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Shifting the focus:

The political case for a comprehensive approach to migration ethics

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1. Introduction: the two dimensions of the full-sovereignty thesis

Much of the debates relating to migration issues have been focused on the access to a sovereign state and on the putative moral obligations for this state to keep its borders open to would-be migrants. A set of familiar arguments regarding respectively the requirement to open or the right to close the borders are now well established. A somewhat pessimistic look at the current state of research could well diagnose a deadlock preventing the further development of a truly comprehensive approach to migration ethics. By focusing on the basic moral requirement of a legitimate deliberation on what could be a just immigration policy for a liberal state, the present paper aims to present an innovative analysis meant to go past the (too) well-known open/closed borders debate.

Broadly following the structure put forward by Abizadeh¹, I propose to consider what one could call the “full-sovereignty” view as entailing two parts. In its first dimension, the full-sovereignty view is about the state’s claim to decide upon its borders policies without considering any moral criteria. It claims the right to decide this issue from an *a-moral* perspective. This first assertion has been put into question by substantive-moral arguments, forming the main body of the works dedicated to the open/closed borders debate.

But the full-sovereignty thesis has a second dimension that has been somehow overlooked. Even if it respects some moral principles, the state claims the right to decide alone upon its borders policies, meaning without taking others into account. In other words, it claims the right to take a decision without taking into account the interests of those would-be migrants who would be most directly affected by the decision or the interests of other states or international organizations dealing with the international movements of people².

This second dimension of the full-sovereignty thesis has not been the object of intensive research. The sovereign claim of a state has mainly been challenged by theorists arguing on a democratic basis and presenting a refreshing variation of the “all affected” principle and its consequences for a bounded demos³. The present paper takes another path, looking for normative resources that are entailed by the founding principles of a liberal state. In a nutshell, the main thesis of this paper is that, by coherently and consequently applying its own principles, the liberal state would be forced to integrate the position and interests of would-be migrants into its discussion on borders policies. In that sense, the moral requirement of *inclusiveness* appear as a general procedural criterion when dealing with migration related issues. As I will argue, it represents on the one side a condition for the legitimacy of the balancing of the different relevant normative elements at stake when determining the borders policies of the state. In that regard, it forms the condition of a morally acceptable deliberation on the different arguments relevant for the determination of a border policy. On the other side, it is also a requirement about institutional mechanisms securing that would-be migrants’ interests are duly taken into account.

¹ Abizadeh (2010).

² For a similar focus, see e.g. Risse (2008).

³ Abizadeh (2008). On the “all affected” principle, see Goodin (2007).

The first part of this paper specifies what I meant by the second dimension of the “full-sovereignty” thesis, thereby sketching the position defended by Abizadeh. In the second part, moving away from Abizadeh’s approach, I will mobilize normative resources from a broadly republican theory and try to highlight what is morally specially problematic in borders policies. Based upon this analysis, I will in a third part present and discuss the main hypothesis sketched above.

Before proceeding further, I shall make a methodological note on my use of the term “liberal state”⁴. By using this formulation, I try to be as ecumenical as possible in arguing from a position that shall prove to be compatible with both a liberal and a (neo) republican conception of the state. The same general methodological stance applies to my recourse to republican normative resources. As was argued by several authors, liberalism has difficulties to conceptualize the link between outsiders and moral issues in controlling and regulating access to a politically organized community⁵. I do not want to claim that classical liberalism does not have *any* normative tools to think about this challenge, but rather that it might be rewarding to have a look on another approach. In this paper, I mobilize normative resources from a broadly republican perspective and try to cast a new light on the links between would-be migrants and borders policies.

2. A one-sided view on migration ethics

The existing literature on the ethics of migration has mainly been focused on the policy⁶ question faced by liberal affluent states: How should a state react to individuals finding their way to the national borders and asking for permission to enter the national territory? By taking the point of view of the state as point of departure, the philosophical debate has been led under the title *open/closed borders*⁷.

Besides the numerous issues directly related to the asylum constellation – where, arguably, the main problem does not lie on the normative issues, but rather in the political problems of implementation⁸ – the normative discussion on the arguments being at stake in cases of economic legal migration has by no way lead to a coherent framework. Although classical arguments for or against open borders are now well-established, it is still very difficult to find a comprehensive framework of discussion, able to make normative room for all the relevant normative elements at stake⁹.

⁴ For the sake of the present argument, I will use the term « state » as encompassing the relevant institutions of a politically organized community. The paper should not be understood as being only compatible with the classical nation-state. In many regards, the EU – as a principles-based community of nation-states – faces similar moral challenges.

⁵ E.g. Cole (2000).

⁶ By borders control is meant in this paper the right of a state to control its borders, meaning its sovereign right to choose to close or open its borders to specific individuals. All the relevant measures of borders controls form what I call in this paper a borders policy. In other words, it concerns the right of a state to choose who is to enter the territory under which conditions. See Abizadeh (2008), 43.

⁷ For overviews, Bader (2005), Seglow (2005), Wellman (2010). For collections of influential essays, Barry and Goodin (1992), Schwartz (1995), Miller and Hashmi (2001), Märker and Schlothfeldt (2002).

⁸ Indeed, the problem also lies on the difficult demarcation with the so called “economic” migration. See e.g. Gibney (2004) or Miller (2007). For an opposite view, Geddes (2003).

⁹ For a clear commitment to this objective, see Seglow (2005). For Risse, this has to do with “unarticulated disagreements precisely about what can be under consideration and what cannot”. See Risse (2008), 27.

Despite this rather disappointing evaluation, all authors – almost *uni sono* albeit coming from different philosophical backgrounds - plead for more borders' openness¹⁰. Nevertheless, this conclusion still appears uncomfortable in that it is the result of a balancing of the different normative elements. The conclusion of this balancing will indeed be different if one is to weight more heavily the value of free movement or the value of the self-determination of a political community. More fundamentally, the different arguments are not integrated into a coherent moral framework. They represent more a sort of catalogue and are weighted against each other in a somewhat arbitrary way. One could not help thinking that most argumentative strategies talk past each other, failing to really engage with each other on transparent grounds and leading to a coherent and comprehensive framework.

A similar conclusion has been defended by Abizadeh in several articles¹¹. Claiming that we need to complement what he calls “substantive-moral” arguments with a “procedural-political” analysis, he shifts the focus from the substantive content of the different arguments to the conditions of decision on the different normative elements at stake and their relative weight against each other. In other words, he focuses on the procedural-political issue, meaning the conditions and modalities of a decision-making procedure on which level of openness (respectively closure) of the state's borders appears morally acceptable. This shift of focus represents a refreshing and challenging look at the migration problematic.

According to Abizadeh, the regime of borders control subjects both members and nonmembers to the state's *coercive exercise of power*. It invades the autonomy of would-be migrants and gives therefore rise to a right of democratic participation in the making of those borders policies. The overall objective is to secure an active position to would-be migrants in the decision-making procedures concerning borders and immigration policies. It would concretely mean to give would-be migrants (e.g. Mexicans willing to emigrate to the US) a right to formally participate in the decision-making procedure on borders control (concretely, US borders policy). From a democratic point of view – so Abizadeh – the justification of borders policies is also owed to would-be migrants. Without such active participation of all directly concerned by the borders policies, those policies would lack legitimacy.

Although I will take another path as Abizadeh's, two main elements of the argument would deserve discussion. On the one hand, the characterization of the effects of borders policies on would-be migrants as state's coercion is to be discussed. On the other hand, the claim that every form of state's coercion requires a democratic justification would also deserve attention.

On the first point, the characterization proposed by Abizadeh has been challenged by Miller, who argues that border controls do not coerce, but only *prevent* outsiders from doing something, namely from having access to the territory of the state¹². He makes the distinction between coercion (to force someone to do something) and prevention (to force someone *not to do* something, but let other options available). Prevention can indeed be severe if individuals are prevented to do something vital to them by several (uncoordinated) actors (such as “economic migrants” in most

¹⁰ Non exhaustively, Carens (1992), Bader (2005), Kukathas (2005), Miller (2005), Seglow (2005), Abizadeh (2010), Wellman (2010).

¹¹ Abizadeh (2008), Abizadeh (2010).

¹² Miller (2010). For the further reply, see Abizadeh (2010).

Western states). Miller further argues that prevention does not trigger demands for democratic justification and that, therefore, borders policies do not give rise to democratic rights for would-be migrants. This does not mean that prevention has no moral relevance.

On the second point, a fundamental critique against Abizadeh's argument could be made by investigating the link between the two models of justification he identifies, namely the democratic one and a broadly constructivist one, based upon an hypothetical justification. The relationships between the two models appear unclear and there is room to argue that the two models are indeed not mutually exclusive (as Abizadeh seems to presuppose). In link with this point, it could be argued that we need more complex models than the "democratic-or-nothing" line of argumentation proposed by Abizadeh when justifying borders policies.

As already mentioned, I will not directly argue against Abizadeh's views. Firstly, my focus of analysis will be on the effects of borders control over would-be migrants and, most importantly, on the modus of these effects from the point of view of the state. As I will show, my argument does not require a characterization of borders policies as strong as Abizadeh's. Secondly, I want to further explore the normative resources entailed into the founding commitments of a liberal state. I argue that there is still much to do in solving tensions by coherently applying basic liberal principles¹³. Taking over Abizadeh's framework, I try to make the most of the coherent application of the hypothetical justification model (what he calls the "liberal justification")¹⁴ and see which problems could be solved. In pursuing this objective, I try to go past the Abizadeh's dichotomy between a hypothetical and a democratic justification by providing a sort of third model. Notwithstanding this somehow different focus, it could well be the case that the democratic argument pushed by Abizadeh will enter the picture through the backdoor. I shall come back to this in the conclusion.

3. What is so special about borders policies?

From the point of view of the (liberal) state closing its borders, why could borders policies be morally problematic? I start my analysis with two key features that appear morally relevant: the effects produced on outsiders (arguably the restriction of their freedom to move and their freedom of choice) and the lack of possibilities to influence those borders policies from the would-be migrants' point of view. These two key features shall not be understood as moral qualifications, but rather as assumptions about borders policies.

Taking over Miller's distinction between coercion and prevention, it seems possible to say that, by closing its borders, a state prevents would-be migrants to enter on the territory¹⁵. By doing so, this state influences the range of choices opened to those would-be migrants. It is not central to discuss now if would-be migrants do in fact have a direct interest in moving to the state in question or if they do not have any direct interest in that move¹⁶. From a purely conceptual point of view, the number

¹³ For a Rawlsian argumentation pointing to similar results, Mona (2007).

¹⁴ Abizadeh (2008), 39-42.

¹⁵ This argument is also discussed by Blake (2006). In this paper, I do not discuss the very disputed issue on which *means* to control the borders are morally acceptable (e.g. under the point of view of human rights considerations). My focus lies on the underlying claim according to which the state has the sovereign right to control its borders.

¹⁶ The present argument does not require accepting that would-be migrants have a human right to international free movement. It only appears necessary to accept that would-be migrants could be said to have

of options open to them has been reduced by the state's decision to close its borders¹⁷. In that sense, the effects of a state closing its borders are not a one-to-one relation, but rather reflect the relation between a political entity (a state) and an indefinite number of individuals affected by this decision, who we could not identify, but who we could specify¹⁸. By claiming a right to decide upon who is to be accepted on the national territory in a fully sovereign manner, a state restricts (or has the virtual power to restrict) the liberty of movement of all outsiders. When states do decide in a sovereign manner upon their borders policies, this concretely means without taking effects on would-be migrants into account. This does not concern issues pertaining to asylum, where most states recognize that their sovereign prerogatives are limited, both from a moral and a legal point of view.

In any case, there is no possibility for would-be migrants to directly influence this restriction. Although they are in the first line affected with this limitation of their possible choices, they cannot influence the decision taken by the state. The upshot of a single state closing its borders might not help getting the whole picture. The problem becomes conceptually more complex and morally more urgent if we consider a quasi real world situation. As a matter of fact, the vast majority of affluent states close their borders to people coming from poorer states (with the exception of some very high-skilled migrants and the asylum seekers). All those people are prevented to enter (legally) into affluent states. If one is to follow Miller's terminology and analysis, what could be understood as a mere "prevention" from a single state is in fact much more a systemic blocking of free movement opportunities.

The two key features of actual borders policies of the majority of the liberal states appear to point out several moral challenges. My hypothesis is that, with respect to borders policies as characterized through those key features, what appears especially problematic are both the *effects* of borders policies and the *modus* of those policies, namely the modus of interaction between the state and would-be migrants. Translated into a neo-roman republican language, the question at issue could be restated in the following way: Could we conceptualize the effects of borders policies and their modus as a form of arbitrary interferences, pertaining to a form of domination? I will start by a very short sketch of the republican conceptual framework and then try to bring it into perspective in the borders debate.

By proposing a definition of freedom as non-domination, Pettit and other neo-roman republican thinkers have tried to highlight factual or potential arbitrary interferences in one's capacity to freely take decisions¹⁹. Or, as Pettit put it in his latest works, if a state exercises an "alien control" over my capacity to take decisions. The point is not to say that the state has no legitimate prerogative altogether to restrict one of my freedoms, but rather that it must do it in a non-dominating way,

a strong interest in being able to choose to move to another place, for very different reasons. For a classical treatment of this question, see Carens (1992). For a critical analysis, see Kirloskar-Steinbach (2007).

¹⁷ Compare with the discussion on « harming others » by Fine. « Prohibiting outsiders from settling in and becoming members of a particular state hinders or prevents their pursuit of all the many familial, social, religious, cultural, political, or economic interests tied to residence and citizenship in that state, despite the fact that some, if not all, of their basic needs could be met elsewhere." Fine (2010), 347-348.

¹⁸ In the constellation of our globalized and interdependent world, borders' control appears to be one of the elements of what Bohman calls the « circumstances of politics », see Bohman (2004).

¹⁹ The issue of potential state's domination shall be distinguished from the issue of the state preventing domination occurring between private parties. In this former constellation, the republican state ought to secure every citizen the faculty to exercise his basic liberties without fearing domination. On what is to count as a basic liberty, see Pettit (2008).

namely by ensuring that my interests are taken into account and given due weight. In the words of Pettit, the control has to be non-alien.

The point is not only to stress the danger of an actual arbitrary interference, but also the resilient power that A could have to arbitrarily interfere with B. In turn, what is at stake when trying to specify what is required for B to be considered as free is a “systematic sort of protection and empowerment”²⁰ against those powers of potential alien control. Overall, the relation between A and B is to be considered as a relation of domination to the extent that A has the capacity to arbitrarily interfere with important B’s choices. On the contrary, a situation where freedom defined as non-domination is taken seriously is a situation where the individual has the resilient capacity to avoid being ruled or influenced in its capacity to take decisions. This situation of non-domination would be secured if the interferences A can exercise over B are non-arbitrary.

One central question remains open: What is exactly required in order for a decision to be checked by the interfered? Interference will be non-arbitrary “to the extent that, being checked, it is forced to track the avowed or avowalready interests of the interferee; and this, regardless of whether or not those interests are true or real or valid, by some independent moral criterion”²¹. As Pettit writes, “in real-world circumstances B may only approximate that condition, say through being able to call off the interference within a brief period of deciding against it or through having a reliable deputy or proxy who can call it off in the event of such a change of mind. But to the extent that B approximates the condition, the interference that A practices will be non-alien; it will be subject ultimately to B’s check and consent.”²² As it appears, interferences will be non-arbitrary to the extent that the entity interfering has been forced to check the relevant interests and take them into account. The other side of the medaille appears to be an effective and enduring protection.

Many elements of this conceptual framework find actuality in the debate on borders policies. First of all, the concept of “arbitrary interference” with one’s capacity to decide freely appears very to the point in qualifying the effects on would-be migrants borders policies have. The state exercises its power in order to remove options which would be, in a world without borders closure, open to would-be migrants. As real world situations clearly show, those options do not concern minor choices, but affect very important choices for would-be migrants, indeed choices that are connected to very strong interests a person might have. As the current situation regarding borders closure clearly shows, the state does not have to take into account or track the interests of would-be migrants. It is a sovereign choice in the sense of a bounded political community deciding alone upon its borders’ policy. The interfere does not have any possibility to check and control in any satisfactory sense the borders’ control prerogative of a state. This interference could therefore be said to be an arbitrary one.

Even in the case of a state opening its borders, the *risk* of arbitrary interferences (and therefore the relation of domination) would persist. The fact that a state, on a contingent basis and according to temporary reasons, does open its borders does not change that this state has the power to interfere arbitrarily with a relevant freedom of would-be migrants by just deciding to close its borders to them. The “immigration choisie” view defended by many politicians is such a constellation: by

²⁰ Pettit (2008).

²¹ Pettit (2008).

²² Pettit (2010), 75.

adapting its borders policies to the employment market situation, the state claims the right to change its policies as it sees fit for its interests. The point of freedom as non-domination as a political ideal is the *modal* conceptualization of freedom it permits. The state should not have the capacity to interfere arbitrarily with my freedom. If it does keep this capacity, then the relation of domination will persist, even in the absence of current interferences.

As it appears, there are good grounds to argue that borders policies as we know them today represent a form of domination. The state is in the position to exercise arbitrary interferences over would-be migrants' choices by arbitrarily preventing them to make use of their freedom to move across borders. Nevertheless, for the present purposes, it is not necessary to accept this conclusion. The main point of my analysis was to prepare the ground for further analysis by highlighting what is especially problematic in the borders policies of most current liberal states.

4. The moral requirement of inclusiveness

The recourse to a republican analysis has shown that borders policies represent an arbitrary interference from a state on would-be migrants. The effects of those policies are indeed very serious as it appears that, in the current world, most affluent states do almost entirely close their borders to vast number of people. Furthermore, the republican resources have enabled to highlight another problematic feature of those borders controls, namely their modus of application. By claiming a sovereign right to decide upon the level of closure of its borders, the state claims an arbitrary power to interfere as it sees fit with people outside its borders, without being somehow accountable to them.

What appears specially morally problematic in the analysis presented above connects directly to the procedural-political side of the "full-sovereignty"-thesis. The fact that a liberal state claims the prerogative to decide upon its borders policies without taking interests of would-be migrants altogether into account appears particularly problematic. Starting from this assumption, my thesis is to consider the liberal state as having sufficient resources in its own normative foundations to successfully meet the moral challenges highlighted before. In other words, I submit that a liberal state should consequently respect its own founding principles and that, by doing so, it ought to give due attention to would-be migrants²³. This represents a moral condition that needs to be fulfilled for the state to act in accordance with its own fundamental aspirations. I will describe what I consider to be the two main moral requirements a liberal state ought to fulfill in this respect. In a further step, I propose to subsume those under the general moral requirement of *inclusiveness*.

For the present purposes, it appears sufficient to start the analysis by shortly presenting two principles of a liberal state that are especially relevant for the borders policy problematic. This proposal is by no means exhaustive and there surely are good grounds to further develop the argument by adding more founding principles to my present proposal.

Firstly, I claim that a liberal state is based upon some version of moral cosmopolitanism. Without engaging in depth with a definition of this concept²⁴, I use it as a virtually undisputed position about the moral value of every human being and the moral equality of every human being. In other words,

²³ For a similar thesis, see Kostakopoulou (2009), 18.

²⁴ For an overview, see Kleingeld and Brown (2009).

the liberal state is grounded upon the principle that every human being has an equal moral value. Based upon this general assumption, I claim that every person should be considered as what I call a “moral reasons-bearer”. By this, I mean that every person whose moral rights (whatever they might be) are infringed has the right to get moral reasons justifying the restriction²⁵. It is not to say that restrictions of those rights cannot be legitimate at all but rather that they should be duly justified. To deny that the person has a claim to get a moral justification in form of moral reasons given to her would be to deny the moral quality of the person. This justification is owed to every person, otherwise it would prove incompatible with the principle of moral equality. The quality of the justification that is owed is indeed the most important issue to be handled.

Secondly, I claim that a liberal state is bound by what we could call the “priority of freedom principle”. The state should not violate the freedom of persons without due justification. Plenty of restrictions of the different freedoms are fully justified and my point is not against state’s interference for itself. But, as a matter of fundamental importance for the liberal state, any restriction of freedom should be justified.

This encompasses an obligation for the state to avoid unjustified restrictions of its citizens’ freedoms, but also entails obligations *vis-à-vis* outsiders. Focusing on this second point, I subsume this general principle under the (inspired by neo-roman republicanism) concept of the negative duty of a liberal state *not to dominate others*, be it other individuals or other communities²⁶. As Lovett and Pettit writes when considering why the state should avoid becoming dominant on its citizens, “self-limitation is built right into the neorepublican ideal. An excessively powerful and intrusive state might easily become a dominating agent in society, and since the neorepublican aim is to reduce domination from all possible sources, republicanism entails placing limits on government power.”²⁷ In another article, Pettit writes that “those states and their peoples [the representative states ; J.R.] will be in a position where they must espouse the ideal of non-domination as a good that any individual or state should cherish.”²⁸ This negative duty not to dominate others explains why states should care in the first place about avoiding relations of domination with outsiders. If the state ought to take its decision regarding borders’ control in accordance with its duty not to dominate, it means that it should exercise a non-arbitrary interferences over would-be migrants.

If they were coherently applied, the two founding principles sketched above would clearly have consequences on the way the state ought to determine its borders policies. Above all, when deciding upon its borders policies, a liberal state should take into account would-be migrants as moral reason-bearers, pay due attention to their interests and justify its policies on grounds that are compatible with their status as free and morally equal human beings. This requirement clearly excludes a state’s decision in full sovereignty, meaning without having to give any reason to any one altogether.

²⁵ This position does not imply that *only* an infringement of rights does give rise to a right to justification. For further considerations, see Forst (2010).

²⁶ See for instance, Laborde (2010), 53. Pettit also writes that representative states and their peoples “will be in a position where they must espouse the ideal of non-domination as a good that any individual or state should cherish.” Pettit (2010), 89. See Skinner for a reconstruction of Pettit’s and Laborde’s arguments, Skinner (2010).

²⁷ Lovett and Pettit (2009), 22. This argument can be seen from within a broader *coherence* line of argumentation. A state ought to respect its own moral principles when dealing with outsiders.

²⁸ Pettit (2010), 89.

But it is not sufficient to consider it as a formal requirement. As a matter of example, a state saying that “No black people are permitted to enter the territory because of their dark skin” does provide a justification, but not one that we find acceptable. The state should justify its borders policy on grounds that are acceptable from the point of view of would-be migrants considered as free and equal human beings²⁹. In doing so, the state shall accept to be assessed in light of demanding standards, and not of purely formal conceptions of equality³⁰. Current standards in force in most of liberal states concerning non-discrimination can be mobilized in determining which standard of justification is to be observed. By excluding justifications based upon criterion that are considered unacceptable in light of the equal and free status (such as sex, race, skin color, religion), a recourse to those non-discrimination standards could help further develop a satisfactory standard of justification for borders policies³¹.

As morally relevant beings, would-be migrants and their interests are considered as moral constraints for the state, which needs to justify its interferences on grounds that are compatible with the moral value and equality of every human being. But this is a necessary, albeit not sufficient condition. The liberal state cannot fulfil its moral requirements only in that it justifies its borders policy on grounds that are hypothetically acceptable for persons treated as free and equals. Would-be migrants and their interests, although they are, strictly speaking, external to the political community, should be properly integrated into the deliberation on borders policies. If the state is to coherently and concretely integrate this external condition into its internal decision-making process, the modus of the interferences will change. In that case, the modus of interferences would become legitimate because the liberal state would, in accordance with its own principles, bind itself to integrate the position of would-be migrants into its discussion on borders policies. In the concluding part of this paper, I will try to sketch institutional mechanisms.

Against the background of the analysis proposed above, the moral requirements of the liberal state with respect to borders policies could be summed up under the moral requirement of “inclusiveness”. Inclusiveness is defined as a general moral requirement of the framework within which substantive-moral arguments regarding borders policies will be assessed in the process of determining which borders policy is to be chosen. In this sense, it appears as a procedural requirement, meaning a normative characterization of how should a procedure be conducted for it to be morally acceptable. What I identify as the two dimensions of the full-sovereignty thesis could be linked through this procedural requirement. Inclusiveness appears as the condition of a legitimate balancing of the substantive-moral arguments presented in the first part of this paper. More precisely, the state ought to elaborate a procedure inspired by the requirement of inclusiveness in order to weight all the relevant arguments against each other.

In order to exemplify the potential effects on borders policies the respect of the requirement of inclusiveness could have, let me take two important arguments of the open/closed borders debate. Firstly, consider the “human right to immigration” argument. By committing itself to consider would-be migrants as free and equal human beings and by acknowledging that they ought to be integrated

²⁹ In a similar way, Abizadeh claims that borders’ control must be justified on grounds that could not be reasonably rejected by outsiders qua free and equal persons. Abizadeh (2010).

³⁰ I thank Tom Christiano and the other participants in the panel discussion at the ALSP Conference in Warwick (July 2011) for stressing this point to me.

³¹ For a general reflection on those standards, see e.g. Bell (2003).

into deliberation on borders policies, the liberal state has to properly assess the value of the interests of would-be migrants. This is not the place to argue for or against a human right to immigration. However, the renewed liberal commitment of the state increases the importance to deal with this issue. If it considers economic would-be migrants to be irrelevant for the determination of its borders policy, it is not essential for the state to clarify this issue. If it is to strictly respect inclusiveness when dealing with economic migration, the state would have to adopt an approach inspired by the way it (currently) deals with refugees and asylum seekers (taking them seriously and considering in depth their interests).

Secondly, consider the “welfare state strain” argument, arguing that a state has the right to close its borders to would-be migrants if open borders would put a strain on the welfare state (e.g. social provisions)³². This argument relies upon the hypothesis that a (relative or absolute) priority scheme among co-citizens is morally acceptable. I believe that there are good reasons to argue that such a scheme could be morally acceptable. However, in light of the moral requirement of inclusiveness, this “welfare state strain” argument would only be acceptable as moral justification for closed borders if the state succeeds in showing that it is compatible with the equal and free status of every human being. Without doubt, this will require some major qualifications of the argument.

Although inclusiveness would have very important consequences on several elements of a comprehensive normative framework on migration, it is not a self-standing argument in two relevant senses. First of all, to respect this requirement for a liberal state does not mean that, *ipso facto*, its borders policy would become legitimate. In that respect, inclusiveness appears as a necessary, but not sufficient condition for the legitimacy of a borders policy. It is insufficient in that what Abizadeh has called the “substantive-moral” criteria still need to be assessed in a comprehensive framework. It is only with all those elements integrated into a complex framework that the state would be in a position to present a borders policy that could resist moral scrutiny. In that sense, the fact that the requirement of inclusiveness remains in some respect a low threshold (the quality of a possible justification under the condition of free and equal human beings) must not be disappointing. Inclusiveness lays down the conditions for the liberal state to discuss and decide upon migration policies if it is to be coherent with its own core commitments.

In a second dimension, to respect inclusiveness does not point out a specific normative result as a matter of policy making: it only specifies a minimal condition for the decision-making procedure on borders policies. It means that inclusiveness should form and inspire the framework in which those different moral, political or prudential arguments would be discussed and weighted against each other. Indeed, to respect inclusiveness would mean for liberal states to fundamentally readapt their borders policies. As a matter of fact, this move will lead to more open borders.

5. In conclusion: Towards institutional mechanisms

As an overall objective, this paper has been directed against the “full-sovereignty” view on borders policies, namely the double claim that a state has the right to decide upon its borders policies without paying due attention to moral reasons and without considering effects on would-be migrants and the modus of borders policies.

³² For instance, Macedo (2007).

With respect to the second dimension of this view – the “procedural-political” issue as Abizadeh put it – I have tried in a first step to clearly specify what was morally problematic with borders policies as we know them as a matter of policy by affluent liberal states. By mobilizing a republican approach, I have highlighted the effects on would-be migrants resulting from arbitrary interferences of the state through its borders policies. In a second step, investigating what could be a good way to meet the moral challenges identified by the analysis, I have argued that liberal states do in fact have sufficient own normative resources, if applied in a consequent and coherent manner.

By acting in accordance with the moral requirement of inclusiveness, liberal states ought to recognise would-be migrants as moral reasons-bearers. Accordingly, they ought to give them a moral justification compatible with their status of free and equal human beings. This general requirement of inclusiveness is to be considered by the state as procedural condition of a legitimate decision about the different arguments discussed at length in the open/closed borders debate. It furthermore entails the commitment of the state to put in force institutional mechanisms able to secure would-be migrants’ interests to be properly heard.

At the end of the day, many might argue that the democratic thesis of Abizadeh is coming back through the window. Indeed, they might claim that the argument shall be pushed one step further to get (back) to Abizadeh’s position: to give active democratic rights to would-be migrants is a necessary step in order to secure that the state will live by its own liberal commitment.

As I discussed above, I agree that institutional mechanisms are an integral part of the general requirement of inclusiveness. To say that the liberal state has the resources in its own normative foundations to meet those moral challenges is not to claim that institutional measures are not necessary. The state should put in place institutional safeguards meant to ensure coherence with its own framework. Again, the idea is that for the liberal state to act in a coherent manner, it should bind itself. In other words, to restrict its potential of arbitrary interferences with would-be migrants is part of the moral *cahier des charges* of a liberal state.

As it appears, the argument presented here is not the same as Abizadeh’s. They do not rely on the same qualifications of borders policies. I have not characterized borders policies as coercion on would-be migrants. According to Abizadeh, this is the capital element in arguing for a democratic justification owed to both citizens and would-be migrants. Therefore, in order to bring Abizadeh’s conclusion in line with my argument, one would need to show that active democratic participation is the best way to ensure the state’s coherence with its own principle. This (empirical) claim does not appear self-evident. I will not directly argue against it but rather try to show, as a matter of concluding remarks, which institutional mechanisms are to be put into place. Let me sketch three of them.

On a general political level, the elaboration of a charta for immigration matters in which the moral requirement of inclusiveness would be clearly stipulated as procedural criteria could be an interesting option³³. In such an official document, the state would have a politically symbolic occasion to affirm that its commitments on that matter are directly grounded in its own founding

³³ As an example of such a political *geste*, see the European Pact on Immigration and Asylum, 4 July 2008. Available at www.libertysecurity.org.

principles. The political discourse and decision-making procedure on migration related matters should be guided by this idea rooted in the core principle of a liberal state, as a matter of internal coherence. Much in line with this political commitment, there are good grounds to argue for institutional mechanisms putting into force a system of indirect advocacy in the name of would-be migrants (through NGOs or other actors). This sort of proxy is part of the general move towards more inclusiveness on the side of the state.

On a legal level, the hypothesis defended in this paper could be interpreted as an argument in support of legal migration. By this concept, I mean the legal possibility for would-be migrants to make their interests in moving to a specific state be heard through an open procedure. Such procedures are already available for economic would-be migrants, although they are in the main cases reserved to high-skilled people. A more global approach to economic migration through the support to legal migration procedures would be part of a move away from the full-sovereignty thesis to forms of decision marked by more inclusiveness. Although the state will remain the final decision-maker, such common procedures enable both would-be migrants the state to make their interests heard. The state is then forced to recognize the interests of would-be migrants and present them a justification that is compatible with their status in case of a negative answer. On a more general level, without going to the level of individual request, the putting into force of such procedures would force the state to promulgate criteria of admissibility and rules of procedures. All those measures represent a move away from the full-sovereignty view and anchor the state's practice under the heading of more inclusiveness.

Finally, the general requirement of inclusiveness could also be mobilized as an argument in support of more international coordination. Again, the first general move is for the state to recognize that it ought to take would-be migrants into account. This requirement to engage into international coordination could take several forms, among which two appear especially interesting. On the one hand, it could mean an international legal regime, similar to the asylum system of the Geneva Conventions. The creation of a similar regime for economic migration would participate from a move towards more transparency regarding normative reasons at stake when determining the legitimacy of borders policies. On the other hand, it could mean a more or less binding process of discussion with other international partners (states, international organizations, companies, NGOs) in order to find way to "manage" issues related to economic migration, but without recurring to a legal framework. On both accounts, though the move from state's claim to decide alone to a more coordinated framework appears desirable, a tension will persist between states talking together (and defending their interests) and taking into account the interests of would-be migrants. In fact, those interests might not correspond to the state's interests. Therefore, the creation of institutional bodies functioning as proxy in helping would-be migrants' interests be heard could be seen as a further improvement.

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