global relationships.

In what follows a brief overview of chapters is presented with the way argument unfolds within the thesis.

To develop the argument in the thesis, first, important concepts and wider debate on migration justice was presented. To this end, chapter 2 offered a map of the migration debate revolving around moral justifiability of the right to exclude. Self-determination based argument is located on the so-called conventional view side of the debate, which is characterised by arguing for the state's right to exclude and against the notion of open borders. This chapter introduced some background presuppositions, like definition of immigration, self-determination, and state system. It also offered an introduction to the notion of human rights, and other important principles and assumptions used in the thesis, including moral individualism, liberal and democratic principles, relational justice and others. The right to exclude is briefly presented in this chapter. This part also explains the limits of following discussion to the issue of admission of immigrants, which leaves a large and complex discussion on integration and naturalisation largely aside. Chapter 2 also offered an explanation of the methodology and strategic route selected to test the hypothesis that self-determination ultimately cannot ground the general right of the state to control migration. This route, as indicated, combines analysis of the concept of self-determination, with focus on both its standard use in migration debate and the way it may be developed, with development of global justice arguments, which are often used to show that more justice would be better served by more open borders. This route allowed contribution to development of arguments from global justice and focus on the concept of self-determination, which is often used in a specific manner in migration debates.

To introduce self-determination, as a right which is taken to ground the right to exclude, chapter 3 offered a brief introduction to this right, its history, agents and value. It was shown that self-determination primarily refers to self-government of different political collectives, like nations, peoples and states. Two main dimensions of this right



were indicated. On the one hand, non-interference gives the right to political collectives to arrange their affairs free of unjustified outside coercion and interference. On the other hand, self-determination requires conditions which award political power to the members of the collective. Self-determination was, therefore, understood as self-government, which gives discretion to the collectives to freely determine their political status and to be free from interference in choosing for themselves policies which could guide their future development. In this sense, the value of self-determination was tied to the notion of political freedom and political autonomy. It was claimed that it should be recognized as valuable for individuals, as members of their political collectives, in awarding a degree of freedom to participate in shaping of their (political) environment within a shared political project, and to shape and sustain their institutions which profoundly determine their lives. In this sense, self-determination was not deemed as exclusively a collective value, but its value was tied to individuals. To this value of political autonomy and freedom, the right to control migration was connected. Taking immigration in focus, also allowed more space to be given to the state, as an agent which primarily exercises the right to exclude. Introducing state, furthermore, allowed to connect self-determination with discussion on conditions which make state's institutional arrangements conducive to self-government, and to legitimacy, which is taken to give moral force to the exercise of self-determination, and especially exclusionary rights which are seen as following from it. This chapter also introduced the idea that states and their self-determination should be observed in the context of a wider system of states, which may be grounded in the value of self-determination, but which has features (like the right to exclude is) that should be justified to all that are part of this system. This idea of justifying self-determination and a system of states with exclusionary rights to all individuals within this system figured prominently in tying this discussion with global justice.

Chapter 4 introduced in more detail the place of self-determination within migration debate, by providing a brief critical overview of various arguments from self-determination. It focused on nationalist and peoplehood conceptions of self-determination, and then on the statist variants of the argument. This chapter also showed why most of the overviewed conceptions of the self-determination based right to exclude are wanting, and proceeded to extrapolate what is the main shape of the argument, and what are its common features. Chapter 4, therefore, shows that most self-determination based arguments understand self-determination as self-

composition, or as a right to control the shape and composition of the membership, or the right to define the self which is to self-govern. For these conceptions freedom in migration and self-determination are incompatible. Absent the power to control migration states cannot be self-determining in a meaningful way. In this sense, overviewed authors move away from seeing self-determination as exclusively self-government, but claim that self-government necessarily entails self-composition. This need to control membership composition is connected to the idea that communities should be able to control their character (like its public culture, values and commitments) and with this related their future social, cultural, political and economic development. Without the right to control membership rules, and most importantly who can become a part of membership which elects policies, existing members cannot control and preserve the way their community is shaped, and cannot freely direct their important matters, if changes in the membership lead to the changes in the values of the community. Therefore, migration should be placed under control. This control, however, is not unlimited, and some general considerations about limits to this right are also presented in this chapter, mostly revolving around respect for basic human rights (which is a condition of legitimacy), but also some minimal concern with global justice. This chapter also offered a brief overview of some of the features of this argument pertinent for global justice. It was shown that self-determination entails minimal duties to foreigners and that when some duties to them are recognized, they are subject to choice from a part of the state. This conception of duties to foreigners and migrants, was tied to understanding of the role of self-determination in international relations, which was given a more detailed treatment later in the thesis.

After the stage of the discussion was set in the manner described above, the main argumentative strategy could take place, and it unfolded in chapters 5 and 6.

Chapter 5, thus, focused on the concept of self-determination, which in addition to self-government, is taken to entail the right to control membership composition. This notion, which is for proponents of the self-determination based argument for the right to exclude, taken as central, is problematized in this chapter. First, it was shown, following some other authors like Lægaard (2013) and van der Vossen (2015), that self-composition, or the right to control membership composition of the community, is an additional layer of meaning added to the self-determination, which, furthermore, stands in tension with both legitimacy and human rights protection. While it is usually read as entailing the right to control who, from the outside, may become a member of

the community, it was argued that having self-determination imply control over composition necessarily includes control over internal membership as well. This control over internal membership potentially implies a wide range of very illiberal policies which may entail population control and also deportation of the existing members. Furthermore, this conceptualisation of self-determination does not negatively reflect only on internal membership, but may also give rise to discriminatory selection policies with respect to immigrants. To have this reading of the right, this specific layer needs to be heavily restricted so as to prevent unwanted consequences. For these reasons, it was claimed that self-composition, which does not straightforwardly connect to the internal or external dimension of self-determination, should be relinquished. However, the second part of this Chapter proceeded to test the relationship between migration, self-government and control over membership composition. The analysis of this part aimed to show that control over membership (or migration) is not a key component of self-government. External dimension of the right requires that the state (or collective) is free from domination or interference by external agents, and migration, unless massive, does not constitute a similar threat. Internal dimension of self-determination, which refers to members of a collective having a political authority, places migration and control over membership in relation to the political institutions which allow self-government. In this sense, potential effect on democratic institutions was observed, and it was shown that control over migration may at times be required to preserve functioning of democracy, but not in the form of a general right to exclude. Character change of the community, and its effect on the future development of the community, which are claimed to be under the effect of changes in membership composition, was also analysed. It was claimed that, if changes to the character of community arise gradually and non-coercively and their effect on the policies is within regular political process, then conditions of self-government are not imperilled. Self-government does not entail control over changes in the community, nor it awards protection against the changes in the development of the community. Non-forced changes in a character of the community, which affect the way the community evolves, do not negate political freedom of the collective. As long as there are institutional preconditions, like the ability to authorise the political decisions, to revoke them and to engage in the political process, and as long as any changes arise through regular mechanisms of deliberation or decision making, self-government is available, even against substantial changes in membership composition. This chapter, therefore, aimed to show that self-composition

cannot be grounded in self-government. Self-rule does not require control over membership, even though this control may at times be justified to serve conditions of self-government.

However, while self-composition was deemed unavailable as a strategic route for proponents of the argument from self-determination, due both to its problematic and illiberal consequences and the fact that self-government does not necessarily relies on it, it could be claimed that control over migration still falls under the purview of self-determination. After all, self-determination entails the right to freely select a number of policies, and to order internal affairs in a manner in which it is the most compatible with the goals of the community, limited by human rights and conditions of legitimacy. Chapter 6 has dealt with this aspect of self-determination, by placing the relationship between migration and self-determination in the wider context of global relationships and global justice. In this chapter, first, it was shown that the way this relationship is construed in the accounts of migration justice is misleading and simplified. Self-determination is often placed within a Westphalian picture of the world, where independent states arrange their affairs freely, with migration constituting an anomaly to the mostly static and separate territorial membership. Within this picture self-determination is taken to entail the responsibility for development levels of societies, and related to it, limited duties to outsiders which may be fulfilled by methods that duty-owning society chooses. Absent stringent duties to foreigners, migration policy is just like any other policy which the self-determining community has interests in controlling. This picture is, however, a result of certain methodological assumptions, like methodological and explanatory nationalism, and lack of engagement with social scientific research in philosophical treatment of the topic of migration. It was shown that self-determination should be observed within a wider context where robust relationships between different agents have an effect on its exercise, and where independence and self-sufficiency are largely unavailable. It was additionally shown that migration should be observed as a complex phenomena with important effects on global justice and development. When these matters are taken into account, seeing migration as a self-regarding policy which collectives can freely choose becomes less available. Selecting different migration policies does not only have a profound effect on individuals and their interests, but also on sending societies and other related agents, which makes migration one of the policies recognized within global justice. Complete choices in migration, seen as deriving from self-determination, then become

unavailable, if contribution to global justice and development, together with remedial justice should be observed. This is especially so, if it can be seen that self-determination itself may lead to development effects on other societies, and that at times migration is affected by political choices of various agents on the international level. In this sense, the relationship between different agents affected by migration is more complex and entails much less discretion on a part of the receiving states than may initially seem. Secondly, this chapter sought to connect this discussion with the notion of legitimacy of the state system which was introduced in chapter 3, following Brock (2020) and Stiliz (2019), which indicated the need to justify the system of states and its exclusionary features. This part of the thesis relied on the idea that institutional arrangement of the world, which gives expression to the claims to self-government, and which in turn entails inequalities between self-governing units and additionally a range of exclusionary rights which these units exercise, should be justified to all belonging individuals, as moral equals. Therefore, it was claimed, the right to self-determination as exercised within the system of states stands in need of justification. Legitimacy and human rights protection offer grounds to justifiably exercise self-determination. However, since self-determination is a part of a wider system of states, this requirement entails that the legitimacy of the entire system needs to be obtained so that exclusionary rights which self-determination seems to entail are justified to excluded individuals. This allowed us to introduce some global justice duties, like alleviation of severe poverty, remedial justice and securing the background conditions for exercise of self-determination as parts of the conditions of state system legitimacy. These conditions, including the general commitment to protection of human rights, in connection to what was shown in the first part of the chapter, entailed that broad discretion with respect to migration policies as an expression of self-determination is largely unavailable. Different migration policies, more precisely more liberal migration, are shown to contribute to a range of global justice conditions, which in turn contribute to the legitimacy of the system of states, which gives moral force to the exercise of self-determination. In this sense, it was claimed, states cannot have a complete discretion in selection of migration policies based on their self-determination. This chapter, then, aimed to offer reasons to see the relationship between migration and self-determination as much more complex than initially seems, if considerations of global justice and state system legitimacy enter the picture. None of this was, however, taken to imply that states should use migration as a tool to secure global justice, if

agency and choice of individuals is not seriously incorporated into this process. The commitment to the individual and her moral equality, should take into the account that individuals should have a say over their migration choices. Migration is a project of individuals and their families primarily, and then it is also a process that may aid in development, alleviation of poverty or other global justice goals.

To show that self-determination of the state does not entail the general right to exclude, then, first it was shown that control over membership composition (or migration) should not be seen as an essential aspect of self-government, since it is both problematic and unnecessary for securing conditions of self-rule. Then, it was shown that self-determination and migration should be observed in a wider context of global relationships and state system legitimacy, in which migration policies should not be read as self-regarding matter of the receiving state, but as a policy with undeniable effect on global justice and legitimacy, which in turn gives moral grounds to exercise exclusionary rights based on self-determination. In this sense, migration should not be seen as a matter of choice of the receiving states, but as a policy which engages a wider range of actors, and which can, due to its nature, be limited only conditionally based on self-determination claims.

Finally, while the main strategy in the thesis was critical, contours of migration justice are offered in chapter 7. The aim of this chapter was twofold. It aimed to offer a brief remainder of some of the main points of analysis focusing on self-determination and to indicate an outline of the account of migration justice following from the conclusions within this thesis. First, it addressed some worries with respect to the effect of more liberal migration on the agent on self-determination, and worries that conditions of legitimacy as imagined may overly restrict the scope of self-determination. It also focused on the concept of self-determination, as understood within this thesis, and the way it may be reimagined. In this sense, and contrary to the way self-determination is often perceived in accounts of migration justice, it was proposed to see this right not as strict non-interference, but as compatible with interdependence and joint decision-making on a number of matters which are not primarily self-regarding, including migration. It was proposed, furthermore, to see self-determination as a right which does not entail exclusive responsibility for different levels of development and complete discretion in a way global justice may be achieved, but in allowing a much wider scope of duties to foreigners. Second part of this Chapter aimed to provide a very tentative blueprint of the more just migration regime. It sought to answer both the question of

authority, or who, if not state, should have the decision-making power over migration, and the question of the content, or what is the status of the right to exclude and an account of permissible limits on migration. In this sense, it was proposed that migration, due to its complex nature, may better be governed by some arrangement where cooperation between various agents is available and where different interests may be impartially adjudicated when conflicts arise. This may be envisaged in the form of some regional or global institutions, which either resolve the conflicts, or provide a framework within which states can reach more just decisions on migration. Presumption should, however, lie with migrants, unless their migration brings significant costs to members of sending or receiving communities, or other agents involved in the migration process. This means that the general right to exclude is not an available option, but that it may be conceived merely as a conditional right, claimed in situations in which important interests of the population are imperilled, including the interests to self-govern, to protect social justice, or to contribute to global justice. Since the presumption is with migrants, apart from situations in which migration presents a significant burden to other agents, this proposal comes close to the accounts which argue for open borders. It was, however, not an intention of this thesis to develop this strategy. Proposed account of the migration justice diverges in some important aspects from the open borders account, by either giving more space to the interests of communities which may justify (at least temporary) limits on migration or by proposing some (transnational) mechanisms to govern migration. Most importantly, this thesis did not offer a direct argument for establishing the right to freedom to immigrate. This, however, does not mean that this proposal cannot be supplied by such an argument in the future. This final chapter, then, aimed to round the critical discussion and to add some additional considerations to notions of self-determination, the right to exclude and migration justice following from it.

Before closing this conclusion with some indications on potential future development of some topics opened in this thesis, it is worth briefly highlighting what are contributions of this thesis to the philosophical discussion on migration.

This thesis, first, offers a contribution to the critical assessment of the self-determination based argument for the right to exclude. As evident from the development of the thesis, this argument is offered by a number of prominent philosophers and political scientists who write on migration justice, including Miller (2016c), Wellman (2016, 2020; 2011), Pevnick (2011), and Song (2018a). It comes in

various forms, and highlights different aspects, which were overviewed in this work. In this thesis, the general shape of this argument is offered, and some of its elements were under the critical examination. As highlighted, this argument assumes that control over immigration is an important aspect of self-determination of the state, or that it follows from the features of self-determination, both those that revolve around self-composition, but also those that indicate independence, responsibility and choice. The main contribution of this thesis, may then be seen in combination of the strategies used to reach the conclusion that self-determination based argument does not entail the right to exclude. To show that this argument does not hold, analysis of the concept of self-determination was offered with the development of a global justice argument for migration justice. Conceptual analysis of the right, leans on the previous work by some authors (Hidalgo, 2014; Lægaard, 2013; Stiliz, 2019; van der Vossen, 2015), which have indicated that self-determination does not require or entail control over membership composition. This was further developed by connecting the right to control membership composition with conditions of self-government, both in connection to external and internal dimensions of the right. This thesis additionally offered a development and reshaping of the argument from global justice which generally claims that migration controls are unjust due to poverty and injustice of the world. Building on the work of Sager (2020), Higgins (2013), Oberman (2015), Pogge (2002) and some social scientific research, this thesis showed why theoretical presuppositions, entertained in self-determination based arguments, do not hold, and why self-determination and migration should be observed against a more complex background. Global justice argument was also connected to the idea of legitimacy of the state system, leaning on the proposals by Stiliz (2019) and Brock (2020), in a manner in which migration was seen as a phenomena with impact on development and global justice, which in turn contribute to the legitimacy of the state system. Combination of these strategies is, therefore, novel, and the global justice argument was in this thesis given a somewhat different shape, by focusing on the theoretical assumptions of the argument and on understanding the relationship between self-determination and migration within the wider context of a legitimate state system.

Furthermore, this thesis offered a modest contribution to reassessment of self-determination, following analysis within this thesis, and proposals by Young (2000, 2007) and Banai and Kollar (2019). These conceptions proposed to see this right as connected to some other aspects, like non-domination and interdependence, or in



focusing on the way it may be remodelled to accommodate a much greater scope of duties to foreigners. This interpretation of the right was seen as following from the discussion in this thesis, and giving a somewhat different shape to migration justice. Blueprint of migration justice was also offered to contribute to the further development and discussion of these topics in ethics and politics of migration. This proposal may be seen as a variant of more open borders approaches, which, however, aims to leave the space to some interests of communities for limits on migration.

This work, however, left a number of matters unresolved, and opened a host of different questions to be pursued in the future research on these topics. Some of these questions refer to the refining a proposed account of migration justice, including devising a way institutions that oversee migration may function, to the development of the justice in integration and naturalisation policies which were largely omitted in this thesis, but which also fall under the scope of self-determination. Developing a full account of migration justice may also benefit from moving the focus from states (which is a characteristic of methodological nationalism) to other agents with stake in migration, and other levels of governance over matters in migration. Even though self-determination was deemed as insufficient in providing grounds for a right to exclude, some issues are left open, especially with respect to devising a manners in which both requirements to allow more movement and boundness of the decision making body should both be satisfied. This means that manners of awarding different rights and statuses to different agents within the states, regions or different localities may be of interest.

Without dwelling further into the matters which may become of interest for further development, I would like to conclude with the observation that both research on migration and self-determination have a great potential, and will probably be part of important contributions of future research, both separately, and together, like in matters of migration justice. Manners in which protection of interests to self-government and interests in freedom to move and settle freely, can be observed jointly, like in projects similar to the one enforced within the European Union, will undoubtedly engage scholars invested in discussions on migration, but also on global justice. This thesis has sought to offer a small contribution in this direction, in seeing more liberal migration and self-determination not as intrinsically in tension, but as accommodating one another. This accommodation could, hopefully, recognize and cherish the fact that

people are individuals with interests to have control over the important aspects of their lives, both as migrants and as members of their political communities.

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