A liberal-democratic theory of borders

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Introduction

The purpose of this work is to inquire into the normative legitimacy of border controls on immigration. Is the state entitled to enforce border controls? Are there any conditions that may be posed as requirements for entry in a political community? Or, conversely, should movement across borders be free? Is there a human right to immigrate? The aim of this work is to inquire into these questions. What I want to determine, namely, is whether international immigration should be totally free or, rather, that some limitations on the individual opportunity to resettle in a new country can sometimes be imposed by receiving polities.

The problem has been absent for a long time from all classical works in political theory, where the fact that any community has the right to decide who can cross its boundaries is usually assumed. Nonetheless, this tendency was inverted starting from the eighties of the last century, when the first philosophical works on the matter appeared (Walzer, 1983; Carens, 1986). From that moment until today, the issue has attracted the attention of more and more political theorists, and now an extremely rich literature exists on what is considered one of the most important problems of political philosophy.

What motivates this interest, on the one hand, is the fact that the problem is obviously practically compelling. Indeed, modernity has seen the presence of large immigration flows of individuals trying to move towards the most developed countries of the world for the purpose of improving their own life conditions. At the same time, in a globalized world in which the labour market tends to be more fluid, it is reasonable to think that the presence of significant numbers of people seeking to migrate is not simply a consequence of the failure of the international political order to grant decent life conditions to subjects in specific areas of the world, but rather an unexceptional characteristic of the world that is here to stay. This raises the need for normative political theory to determine whether movement across borders can be regulated and, if so, why, how, and under what conditions.

However, the practical interest in the question of the legitimacy of border controls is not the sole fact that explains its relevance. Indeed, it seems that

the issue of border controls is theoretically relevant as well. This is because, so to speak, what do we require of migrants to enter our communities tells about ourselves. That is, what, if any, requirements can be imposed on the entry of new subjects into the community depends on what political membership requires which, in turn, depends on what political membership is for us, its meaning, its aims. In this sense, the issue of immigration acquires relevance not only as a practical problem we face in contemporary societies, but also, and for the purposes of this work more importantly, insofar as it invites us to discuss the idea of political community, and the sense of our membership in it, from perspectives that until some years ago were undertheorized.

When approaching the issue of border controls, liberal-democratic political theorists rapidly arrived at the conclusion that borders should be open. What motivated this first answer was the intuitive idea that the practice of border controls is in tension with the classical liberal-democratic commitment to the value of individual freedom and to the right of every human being to pursue their own life projects, that is obviously obstructed by the presence of obstacles represented by border controls. But at the same time, the exercise of border controls appeared to many as violating another classically liberal-democratic idea, namely that of the fundamental moral equality of every human being (Carens, 1987; Cole, 2000; Kukathas, 2004; Oberman, 2016). For clearly, exercising border controls amounts to imposing demarcations between who is in and who is out, and then to make a discrimination as to who can join in the benefits associated with membership in specific political communities.

These arguments have, at least prima facie, much argumentative force. Indeed, as may be easily understood, the open borders perspective rapidly became the most popular position between political theorists on the matter. After all, the liberal-democratic idea of the polity has ever been associated with the concepts of openness, freedom, inclusion, and equality. So that, applied to the issue of border controls, it seems rather natural for a liberal-democratic theorist to think that normality for a modern political community should be the acceptance of almost totally free movement across borders, both entry and exit.

Nonetheless, the rise of the open borders thesis has been, at the same time, counterbalanced by many attempts to discover concurring perspectives capable of justifying the right of states to control their borders, and then capable of reaffirming on justifiable grounds the conventional view on the matter, that is adopted by the practice of existing political regimes. And here, what is usually considered the most relevant argument appeals, in order to justify border controls, to another classical principle belonging to liberal-democratic culture: the principle of collective self-determination (Walzer, 1983; Miller, 2016; Song, 2019; Pevnick, 2011). Here, the classical argument starts with the premise that individuals have the right to a say on the public choices that shape the properties of the polity within which they live, and that this right grounds, in turn, the right to political freedom.

According to some scholars, the satisfaction of this right requires that to the collectives to which individuals belong it is recognized the possibility to control borders. This is because the entry of numerous newcomers bringing with them their culture, their personal story, and their way of life may imprint, in the long run, significant changes on the characteristics of the receiving polity, modifying its identity and its collective practices. In this sense, it is argued that depriving receiving communities of the possibility to control their borders would amount to obstructing the exercise of their agency on an issue that is relevant for their communal identity, and thus to significantly restrict the political freedom of individuals composing the polity.

In this work I shall propose another perspective on the matter, alternative to both views just mentioned. In brief, what I want to argue is that both the open borders and the border controls perspectives can be considered as arising from different interpretations of the liberal-democratic system of values which, nonetheless, fail to justify themselves as fully theoretically legitimate. On this basis, I will argue that the liberal-democratic system of values leaves underdetermined the issue of the legitimacy of border controls, being unable to fully justify either of the two perspectives. This then proves a defect in the theoretical, and subsequently political, legitimacy of both perspectives. On this basis, I argue that the practice of border controls has to be conceptualized as a contested practice in which opposed but equally partial interests collide, giving way to a conflict that does not admit a perfect solution, only mitigation.

A mitigation I will propose in the idea of integrating the right to sovereignty on the matter for receiving polities with the right to contest migration policies for hypothetical migrants.

This introduction aims to illustrate the structure of the argument in its essentials. Nonetheless, for this task to be fulfilled, it is necessary first to spell out some of the methodological and conceptual underpinnings on which the analysis I shall offer relies. In particular, three aspects have to be clarified: first, since the main focus of this work will be whether and how international migration should be regulated, a working definition of the notion of migration is required. Second, I address the matter from the perspective of an ideal-theoretical framework, and it is necessary to specify what this means. Finally, a multiplicity of perspectives from which to address the debate can be adopted, so that it will be necessary to choose one of them. In what follows I shall clarify each of these points in turn. Once this task is completed, it will be possible to introduce the contents of the argument I will propose and its structure. I now turn to clarify the notion of migration.

What is migration?

A normative political theory of migration cannot avoid the necessity of providing a definition of what migration is. Clearly, this being fundamentally a philosophical work, we will not need a sophisticated conceptualization of the notion, as we would if were we interested in the phenomenon of migration from a sociological perspective. Nonetheless, a working definition is needed in order to clarify what we are trying to regulate. For this purpose, I shall start from the following definition:

The movement of individuals across the borders separating sovereign political communities from each other, for the purpose of settling there for a prolonged period and becoming members of a new polity, in order to improve one's own life conditions and to pursue personal life plans.

Now, this definition permits us to isolate the practice this work is focused on. Indeed, by qualifying migration as movement, it is clear that what we want to do is to understand how movement, and specifically movement across borders, should be regulated, if it should. At the same time, this definition permits us to distinguish the kind of movement we are interested in from those

in which we are not. For instance, the fact that migration is defined as movement for the purpose of settling in a new polity for a prolonged period permits us to exclude from our interest short period movements, such as the one we enact when we are tourists in a foreign country. Nonetheless, the prolonged time condition leaves an ambiguity. For given the unavoidably vague and partially stipulative nature of the expression "prolonged time", it seems that, even conceding that vacations cannot count as prolonged time movements, still a broad variety of movements can fall within this category. For instance, the visiting period an academic researcher spends in a foreign country can count as migration as well as the permanent transferal of a southern Italian to the US. Nonetheless, the two are clearly different experiences.

This ambiguity, however, is resolved by referring to the other condition our definition spells out. Namely, the "for the purpose of becoming a member of a new community" condition. We might say, indeed, that this condition is not satisfied by the first example we gave, but it is by the second. This thus clarifies that this work focuses on permanent migration and does not inquire into the problem of temporary migration projects (Ottonelli and Torresi, 2012). Of course, this is not to say that the second class of actions does not count as migration. Rather, do inquire into temporary migration would significantly complicate the argumentative work on the conceptual, empirical, and normative levels. Therefore, the definition of migration given here makes it clear that the term "migration" or, alternatively, "migration project" refers to the act of moving to a new country for the purpose of becoming member of it, namely, to acquire citizenship in it.

Finally, the last two conditions in the definition permits us to make another distinction. As is well known, indeed, the literature usually distinguishes between two classes of migrants on the basis of what causes migration. On the one hand, we talk about refugees when we refer to migrants who move out of necessity, to satisfy urgent and very essential needs, such as the need to escape from war or political persecution, from extreme poverty, or starvation. On the other hand, we usually talk about "economic migrants" when we focus on individuals freely adopting migration projects not for the purpose of satisfying extremely basic needs, but for the purpose of pursuing

personal aims and to have the opportunity to live better lives (Ambrosini, 2020).

The last two conditions serve to restrict the focus of our inquiry to the second class of migrants, that is to the practice of migration as a freely chosen project. Of course, in the current world, when we talk about migration, more often than not what we have in mind is the problem of refugees. Indeed, the presence of unjust political regimes and huge inequalities between different countries makes migration for the purpose of satisfying basic human needs an urgent political problem that, arguably, imposes high moral responsibilities on the wealthier countries of the world and deserves much attention from social scientists and political theorists.

It is clear, then, that focusing on the phenomenon of economic migration is a choice that requires to be clarified. As a first clarification, the matter is addressed from an ideal theoretical perspective. What I mean by this is that I assume that the disagreement on migration takes place in an ideal world, namely in a hypothetical scenario characterized by a number of conditions that I will specify and that are not satisfied in the world as we know it. Addressing the matter from an ideal perspective permits me to focus on the case of economic migration, because in an ideal world characterized by the conditions that I now turn to clarify, there would be no refugees.

Methodological assumptions: migration in an ideal world

The hypothetical scenario is characterized by the following three conditions:

1) *The ideal world considered is inhabited by a plurality of bounded polities which are characterized as territorial communities.* This, in fact, is not an ideal condition at all, for clearly the world is already inhabited by a plurality of territorially bounded polities. This condition has to be included in our ideal model as one of the circumstances within which the phenomenon, namely international migration, can take place (Carens, 1996). For clearly, international migration being defined as movement across borders dividing one community from another, in a world in which boundaries separating communities do not exist, the social phenomenon of international migration does not exist either. Of course, as we shall see later on, saying that our ideal model must include *as a fact* the existence of boundaries by no means implies that it should also assume their normative desirability. In this sense, the assumption of the existence of boundaries has to be considered compatible with the view that their existence is undesirable. And as we will see, one of the points this work wants to defend is exactly that the decisive line along which the divide between different perspectives on the matter can be drawn is represented by a different understanding of the normative status of boundaries.

2) *Each of these communities constitutes a minimally well-functioning system of cooperation whose institutions are capable of granting at least minimally decent life conditions to each of their members.* This condition serves to exclude from our ideal model the presence of extremely poor countries and, then, of individuals living in conditions of extreme poverty.

3) *Each of these communities recognizes the liberal-democratic system of values.* That is, first, each of the communities considered recognizes that their members, but also human beings in general, have the basic right to be authors of their life plans; second, that each of these communities recognizes that each individual in the world has the bundle of basic rights following from this fundamental right. Among these basic rights might be counted, for instance, the right to standard civil liberties; the right to membership in *some* (but not necessarily every) political community; the right to democratic agency; the right for the polities to which individuals belong to have at least the basic

freedom from interference by other polities. Of course, among these rights cannot be counted the right to become members of a hypothetical new polity; the right to be democratically included in the approval of norms defining the international order; or the precise extent of the right to the sovereignty of one's own polity. For, obviously, whether these last rights should be recognized –which of them, and to what extent – is what this work has to establish. I refer to this idealizing condition as expressing the idea of a "liberal-democratic world". Imagining that the normative issue takes place in a world so defined permits me to clarify that what I address in this work are only those perspectives that can be considered to fall within the liberal-democratic macro-category. Henceforth, I take for granted that the expression liberal-democratic, or alternatively liberal, has to be understood as referring to perspectives involving the acceptance of the principles included in this condition.

Now, if we put these conditions together (especially conditions (2) and (3)), it seems that what emerges is the image of a world in which no one could be a refugee. For it qualifies as a world in which each individual belongs to an at least minimally just community, and in which each community respects other communities' sovereign space. In this sense, what we are imagining is a world in which there is no extremely relevant injustice, no poverty, and no war. However, what appears evident is the enormous distance of this imagined world from the world as we know it. So it might be wondered: why address the matter in such an idealized scenario? What is the relevance of trying to figure out how we should behave in the matter of migration in a scenario such as this, that arguably will never come into existence?

These questions open up a number of methodological issues that I cannot fully address here. Indeed, as is well known, a rich debate exists on whether political theory should be ideal or not, on which idealizations are permissible, and in what sense, if any, political theory should be realistic (Estlund, 2011; Ypi, 2010; Rossi, 2019; Galston, 2010; Horton, 2010). The space of a single work does not permit me to fully justify the methodological presuppositions on which the substantive considerations I shall propose rely. So that these presuppositions have to be accepted as assumptions. Nonetheless, it seems

that at least some pro tanto justification of this methodological choice can be offered.

The pro tanto justification for this methodological choice pertains to the fact that the use of idealizations can prove valuable as a means to isolate specific normative dimensions in the political questions we pose to ourselves from other practical concerns with which, in reality as it is, they may be interconnected. Indeed, what we do when we employ idealizations is imagine counterfactual scenarios in which the political issues we are interested in are not interconnected with practical concerns that may influence our way of conceptualizing the normative status of these issues. And this permits us to clarify our normative attitudes towards the problems considered separately by what we think about what the best course of action available to us is in the here and now, all things considered.

This conceptualization of the function of ideal theory – contrary to what is maintained by classical political philosophers, according to which the fact of international migration can only qualify as a non-ideal problem that would disappear in ideal conditions (Rawls, 1999) – seems to apply well to the case of international migration, and to the idealizations I make to treat it. Thus, an obvious example might be given. In the here and now, the issue of migration is highly influenced by the presence of relevant distributive inequalities between countries and by the presence of strongly illiberal and unjust regimes. For these aspects, on the one hand, make the claims of migrants for inclusion urgent, as related to the purpose of escaping from poverty or from the domination of authoritarian regimes. At the same time, however, both aspects make the inclusion of migrants more costly for receiving polities. Considerations about distributive inequality and the nature of existing political orders, then, may potentially affect our opinions on the matter both in one sense and the other. Now, in this case, idealizing these facts – as our second and third conditions do – may have the function of clarifying what is at stake, and what possibilities we value, separately from the practical concern of overcoming poverty and minimizing possible social drawbacks that may arise as a consequence of it, or of deciding how should we deal with the existence of illiberal regimes, and what we owe to people inhabiting them.

Of course, the idealizations involved in the construction of our normative models cannot require an excessive departure from the sociology of the phenomena with which they are concerned. For, in this case, it would turn out that normative theories are no longer distinguishable from works of fantasy. At the same time, we must be careful not to stifle the conditions under which the normative issues we deal with emerge. For the necessity for normative political theory always arises within the context of conflicts between different interests, desires, and perspectives on the matter considered. So that, if it turns out that our idealizations lead us to the image of a world in which these conflicts cannot appear, it follows that a normative model constructed on these idealizations is conceptually, besides practically, inadequate. For it turns out that our normative model is able to deal with the normative issues considered only when these are already resolved by the spontaneous behaviours of the actors involved in the collective practices which are the object of concern. Nonetheless, I shall argue that our ideal conditions are defensible even in the face of these points. This is because the circumstances within which the issue of the legitimacy of border controls, namely the circumstances of conflict between claims for openness and those for controls, arise, would not be exhausted by the satisfaction of the ideal conditions specified above.

 I maintain this point for a number of reasons. *First*, notice that the presence of injustice, determined for instance by strong distributive inequality or by the existence of normatively problematic political regimes, is certainly an incentive to international movement but, at the same time, an obstacle to it (Ambrosini, 2020). So that in this perspective it seems that we should say that, despite the fact that the absence of these sorts of injustices would determine the absence of huge migration flows, this leaves at least underdetermined the exact levels of migration rates we would find in a world characterized by these conditions. So that at least we cannot exclude the presence of international migration to a relevant extent.

To this, it should be added that migration is not always simply a way to obviate undesirable life conditions. Rather, it can be an integral part of a life plan chosen for independent reasons (Ottonelli and Torresi, 2012; 2013; Ambrosini, 2020). Individuals do not move only to deal with relevant

inequality or injustice in their hometown communities, for instance. Rather, they can decide to move to pursue personal relationships, job opportunities, specific ways of life related to certain territorial areas of the world, and so on. All incentives whose existence would not be affected by the satisfaction of the conditions considered. This seems to suggest that there is at least the possibility that a demand for movement, despite perhaps being a minority, would exist even in an ideal world as defined by our conditions. The presence of a demand for movement would by itself generate the demand for control of it that, as we have seen, is usually conceptualized along the lines of the interest of the receiving community in the possibility to exercise self-determination on the matter. The fact that in our ideal conditions the presence of migration flows would be possible justifies the belief that this interest would emerge as well. In this sense, there is no need to think that the interest of receiving communities in border controls is bound to the non-ideal characteristics of the world as we know it. And then the problem of establishing what value to assign to this interest, and what to possibly conflicting ones, would persist.

Finally, a last point might be raised: even assuming that the incentives to movement would be reduced in an ideal world, this does not imply that *freedom* of movement would not be, in this ideal world, normatively significant. We often value the possibility to consider an alternative action independently of whether we value that option. And this point seems to apply perfectly to the case of movement. This is proved, for example, by considering the fact that the deprivation of the possibility to move was considered one of the most problematic characteristics of East Germany before the fall of the wall. This was not simply due to the fact that relevant numbers of individuals desired to move (Hirschman, 1993). Rather, the presence of the wall deprived subjects of the possibility to consider this opportunity, and thus deprived them of a significant part of the authorship of their personal life choices. This consideration grounds the conclusion that what value we should assign to the possibility to consider movement across borders would be a morally relevant question even in an ideal world in which the demand for movement is significantly reduced.

All these points seem to prove that our ideal conditions would not exhaust the conditions within which a conflict on the matter emerges. Rather, they seem to suggest that it would persist as an issue of liberty – and specifically as an issue of liberty in its relationship to political membership – being the liberty of receiving communities to define the terms of access to membership in contrast with the liberty of movement of hypothetical migrants. The purpose of our ideal conditions is exactly that of isolating the dimension of the problem given by this apparent conflict between the different ambitions of liberty of different actors from other dimensions. With the ideal purpose that, in another arena of the research, this dimension is reconnected with all those issues that in this context are silenced by our ideal conditions. Having defined the ideal context within which I locate the object of interest, we should now turn to present the argument I propose. Before this, however, a last preliminary passage is required. What needs to be specified is, so to speak, the exact target of the argument I propose. What has been said so far seems to make clear that the issue of the legitimacy of border controls would survive in our ideal conditions. The question to be posed, however, is: what exactly this issue is about?

What is at stake: liberalism vs democracy or universalism vs particularism?

Before presenting the structure of the argument I shall propose, it is necessary to clarify the perspective from which I address the debate. The last section clarifies that the assumption of an ideal world would not exhaust the conflict on the matter between an interest in border controls on the one hand, and an interest in open borders on the other. What remains to be clarified, however, is how exactly this conflict should be conceptualized. What exactly is this conflict about? Here, it seems that two possible interpretations, among others, are possible. On a first level, the fact that the usual arguments for open borders make reference mainly to individual rights, such as the right to individual freedom and equal opportunities, and that standard arguments for border controls point to collective rights, such as the right to collective self-determination and sovereignty, led many to think that the issue of border controls requires us to make a choice between the more individualist spirit of

liberal rights and the collectivist logic of democratic self-determination (Baubock, 2011; Benhabib, 2006 [2004]; Carens, 2013; Cole, 2011; Pevnick, 2011).

On a second level, since the proper place of democratic agency is traditionally recognized within the boundaries of territorial polities, and that, conversely, liberty rights are usually associated with the universalist idea of human rights, the same scholars saw in the question of the legitimacy of border controls the problem of a choice between a more universalist understanding of democratic liberalism and a more particularistic one – or, borrowing the terminology of one of the protagonists of the debate, a choice between the nation and the universe (Walzer, 2007). Here, the divide would be between those who think that democratic liberalism compels us to give equal weight to the interests, rights, and personal projects of every individual in the world – a perspective that allegedly would rapidly lead us to embrace an open borders view on the matter; and those who think that the purpose of granting to citizens of existing political communities the possibility to exercise the rights that the liberal-democratic system of values recognizes as theirs requires that these polities are permitted to give precedence to the interests of their citizens over those of other human beings. And then, in the case the object of our concern, to give more importance to the claims of citizens for border controls than to the claims for open borders of the hypothetical migrants.

Now, the conventional particularistic understanding of democratic rights, together with the more universalist conception of liberal rights, suggested to many that these two axes along which the divide on the legitimacy of border controls is usually conceptualized, mirror each other. On this basis, the choice between border controls and open borders is usually presented as a choice between "particularistic democracy" on the one hand and "universalist liberalism" on the other. Against this reading, I maintain that the two axes can be separated from each other, and that the real source of disagreement on the legitimacy of border controls has to be found on the "particularism-universalism" axis. In this sense, I shall argue that the issue of border controls does not really put liberalism and democracy in conflict, but rather a particularistic and a universalistic understanding of what the right dominion of application of *both liberal and democratic rights* should be.

The reason why I maintain this point is that I commit myself to the view of the fundamental co-originality of personal freedom, protected by liberal rights, and political freedom, protected by the capacity for democratic agency (Habermas, 2013 [1996]). The fact that democratic self-determination and fundamental individual liberties are compatible and reciprocally supportive, within the context of a single political community with given borders, would be accepted by many. Nonetheless, some scholars would maintain that this harmony breaks up when it comes to evaluate the permissibility of border controls. However, I reject this perspective. What I maintain, indeed, is that the interest in personal liberty, that might be conceptualized as an interest in having a sphere of choices in which public authority cannot intervene, is always complemented by an interest in democratic liberty, meant as the interest in having control over the system of rules disciplining the collective practices within which we are involved. In this sense, I submit the view that, assuming that every individual in the world has an interest in liberty, this grounds the view that every individual in the world has an interest in seeing both their personal and democratic freedom respected, as necessary components to grant, so to speak, complete freedom.

This holds, I maintain, even on the issue of border controls where, on the one hand, the restriction of the democratic liberty of receiving communities, that allegedly would be entailed by free movement across borders, would be complemented by a reduction in the personal freedom of their members, that would express itself in a reduced capacity to decide with whom to engage in social cooperation. But, on the other hand, this holds for the case of the hypothetical migrants as well, in which case the obvious reduction of personal freedom caused by border controls involves at the same time, when these controls are unilaterally decided by receiving communities, a disrespect of their democratic agency as actors capable of evaluating the desirability of norms that clearly affect their capability to pursue their life plans.

I take this point to be corroborated by the fact that, if we look closely at the arguments offered in support of or against border controls, despite appearances, we realize that they cannot be ordered along the "liberalism-democracy" axis. Indeed, on the one hand, liberal rights are used to defend both border controls and open borders. Here, for instance, if many liberals

point out the obvious relationship between personal freedom and freedom of movement, other scholars maintain that the right to personal freedom entails the right to refuse unwanted obligations towards others, and that this grounds, on an individualist basis, the right of members of receiving polities to express their dissent toward the inclusion of hypothetical newcomers in their polity, that would entail the duty to cooperate with them (Blake, 2013) – a duty of cooperation that might be instantiated, for example, by the duty to pay taxes for public services to which even newcomers, once members of the polity, would have access.

On the other hand, if the usual argument for border controls is conceptualized in terms of collective sovereignty, democratic arguments are used to problematize border controls as well. Here the obvious reference is to the rich literature, having as its object global democracy projects and the so-called democratic boundary problem. According to this, there is a democratic deficit involved in allowing territorial communities the possibility to approve binding norms which clearly interfere with the liberty of individuals who, being outsiders, are excluded from these public decision-making processes (Goodin, 2007; Archibugi, 2012). This point clearly applies to the case of border controls as well (Abizadeh, 2008).

Of course, this does not deny that, when approaching the matter, the two bundles of values may sometimes clash. And since the debate is often framed in the terms of "collective self-determination of receiving communities vs individual rights of migrants", sometimes the result will be that the "particularistic-universalistic" divide cannot be perfectly separated from the "democracy-liberalism" one when conceptualizing the debate. Notwithstanding these points, I do think that the clashes between liberty and democracy on the matter are not systematic, and not so pervasive to force us to a choice between democracy and liberalism. This, to my eyes, makes the conceptualization of the choice between open borders and border controls as a choice between liberty and democracy problematic.

What has been said so far, however, seems to suggest a theoretical void within liberal-democratic theory on the "universalism-particularism" axis. Indeed, it seems that standard liberal-democratic theory does not specify the proper dominion of application of the liberal-democratic bundle of rights, that then

turns out to be underdetermined by standard liberal-democratic theory, with this leaving room for both a more particularistic understanding of democratic liberalism and a more universalistic one. This is what seems to be proved by the disagreements, to which we briefly referred, emerging on whether we should choose more in line with the liberal-democratic system of values allowing some degree of border controls or, conversely, restricting this possibility as far as possible. In this sense, the issue of border controls creates a divide between a more particularistic understanding of democratic liberalism, according to which both liberal and democratic principles are better satisfied in a world of border controls, and a more universalist one, defending the opposite view. Thus it transpires that the real divide highlighted by the disagreement on the legitimacy of border controls, which at the same time explains it, is not represented by the question "liberty or democracy?", but rather by the question "whose liberty? Whose democracy?" This question constitutes the angle from which I will address the matter.

Thus, in the face of this divide between "universalist and particularistic democratic liberalism" which emerges in the issue of border controls, I argue that:

1) This divide presupposes on a deeper level a disagreement on the normative status of territorial boundaries. This point follows from the facts that, 1) the divide between border controls and open borders perspectives is generated by different understandings of the normative permissibility of co-citizen partiality; 2) the existence of co-citizen partiality is inherently associated with the existence of a plurality of distinct polities separated by boundaries. Here, while particularistic liberals argue that the existence of boundaries is valuable either instrumentally or inherently as necessary to achieve liberal-democratic justice (or their interpretation of it), universalist liberals reject the desirability of boundaries as instruments of exclusion whose existence is determined just by historical contingency.

2) The disagreement on boundaries is, given the state of the art, not surmountable. This comes from the issue of the right composition of the polity being an essentially contested issue. The contested nature of the issue at stake, I will argue, prevents us taking a strong position in one sense or the other on the normative status of boundaries.

3) The difficulty in solving the problem of the normative evaluation of the existence of boundaries translates itself into an analogous difficulty on the evaluation of both open borders and border controls perspectives on the issue of movement across borders. This entails that both open borders and border controls proposals fail to justify themselves, at first glance theoretically and subsequently politically, as fully legitimate normative perspectives.

4) This conclusion motivates the need to search for a third alternative to open borders and border controls that, given the essentially contested nature of the issue at stake, can only qualify as an imperfect solution, rather than as a perspective capable of synthetizing disagreement in a fully consistent and justified theoretical perspective. I will identify this solution in the idea of integrating the right to sovereignty for receiving communities with a right for hypothetical migrants to contest migration policies approved by receiving communities.

It is time to present in more detail the arguments I will make in order to defend the points here summarized.

Structure of the argument and division into chapters

In this section I briefly present the structure of the argument and the division into chapters The first point to note is that I use the open borders thesis as the starting point of my argument. This expositive choice is dictated by the fact that, as I mentioned, this may arguably be considered the standard position on the matter in the state of the current debate. But it is also motivated by the fact that, despite being quite popular in the academic debate, this position constitutes an obvious challenge to what is considered the normality of actually existing political regimes. Since usually the legitimacy of border controls is assumed, indeed, it may be said that the real academic debate starts when this assumption is put into question, with this determining that the legitimacy of border controls is transformed, from an uncontested assumption, into a point to be defended. In this sense, it turns out that explicit defences of the legitimacy of border controls come onto the scene as attempts to rebut the challenges to it from open borders perspectives, and then as

answers to open borders views, that for this reason I will call *the open borders challenge*.

So, the first step, which I make in the *first* chapter, will be the presentation of arguments usually offered to support the open borders challenge, and subsequently of counterarguments used to reaffirm the conventional view. As we will see, open borders arguments mainly pertain to issues of personal freedom and equality of opportunities. In this perspective, the practice of border controls is presented as illegitimate as being a clear limitation of the would-be migrants' personal freedom – specifically, of their freedom of movement – and, given the inequality across countries, of their opportunity to achieve better social positions associated with membership in specific communities. Once the undeniable argumentative force of these arguments has been set out, the problem will be to understand how the open borders challenge is rejected by defenders of the conventional view, and whether this defence can be considered effective.

Here, after having discarded other possible conceptualizations of the right to control borders, our attention will be drawn to arguments relying on the principle of collective self-determination, according to which, given the effects that the presence of large immigration flows may have in the long run on the identity of receiving communities, the right of communities to their political independence grounds a right to autonomously control borders. To this argument I will recognize that it relies on a principle – the principle of collective self-determination – that is standardly recognized as equally fundamental to the principles to which open borders perspectives appeal. Nonetheless, I will argue that, as a defence of the legitimacy of border controls, the appeal to the idea of collective self-determination is incomplete. This is because the collective self-determination of receiving communities on the matter may come only at the expense of a restriction of both the liberal and democratic rights of hypothetical migrants. Therefore, for the collective self-determination argument to work, it is necessary to provide a reason why the right to collective self-determination of receiving communities should weigh more than the rights of would-be migrants which are violated by the practice of border controls.

To this point, I will show that, confronted with this objection, supporters of border controls usually refer to the idea of co-member partiality to justify the priority of the interests and rights of receiving polities on the matter, according to which, in case of conflicts of interest, political communities are entitled to prioritize the interests of their members over those of outsiders. Thus I will contend that the reference to co-member partiality, rather than resolving the issue, opens up deeper questions. Indeed, the practice of co-member partiality is inherently related to the existence of a plurality of political communities separated between each other by boundaries and then, given the territorial nature of political communities, with the existence of territorial boundaries. What will emerge in this vein is that the justifiability of co-member partiality, and then of border controls, is dependent on the justifiability of the existence of territorial boundaries. This will permit me to argue that the divide on the legitimacy of border controls depends at a deeper level on a divide on the justifiability of the existence of territorial boundaries, and then to isolate the question whose answer will influence our understanding of the legitimacy of border controls: is the existence of territorial boundaries justifiable?

This question will close the first chapter and, at the same time, will constitute the starting point of the *second* chapter. Here, the issue of the justifiability of territorial boundaries will come at the centre of our scrutiny. Thus, I will argue that the justifiability of territorial boundaries can be defended either on the basis of desirability for the purposes of justice, or on the basis of legitimacy. The second chapter will be dedicated to verifying whether the existence of territorial boundaries can be considered desirable as serving, in ideal conditions, some relevant functions for the achievement of liberal-democratic justice. Here, two possible ways to defend the desirability of territorial boundaries will be considered. *First*, what I will call republican arguments, according to which the existence of territorial boundaries is desirable for democratic reasons. What these arguments contend is that democracy can take place only within the context of territorially bounded political communities. The *second* argument in defence of territorial boundaries, conversely, is what I will call the communitarian argument,

according to which the existence of territorial boundaries is desirable for a collective identity.

I will argue that both classes of arguments fail to prove the desirability of territorial boundaries. For, on the one hand, the potential democratic drawbacks of a hypothetical borderless political community – that I will characterize as an imaginary global state – may in principle be counterbalanced by democratic benefits. And the probability associated with the occurrence of possible democratic drawbacks and democratic benefits of this hypothetical scenario is not completely clear. So that we have to conclude that it is not clear whether the existence of a borderless community should be considered more a risk or an opportunity for democracy, and then that, according to democratic parameters, the desirability of territorial boundaries seems to be, given the state of the debate, undecidable. Concerning communitarian arguments, I will argue that they assume the existence of a plurality of particularistic groups expressing the political will to remain separate from each other. This assumption is not problematic per se. Nonetheless, the fact that the communitarian argument can work only assuming the existence of this political will suggests that it should be conceptualized as an argument for the *legitimacy* of territorial boundaries, rather than for their desirability.

This conclusion will introduce the reflections in the *third* chapter, where, after having rejected theoretical perspectives trying to justify the desirability of territorial boundaries, I will verify whether their existence can be considered as at least legitimate. In order to address this point, I will use what I consider standard conceptualizations of political legitimacy offered by contemporary political theory, to verify whether they are able to justify the legitimacy of territorial boundaries. In particular, two accounts of political legitimacy will be considered: functionalist accounts, according to which the existence of territorial boundaries can be called legitimate if they are functional for the achievement of justice; and historical accounts, according to which the legitimacy of territorial boundaries depends on the process through which they came into existence. Within this second category, I will focus on the most classical historical conception of legitimacy: the idea of legitimacy by consent.

I will argue that both accounts of legitimacy fail to prove the legitimacy of territorial boundaries. On the one hand, functionalist accounts fail in this task insofar as they involve a teleological logic that seems to be in conflict with the value of self-determination lying at the core of the liberal-democratic system of values, as I understand it. On the other hand, the principle of legitimacy by consent turns out to be unrealistic. This is because, if we try to imagine a world in which the principle of consent is universally applied, we easily conclude that, given that not all individuals would consent to the same things, it turns out to be self-defeating.

Given the failure of both accounts of legitimacy in the attempt to justify the existence of territorial boundaries, I will conclude that their existence can only be conceptualized as a brute product of historical contingency and, as such, not fully legitimate. A decisive passage of my argumentation, however, will be that this conclusion does not authorize us to infer that boundaries should not exist, and then to prescribe, for instance, the existence of a hypothetical borderless community of human beings. The reason for that is that my conclusion concerning the illegitimacy of territorial boundaries will come as a consequence of a more general scepticism concerning the possibility of justifying *any* possible specific composition of the political community, a hypothetical cosmopolitan community being one, among the many possible, instantiation of a possible composition. Rather than embracing a cosmopolitan view, then, my analysis of the illegitimacy of territorial boundaries will lead to the conclusion that all possible perspectives on how the political community should be composed are not able to fully justify themselves on a theoretical level and thus, that they constitute each a part in a conflict between equally partial perspectives on the matter. This will testify to the incapacity of liberal-democratic theory to offer fully theoretically legitimate answers to the issue of the right composition of the polity, and then our incapacity, given the state of the debate, to resolve the conflict. Given this result, I will argue that this conflict can only be mitigated, not resolved. And I will identify this mitigation in the idea that, starting with the composition of boundaries that is contingently given by history in any given time, it is recognized by both insiders and outsiders, as actors involved

in the conflict on the composition of boundaries, the possibility to contest them.

After having addressed the question on the justifiability of territorial boundaries, I will be able to return, in the *fourth* chapter, to the question opened in the first chapter of the work: should the practice of border controls be considered legitimate? Here, the account of the illegitimacy of territorial boundaries defined in the third chapter will constitute a theoretical framework to be applied to the question. Thus, I will show that the theoretical framework constructed permits us to open another perspective on the legitimacy of border controls, alternative to both open borders and border controls perspectives. Indeed, I will argue that, on the one hand, the illegitimacy of border controls entails the illegitimacy of co-member partiality. And since the legitimacy of co-member partiality plays a central role in arguments for border controls, this will invalidate these normative perspectives. On the other hand, our theoretical framework will permit us at the same time to label as normatively illegitimate even open borders perspectives. The bridge to defend this point will be, once the impossibility to identify a criterion for the legitimate composition of the polity is affirmed, arguing that the open borders thesis can be rephrased as a way to conceptualize the right composition of the polity, according to which the boundaries of membership in the polity are legitimate to the extent to which they are the product of the spontaneous choice of individuals within a free movement regime. To this point, I will argue that, being a proposal for the composition of the polity, the open borders thesis stands in need of legitimation, and that here we find the same problems registered in chapter three impeding us in justifying the legitimacy of one, among the others, composition of the polity.

Given this point, the divide between open borders and border controls will be presented as a conflict between two opposed but equally partial classes of interests. In this sense, it will turn out that the conflict over the legitimacy of border controls is an instantiation of the conflict arising over the right composition of the polity. So that the impossibility of resolving the conflict in the latter case will translate itself, mutatis mutandis, into an analogous impossibility to resolve the former. Given this result, I will propose mitigating the conflict, without the ambition to resolve it, by prescribing that the

legitimacy of border controls is the object of a negotiation in which both insiders and outsiders are included as parts involved in the conflict. Furthermore, I will argue that this negotiation can take place by integrating the right to sovereignty on border controls for receiving communities with the right to contest migration policies for hypothetical migrants. Finally, the chapter will be closed with the consideration of some possible options to implement in the institutional practice the theoretical perspective offered.

What I hope will emerge from the last chapter, and from the work more generally, then, is that approaching the issue of the legitimacy of border controls on an ideal-theoretical level does not amount to imagining a flat utopia in which all possible conflicts on the matter are resolved. Far from this, what will emerge is a difficulty for liberal-democratic political theory in indicating the right course of action on the matter *even in an ideal scenario*. So that it will turn out that even an ideal scenario, as I present it, would be one in which a plurality of conflictual interests and normative perspectives on the matter is still possible. A scenario, though ideal, in which a dynamic and ongoing series of negotiations and messy compromises on the matter would still be required.

The open borders challenge and its critics

Introduction

The aim of this chapter is reconstructive: to present the challenge of open borders and some of the most influential ways that are proposed by critics of open borders to deal with it. What value should we assign to freedom of movement in an ideal world? Should an ideal world be imagined as a free movement world? Does the value of free movement justify the demand for open borders or, conversely, other possible normative goals justify allowing some discretion on border controls to receiving communities and then, the possibility of some restrictions to this freedom? When addressing this question for the first time, many scholars rapidly came to the conclusion that, at least in an ideal world, borders should be open. For this appeared an obvious logical implication of the liberal commitment to the value of moral equality and individual freedom. Indeed, on the one hand, in a world in which resources, and thus life perspectives, are unequally distributed among countries, border controls seem to violate a basic principle of formal equality of opportunities. On the other hand, border controls appear a clear violation of individual freedom. Is this sufficient to conclude that borders should be open?

To address this question, in this chapter I propose, as a preliminary passage, a presentation of the reasons offered in support of the open borders thesis and of those offered by its detractors to reject it. While open borders positions rely, as mentioned, on the values of moral equality and individual freedom, reasons for scepticism towards open borders are variegated. What I will argue is that the perspectives against open borders can be divided, first, into two categories: instrumental and deontological perspectives. Instrumental views point out the possibility for an open borders regime to induce a reduction in the quality of the functioning of democratic mechanisms in receiving societies and to a reduction of social trust within them. Deontological perspectives, conversely, try to point out principled arguments to consider an open borders regime undesirable, independently of the consequences the implementation of this regime would produce. Among deontological

arguments, the most influential is the argument from collective self-determination. According to this argument, receiving communities have a right to be self-determining entities, and the possibility to decide who can become a member of the community is an essential part of collective self-determination.

After having argued that arguments in support of open borders have at least a prima facie plausibility, I will argue that instrumental arguments for border controls fail to challenge the case for open borders. This is due to the fact that they rely on empirically problematic assumptions and, secondly, that even assuming the empirical assumptions on which they rely, the case against open borders does not follow from them. Conversely, I will argue that the argument against open borders from collective self-determination poses a serious challenge, for it relies on a principle that we seem justified to consider as substantially equally fundamental to the values on the basis of which the open borders thesis is usually defended. I will argue, nonetheless, that appealing to the principle of self-determination is not sufficient to reject the open borders thesis. For the fact that receiving communities have a right to self-determination on migration policies is exactly what the open borders view aims to challenge, on the basis of the idea that a border controls regime grants the capacity for both individual freedom and political agency of members of receiving communities, but it denies the same rights to outsiders, which we seem at least prima facie compelled to recognize on the basis of the moral universalism to which democratic liberalism is committed. Therefore, in order to work, the argument from self-determination needs to be integrated with a reason why the interests of receiving communities and their members should be prioritized over those of would-be migrants.

Supporters of border controls are well aware of this problem. And in order to obviate it, they often refer to the fact that political communities are to some extent legitimated to privilege their interests over the interests of outsiders, without this being in tension with moral universalism. This is because privileging the interests of insiders is what makes political communities specific human groups distinguishable from others. In the absence of this possibility, specific communities could not be said to exist in any relevant sense. This argument, however, raises deeper questions. For it turns out that

the validity of the argument from self-determination relies on the possibility of claiming that the existence of distinct polities is justifiable. And since, given the territorial nature of political communities, the existence of separate communities requires the existence of territorial boundaries, it turns out that border controls arguments are dependent on the possibility to justify the existence of territorial boundaries.

Thus, different understandings of the normative significance of the existence of territorial boundaries can be derived from different declinations of the border controls perspectives. Nonetheless, all possible justifications of territorial boundaries would be rejected by open borders perspectives which, conversely, would oppose the view that the existence of territorial boundaries is a mere consequence of brute historical contingency, and as such morally arbitrary. Thus, it will turn out that the disagreement on the legitimacy of border controls depends at a deeper level on the disagreement over the justifiability of the existence of territorial boundaries. And the possibility to determine which theoretical perspective on the legitimacy of border controls should be accepted is dependent on further elaborations on the normative status of territorial boundaries. This will open up a question that closes the chapter, and that will be addressed in the next ones.

The chapter is organized in seven sections. In section 1, I present the thesis of open borders in those I consider the most distinctive elements. In sections 2 and 3, I illustrate the main arguments offered in support of this thesis which, as I said, pertain to the values of individual freedom and equality of opportunity. In section 4, I present and reject instrumental arguments against open borders. In section 5, I present deontological arguments. Section 6 is dedicated to explaining how, from the disagreement on the legitimacy of border controls, we arrive at the disagreement on the normative significance of the existence of territorial boundaries. Finally, a short conclusion follows.

What does "open borders" mean?

The aim of the first part of this chapter is to present and discuss the classical arguments proposed in defence of open borders. Arguments proposed by the literature in defence of open borders are very clear. And despite different accounts for open borders presenting some nuances depending on the theoretical perspective they adopt, usually justifications for open borders rely on the same normative premises. The linear logic of the arguments for open borders suggests that being in favour of open borders is the more natural position for a liberal-democratic author. This point is usually expressed by claiming that a liberal-democratic system of values entails a presumption in favour of open borders (Kukathas, 2012, pp. 655-660). This expression is meant to point out that, until the contrary is proved, a liberal democrat should support open borders, and that the burden of proof is on those who want to criticize them.

As a proof of this point, some scholars engaged in the academic debate on the ethics of migration seem to view open borders as the dominant position in the debate (Pevnick, 2011, p. 79). In this perspective, arguments against open borders are often viewed as the heterodoxy in political theory, and sometimes even naive. Curiously, assuming that this representation of the debate is correct, this is the opposite to what we see in the public debate, where the open borders positions, even in the more progressive side of the political spectrum, represent a minority (Pevnick, 2011, p. 78).

This may be due to the fact that, while political theorists that defend open borders often address the issue on an ideal-theoretical level (Carens, 1996), the public debate is more interested in the "here and now", and the sustainability of an open borders regime in the current world, for the same admission of ideal theory-supporters of open borders (Baubock, 2009, p. 3; 2007, pp. 399-401; Abizadeh, 2006; Kukathas, 2014), is dubious. Nonetheless, the defence of open borders, at least as an ideal theory position, seems an inescapable logical consequence of the commitment to the idea of the moral equality of every human being (Cole, 2000).

Obviously, even non-ideal arguments exist in support of the fact that, even in the world as it is, borders should and, more importantly, *could* be, if not completely open, at least much more open than they actually are. Many

scholars rightly point out that the costs of immigration for receiving polities are not so high, and surely not as high as the most popular narratives present in the public debate might suggest (Sager, 2017, pp. 43-46; Abizadeh, 2006; Castles, 2006, pp. 756-759; Pevnick, 2009, pp. 148-150). For instance, scholars usually point out that the entry of numerous newcomers may induce a reduction of social trust in receiving communities (Dinesen, Schaeffer, and Sonderskov, 2020), but they notice at the same time that an initial loss of social trust can be in the long run repaired as a consequence of immigrants integrating into the receiving polity (Putnam, 2007, pp. 159-165).

From other theoretical perspectives, some evidence points to possible negative economic effects that may come as a consequence of the entry of many low-skilled migrants, such as the depression of native workers' salaries (Borjas, 2019). However, other studies specify that the impact of immigration on native workers' salaries is limited (Kerr and Kerr, 2011). More importantly, these possible economic drawbacks are said to be counterbalanced by possible economic benefits from immigration. Thus, for instance, immigration is often presented as an antidote to the demographic crisis that, as a matter of contingency, existing wealthier countries are experiencing (Kerr and Kerr, 2011). At the same time, the entry of migrants permits developed countries to satisfy the request for low-skill jobs that native workers, as a consequence of the acquisition of higher skills, do not accept (Ambrosini, 2020, p. 75). To this, it must be added that the enforcement of more open borders is often considered as in line with the economic benefits of openness that classical economic theory points out (von Hayek, 1948). In this sense, the attitude to closure to movement of people that existing states seem to show is often seen as in contrast to the allowance of free circulation of goods (Ambrosini, 2020). Another typical concern that in the public debate is often associated to the issue of immigration is that of social security. Even in this case, however, this concern does not find strong correspondence in the academic debate, where migration is considered not to raise specific security-related issues.[1]

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[1] Indeed, immigration does not seem to significantly raise the level of criminality of receiving countries. To be fair, it is still true that immigrants end up committing more crimes than native individuals. Nonetheless, the relevance of this evidence is seriously questioned by

Furthermore, some authors argue that, despite the world being as it is, this would not be necessarily true in an ideal world: border controls more often than not come through the use of violence, and this seems to be a relevant moral cost of restrictive migration policies (Sager, 2017, pp. 48-50). Another interesting argument points to the fact that many people will try to cross borders independently of whether this movement is permitted or not. And since receiving communities' capability to enforce border controls is limited, that means that at least some people will manage to enter political communities irregularly. In other words, it may be the case that thick border controls, rather than favouring "order" in movement across borders, contribute to favouring the proliferation of irregular immigration (Kukathas, 2014; Ambrosini, 2020, pp. 233-236). And this, given the obvious problems related to irregular migration, is a problematic implication. In sum, there is large agreement among scholars on the idea that the maintenance of thick border controls is economically inefficient, often morally problematic, and superfluous, if not detrimental, for the protection of the integrity of the cooperative system and public order in receiving polities. In a word: irrational.[2]

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sociological literature. For instance, some studies advance the hypothesis that the alleged proneness of immigrants to criminality comes as a consequence of marginalization which, in turn, is a consequence of receiving communities' fear of immigrants. In this sense, migrants' attitude to crime would constitute a self-realizing prophecy, that would disappear if receiving polities were more open to the entry of newcomers (Ambrosini, 2020, pp. 284-289).

[2] A proof of this point is represented by the fact that even scholars that are more adverse to open borders would agree with many parts of what I have just said in this passage. An example is provided by Michael Walzer. As we will see later on in the work, Walzer is considered one of the noble fathers of positions in support of border controls. This is mainly due to the positions Walzer famously defends in *Spheres of Justice* (1983). Nonetheless, this is not the only work in which Walzer takes into account the issue of border controls. Rather, he considers the matter in the brief work *What does it mean to be an American?* (1990). Here, Walzer defends an extremely friendly position toward more open borders, at least open borders in the United States, arguing that being a land of migration is contained in the history of the United States as a political community. Obviously, in Walzer's logic, this does not prove that open borders should be required as a universally valid normative position, but only that much more open borders reflect the sense of justice of the United States as a moral community, and that they are coherent with its history. What is important to notice for us,

All these arguments are highly plausible. However, I will not consider them in my analysis. This choice is dictated by two reasons. *First,* these arguments, strictly speaking, are not arguments in defence of open borders. Indeed, what these arguments claim is that excessively thick border controls are not functionally desirable. But this does not exclude the possibility of moderate border controls. Open borders positions, rather, properly intended, defend the idea of a totally free movement regime. This does not imply that border controls should be completely excluded, but only that free movement across borders should be the normality, and border controls the exception (Kukathas, 2012, pp. 653-654; Carens, 2013, pp. 226-228). In this vein, it would still be considered legitimate to limit free movement when this is necessary for urgent reasons. For instance, a supporter of open borders would not contest the closure of borders in a pandemic scenario like the one instantiated by the Covid-19 emergency. What an open borders supporter would contend, rather, is that the limitation of free movement across borders in this case would be legitimate only to the extent to which it is not protracted for an excessively long period of time, and to the extent to which a return to a completely free movement regime is granted once the emergency is over. The arguments mentioned are not sufficient per se to defend this position. For, despite the fact that they convincingly prove that thick border controls are not functional, they do not prove that even moderate closure would be always – with the exception of emergency cases – undesirable.

Second, and more importantly, the arguments mentioned do not touch the main point that an open borders position is supposed to challenge: the sovereignty of territorial polities on border controls (Carens, 2013, pp. 226-228). Indeed, these arguments effectively support the view that thick border

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however, is the fact that, despite Walzer maintaining that it is just to leave the matter of border controls to the discretion of the single community, that every polity should be able to express its own sense of justice on the matter, and that limitations on entry may sometimes be necessary, more open borders is actually a normative position that may emerge within a specific community, and that its implementation is possible. This proves that, despite a disagreement existing on whether and to what extent receiving communities should have discretion on entry of migrants, the fact that borders could be more open than they currently are is common ground in the debate.

controls are inefficient, and thus that it would not be rational for receiving polities to enforce them. However, at least in a standard view, sovereign communities have a right to make inefficient choices for themselves. The open borders position, conversely, aims exactly to challenge the moral legitimacy of even moderate border controls.

According to supporters of open borders, indeed, even a moderate border control is not simply irrational. Rather, it violates fundamental principles of justice (Kukathas, 2014; Carens, 2013). As such, the purpose of satisfying these principles of justice should take precedence over the sovereignty of receiving communities and, thus, receiving polities should be precluded from even the possibility to exercise moderate control. That means that in an open borders view it should be considered illegitimate for any state to pose any condition on the movement of people across borders. Individuals should be left free to move wherever they want whenever they want, to relocate in other polities for all the time they want, and to get benefits from the social goods provided by other polities (rights' protection, welfare, the possibility to work and to freely trade with other individuals) for all the time they want.[3]

This, it is worth specifying, does not amount to saying that borders should not exist. The point is that the function of borders should be limited to demarcate the territorial areas of competence of distinct legal authorities.[4] An open borders world, then, is a world in which borders between states are like borders between regions. Surely, there are borders, say, between Liguria and Piedmont. But no one can prevent me moving from Liguria to Piedmont, and I do not need to ask any permission to make this movement. Obviously,

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[3] In this sense, an open borders position does not claim simply that individuals should have the possibility to enter the territory of other political communities, but that it should be possible for them to become members of other communities whenever they want. In this sense, in an open borders scenario, not simply the borders of a territory are open, but the borders of membership in the community occupying that territory (Kukathas, 2012, pp. 653-654).

[4] Even though this does not imply that open borders perspectives assign normative relevance to the existence of territorial boundaries. Rather, as I argue in the closure of this chapter, one of the reasons that may be used to explain the importance of open borders and, relatedly, the weaknesses of arguments for border controls, is exactly that, despite territorial boundaries existing as a matter of fact, their normative status has to be problematized.

transforming borders of states into analogues of the borders of regions may be complicated, since regions are part of the same overarching jurisdictional authority, while states are not. The point, however, is that the functioning of states' borders should, in the open borders theorists' view, approximate as much as possible the functioning of borders between regions.

To defend this position, generally two arguments are used. The first, that I will call *the argument from equality of opportunities*, contends that in a world of unequally distributed opportunities between different countries, free entry into new territorial polities is necessary to compensate the moral arbitrariness of this inequality. The second argument, which I shall call *the freedom-based argument*, points to the fact that a commitment to freedom of movement immediately follows from a universal right to individual freedom. This argument can be declined in different ways that I will analyse during the exposition. In the next two sections I present both arguments in their classical formulations, starting with the argument from equality of opportunities.

Classical arguments for open borders I: equality of opportunities

In this section I present the first argument in defence of open borders, that I call the argument from *equality of opportunities*. The argument starts with the fact of inequality. As a matter of fact, indeed, the world is inhabited by a plurality of bounded polities that are not equal between each other. Some polities are richer than others, and some polities have the capability to grant better opportunities to citizens than others. This implies that one individual can have better or worse opportunities only by being born in one polity and not in another. And since where one is born is a casual fact, this implies, in turn, that individuals can face a condition of inequality of opportunity because of a morally arbitrary fact (Shachar, 2009, pp. 35-38; Carens, 1987, pp. 255-263; 1992, p. 26; Caney, 2001, pp. 114-118). This, in turn, is problematic insofar as the fact that some individuals can pursue advantages over others without this being justified by valid moral reasons seems to entail a violation of the commitment to the fundamental moral equality of every human being (Carens, 2013, pp. 233-236; Cole, 2011, pp. 175-180).

Given this premise, there are two possible ways through which the open borders conclusion can be inferred. In a first sense, open borders can be

viewed as part of a political project aimed at the reduction of global inequality. This idea can be expressed by saying that inequality can be reduced by operating a redistribution of resources across the world or, in a way that can be considered alternative or integrative, by letting individuals move where the resources are. This second strategy requires that movement of people across borders is not obstructed, and thus open borders (Carens, 2013).

In this formulation, the argument faces a difficulty related to the fact that its soundness is dependent on an empirical evaluation of the effects of open or more open borders for global equality (Song, 2019, pp. 89-91; Miller, 2014). This is a controversial empirical question. Indeed, on the one hand it is argued that open borders can play a role in mitigating inequality due, for instance, to the fact that migrants often send money back home while they are in other countries, and this helps the circulation of money in the country of origin (Van der Vossen and Brennan, 2018, pp. 43-44; Bakewell, 2007; Sager, 2014, pp. 2-5). Other scholars, however, contend that open borders do not solve the problem of inequality, insofar as the worst-off in countries of origin are not those who travel (Miller, 2014). Rather, migrants are often the wealthier in their hometown communities. Furthermore, it is argued that in an open borders world the more skilled would be those who travel more. This would obstruct the growth of hometown countries, since they would be deprived of the contribution of their more talented members (Baubock, 2007, p. 400; Stiltz, 2016, pp. 65-70; Tamir, 2019, pp. 97-101). In the formulation presented, the argument is dependent on the solution of this empirical controversy. As such, then, its validity remains open to question.

There is, however, a second possible way to interpret the argument. In this second formulation, what the argument contends is not that open borders reduce inequality of opportunities, but that they are among the conditions which are necessary to make it normatively acceptable. This is because in a world in which movement across borders is not limited, the fact of being born on one side or the other of the border loses part of its relevance as an element shaping the individual life perspectives. In this sense, open borders do not grant that inequality between individuals across the world will be reduced. Actually, this second version of the argument is even compatible with the

possibility that inequalities will increase as a consequence of granting free movement. What matters is that, in an open borders world, inequalities between different subjects would come about in a context in which any individual has his or her own chance to succeed within a fair competition on a global scale (Van der Vossen and Brennan, 2018, pp. 23-28).

The logic surrounding this second version of the argument is that inequality is not necessarily problematic. Rather, it is only if it is an immediate consequence of one's own condition of birth, rather than being the consequence of each individual trying to exercise their talents in a fair competition. This, according to supporters of open borders, is what happens in a world in which borders are controlled. In an open borders world, conversely, the possibility for each individual to achieve positions in society giving access to better life perspectives would not be determined by the arbitrariness of birth. Or at least the influence of the place of birth on individual life perspectives would be reduced. Since it does not make any hypothesis on how free movement would affect the existence of inequality, but it just aims to spell out the conditions (or one of the conditions) in which this inequality is acceptable, this second version of the argument is not dependent on any empirical claim concerning the relationship between free movement and equality, and thus it can resist the objection mentioned above to the first interpretation of the argument. Furthermore, the argument relies on the essential premise that one's own conditions of birth should not determine which opportunities s/he can pursue, a point that we find at the core of the liberal-democratic rejection of caste societies and on which every liberal scholar would agree. Even this argument, nonetheless, encounters some objections, that now I turn to consider.

The first objection with which the argument is challenged is that it can work only as a non-ideal argument (Baubock, 2011a). What this objection contends, more precisely, is that the argument relies on the premise, spelled out in the opening of this section, that inequality exists between distinct countries. To this point, then, it adds that border controls violate the formal equality of opportunities that only can legitimize the existence of an unequal distribution of life perspectives between individuals occupying different positions in society. Nonetheless, the objection goes, the fact of inequality (or

relevant inequality) between countries is a contingent fact that would not exist in a liberal democratic ideal world. In this ideal condition, rather, equal opportunities, or at least equally valuable opportunities, would be fairly distributed across distinct territorial communities. And then there would be no need to open borders for the purpose of legitimizing inequality in life perspectives.

This objection, though, is problematic. This is because, even conceding that the ideal world in which open borders should take place would see significantly reduced rates of global distributive inequality, some degree of inequality would not be totally absent. Indeed, even in an ideal world, distinct polities would pursue some degree of self-determination.[5] This would make possible the existence of inequality between countries as a consequence of them freely exercising their possibility to make different choices. This permits the argument to stand even as an ideal theory argument, for it turns out that the ideal world in which the open borders principle should apply is not one in which inequalities do not exist. And then it is a world in which the argument for open borders from equality of opportunities preserves part of its cogency.

A second objection that is moved to the argument considered has to do with the fact that open borders per se do not grant equality of opportunities. For, given the existence of inequalities between individuals, having the formal possibility to move across borders would not cancel the fact that movement is easier for some individuals rather than for others (Ypi, 2018). So that it would turn out that enforcing open borders would not be sufficient to grant that any individual in the world can achieve social positions, that may be

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[5] It is worth specifying the fact that bounded polities would exercise self-determination in the ideal world imagined may be accepted by open borders theorists more as a fact than as a normatively desirable point. Indeed, we have seen, and we will further clarify, that open borders views put into question, in different ways, the idea of collective self-determination and a bounded polities' sovereignty. And this comes very close to saying that open borders views challenge the normative status of the existence of boundaries as such. In this sense, the open borders thesis has to be understood as accepting the existence of territorial boundaries not as a desirable characteristic of the political world, but rather as a starting point of the debate that, at some point, must come under normative scrutiny. I shall come back to this point in the last section of this chapter.

related to membership in specific polities, giving access to better life perspectives. Notice first that this is a friendly objection to open borders. For the aim of this objection is not to reject the conclusion for open borders. Rather, it is to argue that, for open borders to work as an instrument of protection of equality of opportunities, they must be integrated with other measures, like for instance global redistributive programmes.

Scholars approaching open borders from an egalitarian point of view would be ready to accept this objection. Conversely, other authors interpreting the argument in a thinner form would argue that the purely negative freedom to cross borders is all we need to grant the kind of equality of opportunity (very thin and formal) we desire, these authors being sceptical of the effectiveness and normative desirability of redistribution (Van der Vossen and Brennan, 2018; Kukathas, 2003; von Hayek, 1958). I want to remain agnostic on which interpretation of the equality of opportunities argument should be preferred. I just want to point out that the objection considered does not deny the validity of the argument. This is due to the obvious fact that, whether we think that the formal possibility to move is a sufficient condition for equality of opportunities or not, the fact remains that it is a *necessary* condition for it. As such, then, the objection can be used at most to conclude that the purpose of equality of opportunities requires that something is added to open borders, but it cannot deny that open borders are part of what is required for this purpose to be achieved.

What this analysis seems to suggest is that the argument resists even this objection. As such, it seems to give at least some sort of initial plausibility to the case for open borders, for it holds both that it relies on a premise (namely that formal equality of opportunities is desirable) that is hardly rejectable from a liberal democratic point of view, and that the requirement for open borders is a quite clear logical implication of this premise.[6] This, nonetheless,

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[6] To be fair, the argument from equality of opportunities can be attacked even by adopting a weakly particularistic perspective. This is what many supporters of border controls do. What these scholars argue, indeed, is that the principle of equal opportunities is, so to speak, dominion-specific. This is because the evaluation of whether the purpose of promoting equal opportunities is met requires a common understandings of what count as relevant opportunities which, in turn, requires a shared set of social meanings. Given that this set of

is not the only argument offered in support of open borders. A second argument proposed, indeed, relies on the value of individual freedom. I now turn to consider it.

social meanings is provided by the forms of life constituted by specific polities, however, this compels us to apply the principle of equal opportunities only *within* the single polity (Song, 2019; Miller, 2016; Pevnick, 2011). Thus, for instance, the French state should be committed to promote equal opportunities between French citizens, not between human beings. However, this view presupposes the existence of different forms of life that, ultimately, is a consequence of bounded polities being able to exercise collective self-determination. In this sense, the objection stands on a collective self-determination based and a particularistic understanding of the idea of justice. Since to what extent collective self-determination concerns and particularistic perspectives should be taken into account will be the object of interest of the last section of this chapter, I shall postpone the elaboration of the answer to the particularistic understanding of equal opportunities for that section. The considerations I will offer there should be thought of to hold even as answers to the position illustrated in this note.

Classical arguments for open borders II: freedom-based arguments

As the expression obviously suggests, the second class of arguments for open borders tries to derive the case for them from the value of individual freedom (Oberman, 2019, pp. 145-147). This argument can be declined in different ways. In particular, we can collect freedom-based arguments into two categories: the first category of arguments tries to point out a relationship between free movement and general individual freedom by relying on analyses of already recognized individual rights (Cole, 2011; Carens, 1992; 2013). The second category of arguments, conversely, derives the case for open borders immediately from an analysis of what does it mean to be free (Oberman, 2016; pp. 33-38; Kukathas, 2012, pp. 655-660). In what follows I present both categories, starting with the first.

Freedom-based arguments I: exit, internal and international free movement

As mentioned, the *first* way to present the freedom-based argument for open borders draws on existing and already recognized subjective rights. Within this category falls, for example the argument for open borders from the right of exit (Cole, 2000; 2011). For right of exit, in this context, is meant the right, so to say, to abandon the territorial polity to which one belongs through the action of emigration. This is recognized as a human right and the normative relevance at least of having the opportunity of considering exit options is acknowledged even by detractors of open borders. This is the reason why starting from the right of exit appears a solid premise to supporters of open borders. There are, however, different possible ways in which the case for open borders can be derived from the right of exit.

The simplest way to connect the right of exit with the case for open borders is arguing that, in the absence of a corresponding right to enter somewhere, and then a duty to let in for some other polity, the right of exit is exclusively formal. Namely, it is not able alone to grant an effective individual capacity to exit his or her own polity (Cole, 2006; 2000, pp. 43-46; Baubock, 2006). In this formulation, however, the argument is weak. In a sense, indeed, it is clear that one cannot be really said to be free to exit if he or she cannot enter another polity. This is because political communities together occupy the

entire earth's surface. In this sense, the world resembles a set of communicating rooms in which one can exit one room only by entering some other room. As such, then, this argument seems to give plausibility to the idea that the right of exit should be complemented by a right to enter somewhere. This, however, does not, strictly speaking, require an open borders regime. Given how it has been presented, indeed, an open borders regime is characterized as a circumstance in which every individual has, at least prima facie, an unlimited right to enter everywhere. The enforcement of this regime, though, is not necessary to grant every individual the possibility to enter somewhere. For this purpose, it seems sufficient that for every individual in the world, there is some (but not necessarily any) community disposed to let that individual in.

Clearly, in a world in which territorial communities jointly hold a duty to grant every individual in the world at least some entry options, the possibility of border controls would need to be severely limited. Furthermore, this world would configure as a world in which borders are much more open than they actually are. A world in which freedom of movement is taken seriously. Nonetheless, a more or less narrow space for receiving communities' possibility to exercise discretion on entries would still be possible. As such, then, as described this would not configure strictly speaking as an open borders scenario.

The argument, however, can be understood in a more promising way as proposing an *interpretation* of the right of exit (Carens, 1992; 2013). In this vein, the argument can be interpreted as claiming that the reason why we believe that there is a human right of exit is that, besides other things, in a world of bounded communities, the right of exit is necessary for individuals to have the possibility to move. Thus, the argument would highlight the fact that we already value freedom of movement across borders. In this sense, allowing freedom of movement across borders would amount to simply extending the scope of a possibility we already consider valuable.

A similar operation is made by another argument that, starting from an already recognized individual right, tries to argue that whoever wants to recognize that right should, as a matter of consistency, recognize as well the right to freely move across borders. I am referring to what has been called the

cantilever argument. Differently from the argument from the right of exit, the cantilever argument tries to derive the case for open borders by an analogy between the right to move across borders and another already recognized right: the right to move within the borders of one's own polity. What the cantilever argument contends is that the reason we value internal freedom of movement is to be reached in the value we implicitly assign to freedom of movement as such. This, according to supporters of the cantilever argument, authorizes the case for open borders. This is because open borders would grant a major extension of the same right that the right to internal freedom of movement aims to protect. Using the same logic employed in the case of the argument from the right of exit, this grounds the conclusion that there is a prima facie case for open borders.

Of course, objections can be moved to these arguments. For clearly both arguments rely on specific interpretations of the value of specific rights – the right of exit in one case, the right to internal free movement on the other. So that both arguments seem to fail if the interpretation of the mentioned individual rights they propose is rejected. Thus, for instance, a classical objection to the cantilever argument is that it misrepresents the function of the right to internal movement. According to this reading, the right to internal movement should not be understood as a freedom-right, but as a right with civic functions (Pevnick, 2011; Miller, 2014; 2016 Song, 2018; 2019). Movement within borders, indeed, serves the function to protect the political liberty of citizens, insofar as being free to move in the country is necessary to pursue the opportunity to freely associate with other members of the community for the purpose of constructing, for instance, political parties, social movements, cultural associations and so on. Another classical justification of freedom of internal movement is the fact that obstructing internal movement would facilitate the creation of antagonistic factions within the polity bound to specific sub-territorial areas of it, and then would undermine the cohesion of the polity. This lack of internal cohesion, in turn, might potentially lead to the upsurge of discriminatory attitudes between members of the distinct sub-territorial groups that would be created as a consequence of the limitation of internal movement.

Analogously, the argument from the right of exit might be contrasted with other interpretations of the same right. This, for instance, is what Michael Blake famously does (2014). According to Blake, indeed, the right to exit should be interpreted as somewhat analogous to the right to marriage. Having the right to marriage entails that I should be left free to try to get married with other people. As such, it entails a negative duty for the community not to obstruct my attempt. If nobody is disposed to marry me, however, I cannot say that my right to marriage has been violated, for the possibility to refuse marriage proposals makes part of other individuals' rights. In the same way, Blake argues that the right of exit entails only that the state of which we are members cannot prevent our exit. But if we do not find any other state disposed to accept us as new members, we cannot say that our right of exit has been violated. In this interpretation, then, the right of exit has no direct implication for free movement across borders.

Clearly these counter-interpretations of the rights considered would undermine the arguments for open borders, for the element of analogy between the good protected by these rights and the one protected by a hypothetical right to free movement across borders would disappear. However, I shall not consider in detail the objections mentioned, for this would be superfluous for the general point I want to make. This has to do with the fact that, based on what has been said, it seems that the reference to these rights in the arguments considered serves the only function to take something that we all consider valuable to prove that what justifies this idea is its relationship with individual freedom of movement and, for extension, with individual freedom more generally. From this point, then, is derived that since freedom of movement across borders is an obvious extension of the same freedom, we should consistently conclude that freedom of movement across borders is normatively valuable.

But then, this argument turns out in a way to rely on an assumption concerning what it is supposed to prove, namely that free movement is valuable. Indeed, given how the arguments have been presented, it seems that the idea of free movement stands as the basic premise providing the means to interpret the rights considered – and then to infer from them the necessity to introduce the right to movement across borders – rather than the conclusion

toward which we are led from the passages of the argument. In this sense, the two arguments appear problematic for being question-begging. It seems, indeed, that a freedom-based argument for open borders should start from a reasoned analysis of the value of free movement and of its relationship with individual freedom more generally, rather than simply assuming its value. This is what the second category of freedom-based arguments do (Kukathas, 2014; Baubock, 2009; Oberman, 2016). I now turn to consider them.

Freedom-based arguments II: freedom of movement across borders as an essential part of individual freedom

The structure of the second category of freedom-based arguments is the following:

1) Individual freedom is valuable.
2) Freedom of movement across borders is a condition for individual freedom.
3) Thus, freedom of movement is valuable.

The first premise seems to be unproblematic, at least in a liberal democratic view. Therefore, we can simply assume it. The second premise, conversely, encounters some objection. For despite the fact that the relation between freedom of movement across borders and general individual freedom appears obvious to many, some scholars have argued that a totally unrestricted freedom of movement is not a necessary condition to be free, at least to relevant extents. And then, restricting freedom of movement across borders does not immediately entail restricting individual freedom. In other words, according to some it is possible to be free in a morally relevant sense even without pursuing a complete freedom of movement across borders (Wellman, 2016; Pevnick, 2011; Moore, 2015).

This objection is most famously defended by David Miller. What Miller contends, indeed, is that for individuals to be free in a morally relevant sense it is sufficient that they have access to an adequate range of life options. It is not necessary, however, that every possible life option is available for their choice. Limiting freedom of movement across borders, Miller's argument goes, does not necessarily undermine the possibility for individuals to have access to an adequate range of life options. For instance, citizens of the United

States, according to this line of argument, could choose from an adequate range of life options in the sphere of movement even if they could not cross the borders of the territorial community to which they belong (Miller, 2014, pp. 365-366). In this sense, the limitation of freedom of movement that comes with border controls does not necessarily amount to a relevant limitation of individual freedom, and then it is not necessarily normatively problematic.[7]

However, this objection is problematic. To understand why, it is necessary to make a brief elaboration of the notion of freedom. The way in which individual freedom (and its possible violations) is involved in the social phenomenon of international migration, indeed, depends on the way we choose to conceptualize it. It depends, in other words, on what does it mean to be free according to us. Thus political theory traditionally offers two popular ways to conceptualize individual freedom. What I argue, is that it transpires that would-be migrants' individual freedom is violated by border controls whatever notion of individual freedom, among the two I shall consider, we decide to adopt. I now elaborate this point.

In a first sense, individual freedom can be conceptualized in negative terms, namely as absence of interferences (Berlin, 2010 [1958], pp. 172-181; Carter, 2013; Kramer, 2010). In this notion of individual freedom, I am free if there are no interferences preventing me to pursue the courses of action I want to. The most classical way to explain what it means to be free in this negative sense is making an obvious example of a condition in which this kind of freedom is violated: the condition of prisoners. A prisoner is deprived of his or her negative freedom because different obstacles (locked doors, guards, etc.) interfere with his or her possibility to move. Taking freedom in this

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[7] This is also the reason why Miller maintains that border controls are not coercive (Miller, 2009; 2010). According to Miller, indeed, coercive acts are threats that limit significantly individual freedom. And a threat relevantly affects individual freedom only when it reduces the alternatives of actions available to the subject to a single option. This is not what happens in the case of border controls: border controls eliminate only one alternative of action from the range of options available to the subject, without interfering with the individual ability to pursue the other possible courses of action. As such, Miller argues, border controls do not violate individual freedom. Therefore, they are not coercive, but simply *preventive*. In a reply paper, Arash Abizadeh (2010) famously challenges the notion of coercion underpinning Miller's analysis. I will refer to Abizadeh's argument in the continuation of the section.

sense, the violation of freedom entailed by border controls appears obvious. It seems, indeed, that border controls interfere with would-be migrants' possibility to move in the same way as the presence of guards interfere with prisoners' freedom.

Miller would contest this point. For, though in a literal sense border controls violate migrants' negative freedom, Miller would probably argue that the interference of border controls with migrants' freedom is not that relevant after all. Even in a closed borders scenario, for instance, the condition of a US' citizen is quite different from the condition of a prisoner. The latter sees his or her possibility to move restricted to the space of a room, while the former can pursue the possibility to move into a huge territorial area that is not altered by the interference entailed by other states' border controls. The US citizen, Miller would argue, pursues a *sufficient* degree of negative freedom even in a closed borders scenario (but would this be true for citizens of Lichtenstein?).

However, this 'sufficientarian' conception of the moral relevance of negative freedom is problematic. Consider the following scenario. Imagine that I want to pursue a PhD career in the United Kingdom because I would like to do research under the supervision of a specific professor that, suppose, is my favourite philosopher. Imagine, now, that my entry into the UK is prevented. Miller would argue that this interference with my freedom is not relevant. After all, Miller would argue, Italy has plenty of good universities and valid intellectuals, and no one will interfere with my possibility to try to become a researcher in these universities. Therefore, the UK's interference still leaves me big margins of choice.

However, I would not find this answer satisfactory, because alternatives are not always interchangeable. The possibility to have the option to work with that specific philosopher, for instance, might be so valuable to me that the deprivation of it is not compensated by the fact that I still have other options. And it seems that, on a descriptive level, the value of specific violations of individual freedom is subjective. Namely, it depends on the value the subject assigns to the courses of action barred to him/her. So that, on a normative level, if we want to remain impartial on the value of specific life projects, we are compelled to claim that the interference with any possible course of action

has, a priori, the potential to be relevant.[8] In this sense, we must recognize that the interference of border controls with migrants' individual freedom has the potential for preventing courses of action they can consider extremely relevant, and this seems to be enough to conclude that their negative freedom is violated in a morally relevant sense.

The second conception of freedom offered by political theory is the idea of freedom as not being subject to the will of other agents (Pettit, 2011; List and Valentini, 2016; Abizadeh, 2008 and 2010; Carens, 2013; Bellamy, 2019; Forst, 2021 [2015]). According to this idea of freedom, I can be said to be free only to the extent that no other agent (at least no other human agent) is able to determine the courses of action I will pursue.[9] In this sense, in order

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[8] This point seems to be confirmed by the fact that we can find analogous interpretations of the value of freedom in classical negative understandings of the concept. An example is provided by Ian Carter's account of negative freedom, according to which freedom has non-specific value, with this meaning that "freedom has value independently of the value of being free to do one or another specific thing" (Carter, 2013, p. 37). If I interpret correctly the passage, what this means is that the value any specific freedom has should not be determined a priori by a substantive understanding of the value of pursuing a specific course of action. This compels us to accept that a priori any possible freedom has the potential to be normatively relevant. Furthermore, as far as I understand, this conception of freedom compels us to accept that restriction of freedom may be relevant even when it precludes a relatively little range of possible courses of action for the subject. For saying that freedom has value independently of the value of being free to do one thing or another presupposes the idea that freedom has value as such (as Carens contends (2013, p. 37)). But this seems to entail that even the deprivation of a single liberty may be normatively relevant. Of course, this is not in contrast with saying that the deprivation of a higher number of freedoms is more relevant than the prevention of a smaller set of liberties. It only clarifies that, from the fact that a certain deprivation of freedom leaves open a high number of possible courses of action for the subject, it does not follow, according to classical negative understandings of freedom, that it is not of normative relevance.

[9] This second conceptualization of the notion of freedom might be further split into two subcategories: neo-republican understanding of freedom as non-domination on the one hand (Pettit, 2011); civic-republican understanding of freedom as the positive freedom which comes with the actual exercise of political self-rule (Forst, 2021 [2015]). However, I do not consider this differentiation relevant for the purposes of this work. Indeed, both understandings of freedom seem to have a common core in identifying the condition of freedom in not having masters. Since the purpose of this work is not to offer a thesis on which

to be free, it is not sufficient that there are not interferences. Rather, it is necessary that no one is in the position to unilaterally direct my actions making my choices an extension of his or her will. According to this notion of freedom, the condition of deprivation of freedom *par excellence* is represented by the condition of slavery. Slaves are not free, not simply because there are interferences with their actions. This is not necessarily the case. Rather, they are not free because there is another agent, the master, who owns them. What this means is that the master *can*, if he or she desires, interfere with the slaves' actions. This determines that which options the slaves can consider depends on the master's will.

According to this notion of individual freedom, the fact that the existence of a plurality of options is not sufficient condition for freedom is even clearer. Consider the following scenario. Imagine a polity governed by a constitutional monarchy. Constitutional law permits every member of the polity to have a wide range of life options from which to choose. Every individual, for instance, can choose employment from an adequate variety of work options. Furthermore, constitutional law establishes that once individuals are permitted to consider a certain option, this possibility cannot be revoked by the action of the monarch, and if the monarch tries to interfere with individuals' ability to obtain one of these life options, the monarch will be prevented from doing so by a constitutional court. Suppose, nonetheless, that the life options every individual can choose from are initially established by the monarch.

Now, in this scenario, all the members of the polity have an adequate plurality of life options from which to choose. Furthermore, the integrity of this plurality is guaranteed by constitutional law. Nonetheless, according to the notion of freedom we are considering, we cannot conclude that the members of the polity have the capacity to freely lead their lives, for the following reason. The range of options every individual can consider is initially constrained by the decisions of another agent, the monarch in this case. In this sense, the members of the community are subject to the will of another agent in their life choices. Therefore, it is as if the monarch arrogated the possibility

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notion of freedom we should prefer, I think that the conceptual macro-category I use will be sufficient for our purposes.

of deciding which life options an individual can value and then what is (or should be) good for them, because by shaping the range of options individuals can choose from, he/she substantially decides what options are worth being taken into account for individuals.

Now, if we apply this idea of individual freedom to the case of border controls (namely unilateral border controls), we easily conclude that they are freedom violating. This is because they necessarily imply that the range of life options from which the subject can choose, independently of the extension of this range, is shaped by the decisions of other actors, namely receiving communities enforcing border controls. In this sense, an open borders theorist would contend that individuals in a border controls regime are in the same condition (or in a relevantly similar condition) as individuals in the constitutional monarchy mentioned in the example above. This rules out Miller's objection.[10]

On the basis of the analysis offered in these sections, then, it seems that open borders arguments highlight moral benefits whose relevance from a liberal-democratic perspective seems difficult to deny. In this sense, what seems evident is the contrast between the apparent argumentative force of open borders arguments and the conventionally accepted practice of existing political regimes on the matter, in which the fact that states have a right to control their borders is substantially assumed. The existence of the open borders challenge compels those who want to defend this practice to

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[10] This passage permits me to add a further consideration of the arguments against border controls. Indeed, the second notion of freedom we have been considering is, as is well-known, more popular among republican and democratic scholars. In this sense, then, the argument from individual freedom can be thought of to ground not only a liberal argument against border controls, but also a democratic one (Abizadeh, 2008). For in this case it would be argued that border controls, by unilaterally imposing on would-be migrants collective decisions, violate their political agency, namely their capacity to negotiate collective decisions in a collective space. In this sense, though the language most commonly used in support of open borders makes reference to individual rights, this should not be understood as a sign of the fact that the case for open borders is sustained exclusively on the basis of liberal arguments having the potential to conflict with democratic views. Rather, the case for open borders has to be understood as a liberal and democratic case at once. This retraces what has been said in the introduction concerning the co-originality of liberal and democratic rights.

transform it from a conventional practice unproblematically accepted to a point explicitly defended on the basis of arguments. And given the already mentioned force of the open borders argument, it seems that this defence can only come through highlighting possible counterbalancing reasons capable of showing that, notwithstanding the prima facie moral benefits involved in open borders, the enforcement of an open borders regime would on closer inspection produce at the same time moral drawbacks making it undesirable, all things considered. This is the argumentative strategy pursued by different scholars that, in different ways, try to reaffirm the normative defensibility of border controls against the challenge raised by the open borders theorists. In the next sections I present and discuss the most common arguments proposed for this purpose.

Objections to the open borders thesis I: instrumental arguments

The open borders views just presented are challenged by many scholars trying to propose alternative views on the matter, with the purpose of pointing out what they hold as the relevant moral drawbacks of open borders. Differently from arguments in support of open borders, however, arguments aimed at challenging this position, and then defending to some extent border controls, are variegated and respond to different logics. The presentation of these arguments, therefore, will require more elaboration. First of all, the arguments against open borders can be divided into two categories: instrumental arguments and deontological arguments. In this section I will address instrumental arguments, while the next will focus on deontological ones. What instrumental arguments contend is that open borders are normatively problematic because of the consequences they might potentially have. The purpose of avoiding these consequences, according to supporters of instrumental arguments, justifies the requirement for closure (Miller, 2014, pp. 369-370).

In particular, two classical arguments are proposed. The first contends that in an open borders scenario the population stability of political communities would be under threat. The second argument raises some concerns about the level of cultural heterogeneity internal to political communities that might come about as a consequence of the unrestricted freedom of international

movement. Both the reduced population stability and the increased level of internal heterogeneity, according to supporters of these arguments, would produce a consequent reduction of social trust within the polity and a lowering in the quality of democratic interaction between citizens. In what follows I shall discuss both arguments in detail. What I want to argue is that, despite their intuitive plausibility, they both fail in the attempt to point out the relevant moral costs of open borders. I now turn to consider the first class of arguments.

Open borders and population stability

As I briefly mentioned, instrumental arguments for border controls point to the potentiality of immigration to determine a decrease in the quality of democratic mechanisms in the polity considered. The first way to present the argument is contending that democratic polities need relative population stability in order to work properly. Indeed, population stability facilitates the fact that individuals take seriously the long-term interests of co-members, and then favours an overall higher quality of the negotiation of interests in the public debate. In this perspective, if I know that my interests are interconnected with the interests of other individuals on a long-term basis, I am incentivized to take into consideration the others' interests, for I know that there is a long-term causal correlation between their interests and mine (Baubock, 2018, p. 14; 2011b; 1998; Biale, 2019, p. 104; Tamir, 2019, pp. 33-40).

Another way to explain the interest of every community in population stability is to point to the fact that, in representative systems, those who govern must be accountable to citizens. That means that citizens must be in the position to ask reasons for any given public choice made, and representatives must be responsive to the requests of citizens. But if citizenship becomes too fluid, this becomes difficult, insofar as it is no longer clear what are the relevant interests that should be taken into account by representatives when making public choices, and then it is no longer clear to whom representatives should be accountable (Song, 2012, pp. 55-58; Benhabib, 2006, p. 177).

Not all authors who hold these points derive from them a stance for border controls, but some do (Tamir, 2019; Benhabib, 2006; 2007, p. 448; Miller, 2016a, p. 28). From this premise, indeed, these scholars derive the conclusion that, were borders open, we should accept the possibility that a high number of individuals in the world choose to move across borders at the same time. This would imply the risk that the polity loses its internal stability, with a consequent decrease in the quality of its democratic life.[11]

Now, this argument for border controls is weak. In order to clarify this point, notice first that the possibility to restrict entries is not totally precluded in open borders theses. Rather, it is bound to emergency situations. Obviously, if we argue that, had they the possibility to move, extremely high numbers of individuals would choose to move across borders frequently, then the argument just mentioned would prove that open borders are unsustainable. For it would prove that cases in which many persons choose to move are too frequent to be considered only emergency situations. And then it would turn out that the necessity to restrict entries might show up frequently. This would substantially amount to denying open borders.

The problem, however, is that the idea that many persons would choose to move frequently in ideal conditions is not plausible. According to a well-known view, individuals like long-term territorial residence (Carens, 2013; Schewel, 2019; Gray, 2011; Mata-Codesal, 2017; 2015; Hjalm, 2014; Moore, 2013). This is because, as a matter of fact, people like having the possibility to make long-term projects for their lives. This requires a stable connection with a given social network, namely stable relationships with specific classes of other human beings. And this condition is easier to satisfy when individuals occupy a given territorial area on a long-term basis.

What this implies is that, taking human beings as they are, or at least as we can reasonably suppose they are, an open borders scenario would not necessarily amount to a scenario in which the composition of political

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[11] Even if it is worth to specify that this argument still leaves space for significant degrees of international mobility. What is required is only that the community is composed of a majority of individuals who desire to spend most part of their lives in the territory considered (Baubock, 2018).

communities becomes extremely fluid. This risk might be more compelling in non-ideal conditions, where the presence of relevant inequalities across the world may constitute an incentive (but at the same time an obstacle) to international movement. But in an ideal world in which, even according to less egalitarian perspectives, any polity would be in the position to grant at least decent life conditions, the argument loses much of its force. This is relevant because scholars proposing this argument do not present it just as a non-ideal argument, but as a sufficient reason to think that some degree of closure, and then of territorial sovereignty, would be required even in ideal circumstances (Benhabib, 2007). In this perspective, the point outlined permits us to exclude the interest in stability as a compelling reason counterbalancing the moral benefits of open borders. In what follows I turn to consider the second instrumental argument offered against open borders.

Open borders, cultural homogeneity, and social trust

A more serious version of the instrumental argument for border controls contends that liberal-democratic societies, in order to work properly, require the existence of social trust between co-citizens. This is because trust in the polity we belong to reinforces the belief that co-citizens will be willing to accept costs to cooperate with us, and thus incentivizes us to accept, in turn, the same costs. What some scholars contend is that the presence of this kind of social trust is more easily achieved when the polity does not reach excessively high rates of internal cultural heterogeneity (Putnam, 2007, p. 159; Miller, 2017, pp. 12-13; 1988, pp. 649-650; 1989, pp. 67-72; Moore, 2001a, pp. 8-10; Tamir, 2019, pp. 49-51). Some degree of cultural homogeneity, in other words, is a condition for social trust between co-citizens and then, for solidarity and the disposition to cooperate (Miller, 2016a, p. 28; Banting and Kymlicka, 2006, pp. 14-17). Indeed, the fact of sharing some characteristics with other people makes us more confident in our capability to predict their behaviour, and then in the possibility to trust them.

The role these scholars assign to cultural homogeneity is the same that political theory traditionally acknowledges to religion (Burke, 2020 [1790],

pp. 166-167). If I know that you and I believe in the same god, I also know that you will avoid incurring those courses of action that we believe are prohibited by that god, for the purpose of avoiding punishment. Analogously, I will feel I have the same capacity of prediction of your behaviour if I know that you and I believe in the same, or at least in a relevantly similar, set of social meanings, practices, and values. In both cases I will feel able to predict in which cases my efforts to cooperate with you will be compensated, and this grounds at least in some cases my trust in the fact that our cooperation is possible, and that it will be beneficial for me.

This line of argument is usually defended by those authors who call themselves *liberal nationalist* (Walzer, 1983; Miller, 1995; Tamir, 1993). What these scholars contend is that the best candidates in modernity to constitute the basis for cultural homogeneity on which the existence of trust and solidarity between co-citizens relies are national identities (Putnam, 2007, p. 159; Miller, 2009, pp. 210-213; 2018, pp. 138-141; 2020, pp. 6-7). These scholars usually maintain that too permissive immigration policies, due to the level of internal cultural heterogeneity they can produce, will as a consequence lower citizens' sense of national commonality, and then their reciprocal trust.

Now, nationalism is usually associated with regressive and xenophobic political attitudes that come as the product of tribalism, irrationality, romantic idealization of the idea of community – where the term 'romantic' has to be read here as a negative connotation – and is generally considered at odds with liberal democratic values. Therefore, an obvious objection that might be moved against this argument for border controls is that opposing free movement on nationalist grounds amounts to a departure from a liberal-democratic system of values.

This is because many would think that the cost to be paid for the social cohesion granted by the existence of national identity is intolerance, aggressivity and inter-group antagonism. This, after all, is what we learn from classical nationalist political theories (Scruton, 2003). Classical nationalist scholars, indeed, identify the primary source of national identity in conflict. Thus, a clear example is provided by Carl Schmitt's friend-enemy distinction (Schmitt, 1988 [1926], pp. 13-14). In this perspective, the members of a group

may capture the specificities of their group only when noticing that they all feel different from other groups for similar reasons. Furthermore, the presence of an external enemy to beat induces the feeling that we are sharing an effort, which in turn reinforces the perception of 'being in the same boat' and then, instinctive solidarity.

No contemporary political theorist would subscribe to preserving this kind of national identity as a good reason to restrict entries, because their moral cons (internal intolerance towards diversity and external aggressivity) appear clearly superior to their pros (political cohesion). Furthermore, defending this idea of national identity, in the specific case of immigration, would not amount to suggesting some prudence on the possible effects of more inclusive immigration policies. Rather, it would legitimize feelings of refusal towards the stranger (Schmitt, 1988 [1926], p. 9) that seem to be in open contrast with the idea of moral equality and that, thus, no one could accept and at the same time credibly demand to be called liberal.

What liberal nationalists contend, however, is that this is not the only way a political community based on a shared sense of nationality can be thought of. The typical stance of liberal nationalism is that contrary to what illiberal understandings of the national community suggest, the existence of national groups is not necessarily connected with xenophobic attitudes (Miller, 2005). In this view, human beings simply have a spontaneous tendency to trust more easily those with whom they share some characteristics, such as a common language, a shared history, a common way of life (including, for instance, similar alimentary styles, same identification with certain symbols etc.) (Gellner, 1983, ch. 1; Anderson, 2009, ch. 1; Moore, 2001b, pp. 5-9; Miller, 1995, ch. 2; 2003, pp. 303-308; Tamir, 1991, pp. 72-80; 1993, ch. 3; Renan, 2004 [1882], p. 16; Berlin, 2000, p. 498). A tendency that, per se, does not automatically entail any feeling of superiority or antagonism towards other groups. This attitude assumes aggressive traits only when this sense of group specificity gets frustrated by what is perceived as the intrusive interference of an external other. What Isaiah Berlin's famous expression *the bent twig* wants to suggest is exactly that aggressive nationalism is a reaction to an offended sense of national community that, in itself, is identified as a pacific feeling (Berlin, 2013 [1959], pp. 261-262).

In line with this argument, what liberal nationalism contends is that avoiding interferences with national self-determination is required exactly to avoid that virtuous national identities transform into xenophobic attitudes (Tamir, 2019, pp. 43-51; Miller, 2016b, p. 28). And allowing national sovereignty in immigration policies, according to these scholars, is part of what is required to avoid this risk. This is what is summarized in Walzer's famous warning "[…] if states ever become large neighborhoods, it is likely that neighborhoods will become little states" (Walzer, 1983, p. 38). In this view, the enforcement of open borders would appear to be the imposition of the presence of undesired strangers on receiving communities, and thus would entail the risk of an exaggeration of xenophobic feelings or, alternatively, a fragmentation of the polity in a plurality of ghettoized micro-communities.

At first glance, this view seems difficult to reject. The current world appears to have plenty of elements confirming liberal nationalist concerns. Thus, for instance, resistance is registered towards a transfer of decisional competences on immigration policies from national to supra-national levels, and the primary responsibility for this resistance is identified in national identities (Luedtke, 2005). Furthermore, some empirical studies partially confirm liberal nationalist hypotheses. For instance, it is argued that the presence of liberal nationalist attitudes tends to reinforce a proneness to cooperation more than non-liberal nationalist ones (Reeskens and Wright, 2013; Huddy and Khatib, 2007; Miller and Ali, 2014). Other works point out the role of the citizenship test, that is one of the more distinctive liberal nationalist proposals in matters of immigration (Miller, 2016b, p. 68; Kymlicka, 2015), may have in favouring population acceptance of the entry of newcomers (Putnam, 2007; Banting et al., 2019). What these studies suggest, indeed, is that knowing that newcomers have to take tests to become citizens facilitates the perception in members of the receiving polities that immigrants have made efforts to become citizens, and this then reinforces the trust that they will be disposed to offer their loyalty to their new polity and to accept costs in order to cooperate for the 'common good' (Kymlicka, 2013; Johnston et al., 2010; Banting and Kymlicka, 2006).

Nonetheless, this theoretical perspective appears on closer inspection problematic, for three reasons. *First*, according to liberal nationalists, one of

the alleged advantages of the liberal nationalist project is that it is more realistic than its competitors (Miller, 1995; Tamir, 1993). That is, it starts from a more faithful description of what human beings are given how they appear in our world. Despite appearances, however, liberal nationalism involves idealizations not less demanding than those involved in more cosmopolitan oriented views. The liberal nationalist proposal, indeed, is to promote virtuous nationalism as an antidote to illiberal nationalism, and this would require acceptance of moderate border closure as part of the pack of virtuous nationalism. But the equilibrium between this light nationalism and its degraded forms may be precarious. It is not clear, indeed, that this benign nationalism can be so easily separated from xenophobic nationalism, as liberal nationalists would desire. It is suggested by empirical literature, for instance, that the processes of construction of the national identity are almost inherently associated with inter-group antagonism (Spinner-Halev and Theiss-Morse, 2009; Reeskens and Wright, 2013; Huddy and Khatib, 2007). Other evidence points out that often the inclusion of newcomers in the national group is based on processes of racialization (Banting et al., 2019), a source of national identity liberal nationalists would like to avoid. Furthermore, provided that the presence of difference brings with it the risk of conflict, it should be asked whether promoting the proliferation of national identities mitigates or exacerbates this risk. This concern seems to have direct relevance for the issue of immigration, for it applies to the mentioned case of citizenship tests. It has been argued that citizenship tests, rather than having the function to "protect" a pre-existing collective identity, may also have the function to construct it. In posing, for instance, some cultural competences as a requirement for citizenship, the political community is saying to immigrants (or would-be migrants when tests are taken before entry into the territory) "this is us". But at the same time, it is saying the same to itself. In this sense, citizenship tests may have the function to *give* an identity to the receiving community as an answer to the anxiety of "having lost" it, that may come as a consequence of a more interconnected world (Orgad, 2015, p. 53). But then, it seems that citizenship tests may end up reinforcing a perception of diversity between citizens and would-be migrants as a consequence of their stressing a partially fictitious distinctness of the receiving polity (Orgad, 2015, p. 113).

And this may produce hostility of newcomers towards the receiving polity as a reaction, ending up producing the opposite effects to those hoped for (Orgad, 2015, p. 162; Ypi, 2018).

The *second* element of scepticism towards the liberal nationalist argument has to do with the fact that perception of similarity can be, so to say, conditioned (Pevnick, 2009, pp. 148-150; Kukathas, 2014; 2021, ch. 7). A point that is suggested by the genealogy of national identities in itself. As is well known, indeed, classical anthropological studies on nationalism show that national identities were the product of constructivist projects which had the aim to create bonds of solidarity between peoples who used to perceive each other as strangers. According to these studies, national communities came into being as a consequence of the 'sponsorship' of the idea of a nation led by elites for the purpose of answering the need for political integration posed by industrial society (Gellner, 1983, chap. 3, Hobsbawm, 2002, p. 101). The construction of the modern state, indeed, required to implement a system of cooperation occupying wide territorial areas. In order for this aim to be achieved, it was necessary to incentivize people to cooperate with anonymous others residing in distant territories. The idea of national identity made this possible insofar as perceiving the other members of the state as similar to some relevant respects permitted individuals to consider their cooperation with them meaningful. And what made possible the rise of a strong perception of national identity in large political communities was the use of mass communication technologies and other means of propaganda (Anderson, ch. 2).

Now, liberal nationalists use these anthropological explanations of the rise of national identities to support their position (Tamir, 2019, p. 27), insofar as these studies present nations and nationalisms as allies of the modern liberal-democratic state (Anderson, ch. 1). However, this argumentative strategy turns out to be a boomerang for liberal nationalism. Indeed, what these studies tell us is not only that national allegiances were functional to the aims of the construction of the liberal state, but also that they emerged as the consequence of processes of reconstruction of perceived identities. The perception of national similarities on which national solidarity stands, in other words, is at least in part a product of construction.

Nothing in principle seems to preclude the possibility that the same means used to construct national allegiances can be used to construct more inclusive forms of collective identities that may be more apt to deal with a world in which movement across borders is more frequent, and thus in which the internal composition of political communities, as well as their identity, are more subject to mutations. Among typical instruments of nation-building, for instance, are mentioned the role of political parties, public spheres, and public school programmes (White and Ypi, 2010; White, 2014, pp. 5-9; Wolkenstein, 2018, pp. 295-297; Tamir, 2019b, pp. 81-84). All instruments that may in principle be used to persuade people to have more open attitudes towards immigration.

Clearly, things may be not that easy. From the fact that national identities are constructed, indeed, it does not follow that it is easy to deconstruct and reconstruct them. Furthermore, some scholars suggest that the construction of collective identities cannot start ex nihilo. Rather, in order to be successful, the construction of collective identities needs to rely on pre-existing perceived similarities between people which often come as a product of a shared past (Smith, 2003, pp. 357-359; 2000, pp. 800-803; 1995, pp. 13-18). Nonetheless, this does not deny the general point we are making. This is because even according to the logic of this possible objection, more inclusive collective identities remain a possible object of construction to the extent to which some pre-existing spontaneous tendency in this direction exists.

Thus, modernity is already moving towards higher degrees of globalization, and these changes seem to have the potential to reshape existing collective identities. On the one hand, there is the well-known story that the world has become more interconnected, determining a systematic dialectic relation between global and local dimensions according to which an event taking place on one side of the world is capable of deeply affecting lives of individuals all over the world (Giddens, 1991, pp. 21-23). On the other hand, thanks to the existence of mass communication technologies, the increasing interconnectedness of the world enters into the perception of individuals. The capability of these technologies to transmit the same information to high numbers of peoples at the same time permits crossing space and time easily. This allows the mediated experience of distant events to be attached with a

sense of familiarity (Giddens, 1991, pp. 23-27). These already existing tendencies, in the long run, may constitute sources for the rise of more global oriented collective identities. This is not simply to say, as it has been argued, that individuals may come to rationally recognize that high levels of global cooperation would serve better their interests and thus that common interests may substitute collective identity as sources of solidarity (Valentini, 2014, p. 799; Wolkenstein, 2018, pp. 292-295; Dryzek, 2008, pp. 481-484). Rather, the point is that these mechanisms may guide the construction of forms of collective identities which may not be fluid, yet more prone to openness toward the other.

To be fair, this view might be accused of an excessive optimism. Indeed, some authors have pointed out that, despite the fact that globalizing tendencies are at work, they are very far from having produced the same level of interdependence between individuals typical of national communities. And more importantly, they have not been sufficient to remove the obstacles to achieving levels of communal sympathies at the international level comparable to those present in the national arena (Christiano, 2006, p. 86). Thus, for instance, the existence of linguistic barriers hinders the construction of global strong we-feelings. Post-national identities, furthermore, are nowadays a clear minority. Taking for instance the case of the European Union, only 15 percent of the European population recognize European membership as a relevant source of personal identity, against the 40 percent of Europeans that continue to identify exclusively with their national membership. And a further aspect worth noting is that most of those comprehended in the 15 percent belong to the higher layers of the society, are well educated and highly mobile (Bellamy, 2013, p. 506). However, the fact that parts of society, despite currently constituting a minority, define their personal identity in post-national terms should at the same time suggest that the construction of more inclusive collective identities is in the long run a possibility (Archibugi, 2012, pp. 17-18).

In sum, the human tendency to divide the world into 'us and them' is well-documented. Nonetheless, we also know that collective identities are mobile (Kukathas, 2003, pp. 172-173). And though reshaping already existing collective identities may be a difficult and risky process, it is not clear that it

is riskier than indulging in the existence of already existing particularistic groups. Both strategies, in other words, may involve risks. The fact that more inclusive migration policies may risk having some drawbacks in terms of the internal cohesion of the polity, then, is not sufficient as a counter-argument to open borders. It turns out that what strategy will be pursued largely depends on what risks we consider worth being pursued which, in turn, depends on the scale of values we decide to adopt.

This permits me to introduce the *third*, and more fundamental, element of scepticism towards the liberal nationalist argument. This has to do with the fact that there is a non sequitur in the argument. Indeed, even assuming that the nationalist concerns about the risks of too inclusive immigration policies are well-grounded, the nationalist normative claim does not follow. For it might be argued that, due to the moral benefits of open borders, these risks are worth pursuing. After all, this is the same logic we apply in other cases. For instance, we know that in a parliamentary culture allowing free speech and equal political participation for all determines the risk that collective decisions do not always coincide with the best decisions that it is possible to make. But this does not lead us to put democracy into discussion, because many of us (even if not all) think that these risks are worth pursuing given their moral benefits.

Some authors have already pointed out this weakness in the nationalist argument. Many, for instance, argue that if we are disposed to restrict entries for the purpose of granting solidarity and social trust, we should accept in the same way a limitation of the right to emigration, that, as we argued in previous sections, is recognized as a human right (Cole, 2000, pp. 46-48; Ypi, 2008). For emigration has that potential to alter the internal composition of the polity as well as immigration. Now, this argument per se is not likely to convince supporters of border controls, for some of them would bite the bullet and accept that even the right to exit, while remaining a right, can be to some extent limited if circumstances so require (Stiltz, 2016; Walzer, 2007c). The fact remains, however, that if the purpose of limiting free movement (both as emigration and immigration) is granting higher rates of political cohesion in political communities, an explanation is needed for why this purpose takes precedence over the values protected by the possibility of free movement.

That means that, even assuming that it relies on reliable descriptive premises, the argument against open borders we are considering requires to be integrated with a deontological explanation of the value of group solidarity and communal belonging. This leads me to consider the deontological arguments against open borders, that I present in the next section.

Objections to the open borders thesis II: deontological arguments

The second category of arguments proposed to neutralize the open borders thesis pertains to deontological reasons. What these arguments contend, in different ways, is that, independently of the effects it would produce both for receiving polities and at the global level, the enforcement of an open borders regime would be problematic because it would violate deontological principles. Here, the argument that has received more attention has to do with the concept of collective self-determination. This, according to many, would ground a right to unilaterally control borders (Walzer, 1983; Miller, 2016b; Orgad, 2009; Song, 2017; 2018; 2019; Pevnick, 2011; Stiltz, 2011; 2019, ch. 7; Moore, 2013; 2014; 2015, ch. 9). Scholars maintaining this theoretical perspective think that the capacity to exercise discretion over who can become a member of the group and who cannot is an essential part of group self-determination, to the point that a group deprived of this capacity could not be said to be self-determining in any relevant sense.

This position echoes, once again, Walzer's view: "Who is in and who is out? – these are the first questions that any political community must answer about itself. Particular communities are constituted by the answers they give or, better, by the process through which it is decided whose answers count" (Walzer, 2007a, p. 81). In this view, then, the group capacity to decide independently who to include and who to exclude – independently of which decision will be made – is what makes the group a group, and the possibility to access this decision-making process is what distinguishes members from non-members (or not-yet-members).[12]

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[12] To be fair, other more "individualist" perspectives on border controls exist. Within this class, for instance, falls Michael Blake's idea that an open borders regime would violate the right of members of receiving communities to refuse obligations towards hypothetical

What border controls arguments contend, then, is that the purpose of granting a right to self-determination to existing communities requires allowing sovereign discretion on the matter of movement across borders. But in what sense does collective self-determination require a right to control borders? Why would an open borders regime violate the right to collective self-determination of political communities? The literature offers, among others, two possible answers that I consider worth considering.

The first is proposed by Christopher Heath Wellman. According to Wellman, the bridge between the right to collective self-determination and the right to control borders is given by the notion of freedom of association. What Wellman argues is that a strict relation exists between our possibility to decide with whom to associate and our capacity for self-determination (2011; 2016, pp. 81-85). In this view, then, the right to self-determination grounds a right to freedom of association which, in turn, grounds a right to refuse association with others, for being free to associate amounts to being free to decide whether to associate or not. From this the right to control borders would follow. In this perspective, indeed, migrants seeking to make entry into a given political community are individuals asking to associate with the group the political community constitutes. According to Wellman, the right of the receiving community to refuse this new entry comes as an extension of its right to decide who can associate with it and who cannot which, in turn, follows from the community's right to its independence.

It is worth specifying that Wellman conceives the right to freedom of association as a collective right, namely a right retained by the group as such,

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newcomers (but which obligations?) (Blake, 2014; 2006; 2013). Another individualist argument in defence of the legitimacy of border controls is Hillel Steiner's conception of the right to control borders as an extension of the right of members of the community to the private property of their land, and then to the exclusive control of it (Steiner, 1992). However, it seems undeniable that who enforces border controls is a collectivity representing the aggregated interests of members of receiving polities as a group. This seems to imply that for individual rights to ground a right of a collective agent to exercise border controls, these perspectives need some sort of reconnection to the right of groups to act in representation of individuals composing it. This seems to suggest that these individualist arguments for border controls should be considered integrative arguments having the function to complete more collectivist theoretical perspectives, rather than as alternative approaches.

not by isolated individuals. Reading Wellman's argument as maintaining that the right to refuse association is grounded on the individual right to freely decide whether to associate with others within a common political community would be a mistake. This interpretation, indeed, would somehow suggest a voluntarist conception of the polity as a free association that Wellman explicitly rejects as an untenable political ideal (Wellman, 2011, p. 29).

What remains to be clarified is why freedom of association should be so important for collective self-determination. And to this purpose, Wellman seems to think that the inclusion of new members in the polity entails that they will be allowed to participate in the practices of the community, both in the public sphere and in civil society, with this determining a change in the characteristics of the polity. The right to refuse association with hypothetical newcomers which is expressed in the right to control borders, according to Wellman, is what permits political communities to avoid these possible changes in their characters if they so desire.

But then, it turns out that Wellman's conceptualization of receiving communities' right to sovereignty in immigration policies has an identity-based core. Namely, it configures as an alternative way to present a relationship between collective self-determination, collective identity, and the right to control borders. It seems, then, that Wellman's view can be expressed by referring to these three concepts. And deriving the right to control borders from a relationship between the notion of collective self-determination and collective identity is exactly what the second most common argumentative strategy used to justify the connection between self-determination and border controls does. I now turn to present it.

What this second argument contends is that the right to collective self-determination grounds a group right, so to say, to choose which identity it wants to adopt. This, in a way, is suggested by the same expression 'collective self-determination'. By having the possibility to freely determine its own collective identity, indeed, the collective self pursues the possibility to determine itself, namely, to make what it is going to be entirely dependent by its will (the collective will).

From this premise, the right to control borders follows once it is added that immigration flows are vehicles of change in the identity of receiving polities.

This holds, first, in the almost tautological sense that the inclusion of new members changes the composition of the polity and then, to the extent to which it is accepted that the identity of the polity depends on who makes part of it and who does not, its identity. Second, it holds because newcomers bring with them their beliefs, their culture, their personal history and so forth (Miller, 2016b; Walzer, 1983; Song, 2019; Pevnick, 2011; Moore, 2015). And since by becoming members they will be included in the practices of the polity, this determines that they will bring their identity into the public sphere, inducing as a consequence a change in the character of the community in itself. Since, according to this reading of the principle of collective self-determination, collectives are entitled to exercise control over possible sources of changes in their identity, this grounds a right to control movement across borders. Indeed, in the absence of this possibility, the identity of the polity would no longer be determined by the will of the collective, but by external factors, and then the collective would no longer pursue its right to collective self-constitution.

Now, this argument has the merit of grounding the right to control borders on a principle – the principle of collective self-determination – that is recognized by traditional political theory as a standard principle. As such, then, the argument poses a serious challenge to the open borders thesis. Nonetheless, something seems missing. The main problem of this class of arguments against open borders, indeed, is that its validity depends on the possibility to convincingly argue that the interest in collective self-determination of receiving communities can be privileged against the competing reasons that are offered in support of open borders (Fine, 2013).

After all, the fact that the collective self-determination of receiving communities in migration policies comes first over would-be migrants' interest in free movement, as we have seen in the opening of this chapter, is exactly what arguments for open borders want to challenge. This challenge, in what I understand as its most compelling form, does not come through a defence of the priority of individual rights over collective self-determination. Indeed, as I specified in the introduction of this work, I commit myself to the idea of a substantial co-originality of individual liberty rights and collective

self-determination.[13] A more serious problem an open borders theorist might raise, rather, is that the argument for border controls for collective self-determination may come only by privileging the interest – both in individual freedom and political agency – of members of receiving communities. Nonetheless, the same interests are retained by would-be migrants as well. So that it would turn out that the purpose of respecting both the personal freedom and the capacity for political agency of *all* human beings would make the practice of border controls morally problematic.

In this sense, limiting oneself to mention the right to collective self-determination to reject the open borders thesis appears problematic. Something needs to be added to prove that the right to collective self-determination of members of receiving polities should be prioritized over migrants' rights. Therefore, the argument for border controls faces the challenge to prove that the bundle of rights to which members of receiving polities are entitled (individual liberties and collective self-determination) should not be extended to those residing outside the polity. In the next section, I shall briefly mention how supporters of border controls usually approach this difficulty. This will permit us to open a possible theoretical perspective from which evaluating the normative issue under discussion here.

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[13] A point that is corroborated by the fact that, as we have seen, normatively problematic dimensions of border controls can be conceptualized in both liberal and democratic terms and, at the same time, the right to control borders is understood at once as an extension of the right of receiving communities as collectives and of individuals composing them.

Collective self-determination, co-member partiality, and territorial boundaries

As we have seen, the validity of the collective self-determination arguments depends on their capacity to prove that the interests of members of receiving polities can be prioritized over the analogous interests of would-be migrants. Detractors of open borders are well aware of this problem. That is the reason why these scholars make many efforts to avoid it. And the most common argumentative strategy adopted to justify the prioritization of receiving communities is referring to a weakly particularistic conception of justice – presented as fundamentally compatible with moral universalism – according to which, to the extent to which no extremely basic human interests are involved, receiving communities are legitimated in prioritizing their interests (the interests of their members) over those of outsiders (Miller, 2016b; Walzer, 2007b; Song, 2019; Pevnick, 2011).

The reason usually offered for this pertains to the fact that, in the absence of the possibility to privilege the interests of their members, it would not be even possible to claim that these political communities exist as distinct units. After all, the existence of specific political communities is determined by the existence of particularistic duties. This is to say that a particular political community is a specific group of human beings which hold specific duties towards each other that they do not hold towards other human beings. And the fact of holding these specific duties (with corresponding rights) is what makes them members of that specific community. For instance, I am a member of the Italian political community because I hold specific duties towards those pursuing the status of Italian citizens, that I do not hold towards human beings lacking this status. In this vein, I have the duty to protect (or contribute to protect) other Italian citizens' human rights and to cooperate to grant them at least a decent level of economic well-being.

The existence of these specific duties is made possible by privileging the interests of co-citizens over the interests of outsiders. For, if we accepted, for instance, the fact that the interests of other individuals in human rights protection or economic well-being should be equally normatively compelling as the same interests of Italian citizens for me, then we should conclude that I hold the same duty to promote human rights protection and economic well-

being towards both classes of individuals, and then there would be no longer any reason to preserve the distinction between Italian citizens and non-Italian citizens.

Applying this way of reasoning to the case of border controls, supporters of border controls attempt to justify privileging the interests of insiders. In this vein restricting would-be migrants' rights is justified if this is required to grant higher rates of the same rights for members of receiving communities. For rejecting this point would amount to breaking down the distinction between insiders and outsiders, by missing to acknowledge priority to the latter, and then to missing to recognize the normative significance of the existence of distinct ethical communities that polities represent.

This answer, however, rather than solving the problem of justifying the argument against open borders from collective self-determination, raises deeper questions. This is so because, if the analysis led so far is correct, it turns out that what justifies priority towards co-citizens is the fact that in absence of this priority, specific communities would not exist. This argument, then, relies on the presupposition that the existence of distinct communities is justifiable. And since, given the essentially territorial nature of political communities, the existence of separated bounded polities presupposes the existence of territorial boundaries dividing them from each other, posing this question amounts to putting into question the existence of territorial boundaries.

Some scholars involved in the debate neglect the existence of this question (Wellman, 2011; Blake, 2013). What they seem to do, indeed, is assume the existence of separate polities as part of the circumstances in which the normative problem of the legitimacy of border controls takes place. What this analysis should suggest, however, is that this argumentative strategy is highly problematic.[14] If the right to control borders has to be justified on the basis of the right to collective self-determination, indeed, we should surely admit that

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[14] Of course, in a sense a debate on the legitimacy of border controls must necessarily assume the existence of territorial boundaries, for clearly the question considered shows up only in a world in which borders exist. What I mean in this passage is simply that, while the mere existence of boundaries can be assumed for the purposes of the debate, its normative status – namely, whether this existence is justifiable, normatively desirable, or not – cannot.

collectives (specific collectives) pursue a right to self-determination only if they have a right to exist. This proves that the acceptance of the existence of separate communities cannot simply come as an assumption on which the debate relies. Rather, the justification of this state of things has to be an integral part of the arguments proposed by those defending border controls. Conversely, other scholars address directly the matter considered. The justifications offered for the existence of distinct communities vary depending on which conceptions of the political community – namely, which conception of what is a political community, what does it mean to be part of it and what is the normative relevance of political membership – are adopted by the authors proposing these justifications. Nonetheless, all these justifications are rejected by open borders theorists. A presupposition on which the open borders thesis partially implicitly relies, indeed, is that the existence of territorial boundaries is the mere product of brute historical contingency. In this vein, assigning normative relevance to their existence – as happens when we acknowledge the possibility of exercising co-member partiality, for instance – would turn out to be illegitimate, insofar as perpetuating a composition of power that is produced by morally arbitrary facts. This, of course, is also what explains the problematic dimensions of border controls. In this perspective, indeed, it is problematic to recognize receiving polities' moral agency on the basis of a right to exist which, nonetheless, is more a product of a contingent equilibrium of forces rather than of a principled and justifiable recognition of it.

What this analysis seems to highlight, then, is that the debate on the legitimacy of border controls depends on a deeper disagreement on the normative evaluation of the existence of territorial boundaries. How should this existence be evaluated? Is it to be considered a morally justifiable fact as an instrument enabling specific forms of life to express their individuality or, rather, as the consequence of a brute equilibrium of forces whose effects on the lives of individuals have to be limited as much as possible? The success of border controls views depends on their capacity to prove that the first view is the correct one, as well as that the success of the open borders perspective depends on the view that providing this justification is not possible. In this sense, then, the superiority of open borders perspectives depends on the

absence of suitable justifications for the existence of territorial boundaries. In order to understand which one between the two theoretical perspectives should be preferred, then, we need to further elaborate on the normative status of territorial boundaries.

Conclusion

In this chapter, I introduced the main positions occupying the philosophical debate on the legitimacy of border controls. As a first passage, I presented the case for open borders and the most frequently recurring arguments offered in its support. What emerged from this analysis is that traditional liberal-democratic values, such as equality of opportunities and individual freedom, ground at least a prima facie case for open borders. This justifies the claim, classically presented by supporters of open borders, that the burden of proof is on those who want to challenge this theoretical perspective, and that then the presumption is in favour of it. Furthermore, I tried to verify whether the classical arguments offered against border controls are sufficient to revert this presumption. Concerning what I called instrumental arguments, the answer seems to be negative. This is because they seem to rely on disputable empirical bases and, more importantly, on undefended normative assumptions. Therefore, it seems reasonable to claim that these instrumental concerns are not sufficient to conclude that an open borders world would not be worth pursuing. Conversely, this chapter leaves open the question of whether deontological arguments, with special attention to the argument from collective self-determination, are enough to reject the open borders thesis. As I clarified in the closing of the previous section, indeed, this point seems to be dependent on whether the existence of distinct political communities is desirable or, at least, legitimate. This will be matter of inquiry in the next chapters.

Do we need territorial boundaries?

Introduction

In the previous chapter the main positions animating the debate on the legitimacy of border controls have been introduced. After having presented the arguments offered in support of open borders, and having ascertained their undeniable argumentative force, we have seen the main strategies used to reject this position. In this way, our attention has been led to deontological arguments for border controls relying on the value of collective self-determination. Concerning these arguments, we have pointed out that they can successfully reject the thesis for open borders only if it is proved that the interest of receiving communities in self-determination can be prioritized over the interests of hypothetical migrants in individual freedom. Thus, the usual argument utilized has to do with the fact that receiving communities have a right to privilege their interest in collective self-determination as an extension of their right to privilege the interests of their members over the interests of others. And the possibility to privilege the interests of their members is desirable, the classical argument goes, because this is what makes specific polities distinguishable and identifiable as distinct political units.

Now, what makes possible the existence of distinct political units is the presence of boundaries. And in particular, given that according to a standard view that seems difficult to reject political communities are territorial communities, it seems that the existence of specific polities presupposes the existence of *territorial* boundaries. As such, then, the argument just summarized relies on the implicit premise that the existence of territorial boundaries is justifiable. Establishing whether territorial boundaries are desirable or not, in this sense, turns out to be the focal point from which the defensibility or non-defensibility of the practice of border controls depend. For from a positive answer to this question a case for border controls would follow, while an open borders conclusion seems to be entailed, at least prima facie, by a negative answer to the question posed. The purpose of this and the next chapter is clarifying this point by determining whether we are capable of proving the normative justifiability of territorial boundaries.

At first glance, it seems that there are two possible ways to argue that the existence of territorial boundaries is justified. The first is arguing that their existence is *desirable* because, for instance, their existence grants the existence of some normatively relevant social goods. The second possible way to justify the existence of territorial boundaries is arguing that their existence is, if not desirable, *legitimate*. Legitimacy is obviously a less stringent concept than desirability. For arguing that the existence of territorial boundaries is legitimate amounts to saying that we do not have a reason for why we should desire that territorial boundaries exist, but only that that the desire to bring about a world of boundaries, in case this desire shows up, is permissible. In this chapter I inquire into whether the existence of territorial boundaries is desirable.

The argumentative strategy employed here to inquire into the desirability of territorial boundaries is the following. I will construct an imaginary scenario in which territorial boundaries do not exist in order to determine whether their absence would entail the absence of some relevant social good. This will clearly require the definition of an account of what territorial boundaries are. To this purpose I will offer a working definition of territorial boundaries as demarcations determining the territorial areas in which distinct legal authorities are entitled to exercise sovereignty. Given this definition, I will argue that the normatively more salient scenario characterized by the absence of territorial boundaries is one in which the world is inhabited by a single global state. Once this preliminary passage is completed, I will inquire into whether a single global state implies the absence of some relevant social good. Thus, I will examine the apparently most popular reasons offered to conclude that the existence of a global state would be problematic. These can be reduced to two classes of arguments: republican arguments and communitarian arguments.

The first class of arguments points to the fact that a global state would likely present democratic deficits. This position retraces the classical Kantian conviction that a global state could figure only as a global despotism. The arguments usually offered in support of this scepticism about the democratic potential of a global state are three: the first is that a global state would lack exit options; the second maintains that democracy presupposes the existence

of an external other in order for the demos (namely, the owner of democratic power) to be identifiable; the third, and probably most influential, argument is that a global state would be too big to work properly as a democratic system. The communitarian argument, conversely, contends that the existence of a global state would presuppose, for its stability, the impoverishment of the cultural plurality entailed by the existence of different political communities, which existence may be considered normatively relevant as a source of individual well-being and self-esteem.

I will argue that both arguments fail. On the one hand, republican arguments rely on dubious descriptive hypotheses, fallacious conceptual passages, and problematic normative commitments. On the other hand, while the tenure of communitarian arguments as arguments for the legitimacy of territorial boundaries remains to be evaluated, it seems possible to claim that they do not work as arguments for their desirability. This will permit me to conclude that we have no reason to think that a world of bounded states would be preferable – namely, more just – to a global federalism. Furthermore, I will clarify that, while this entails the impossibility of arguing that territorial boundaries *should* exist, it still does not exclude the possibility of maintaining that their existence is legitimate. Whether this hypothesis is tenable will be the object of analysis of the next chapter.

The chapter is organized as follows. In the first section I describe a hypothetical scenario in which territorial boundaries do not exist. In the second and third sections I address the arguments mentioned above and argue that they fail. Finally, a conclusion closes the chapter.

What would a world without territorial boundaries look like?

Generally speaking, boundaries can be defined as visible or invisible demarcations dividing something from something else. For instance, we can talk about boundaries between the human and non-human world. What we usually mean by this expression is the demarcation dividing the individuals that belong to the class of human beings from those who do not. In this sense, boundaries are the borders of a set. As I define them, territorial boundaries are demarcations that separate one territorial area from another in which distinct and at least partially independent overarching legal authorities

exercise sovereignty. This definition seems to reflect the standard understanding of territorial boundaries implicitly or explicitly adopted by scholars interested in inquiring into the normative status of their existence (Baubock, 2018; Benhabib, 2006 [2004]; Song, 2012; Beckman, 2023).[15]

Given this rudimentary definition of territorial boundaries, what would it mean to imagine a world without them? We can imagine three possible scenarios. The first is a scenario in which no political authority exists at all. Obviously, it might be argued that the existence of political authority, at least in ideal conditions, is not desirable. However, in this chapter I do not consider this possibility, for it seems extremely weak. Of course, the possibility to defend this perspective is not denied, but I think that the burden of proof is on those who want to defend it, and that until someone convincingly argues the contrary, we are entitled to neglect this option.

A second possible scenario is that a plurality of political communities exists, but they are not territorial. In this case, we could still talk about boundaries, but they would not be territorial. In order to understand what would differentiate territorial from non-territorial communities, we can think about what can determine membership in a polity. In the case of territorial communities, membership is usually determined by some kind of relationship to a certain territorial area of the world. For instance, in this perspective, one can be said member of a certain community because he or she is born in the territorial area in which that community resides, or because one's parents are born in that place. Alternatively, membership can be determined by long-term residence in the territorial area of the world in which the authority considered exercises its power. A non-territorial community is one in which membership in the polity is not determined by a relationship to a certain territorial area,

[15] It is worth specifying that existing territorial boundaries, as pointed out by recent studies (Goodin, 2016; Shachar, 2020), are much more complex entities than this definition might suggest. For instance, it is well known that states exercise their power even beyond the territorial areas in which they have sovereignty. Nonetheless, this definition of territorial boundaries remains acceptable if intended as an approximation, for still it seems to be the case that the territorial areas demarcated by these 'invisible demarcations' are the sole way in which states can exercise pervasive and systematic, that is supreme control.

but by other criteria. We might imagine, for instance, a community in which inclusion is determined by religious membership.

This kind of community would have non-territorial boundaries: a community composed of all Christians would have boundaries separating Christians from non-Christians. This form of political community would unite under the same jurisdiction individuals distant in space. Some authors argue that these apparently unrealistic forms of political associations are made concrete possibilities by technological development. Authors who suggest this possibility talk about *cloud communities* (Orgad, 2018, pp. 257-258; De Filippi, 2018, pp. 272-274). However, the hypothesis of cloud communities does not seem solid enough to constitute an alternative to territorial membership.[16] Therefore, an analogous observation to the one made with respect to the first option seems to be applicable to this case as well.

The third possible scenario is the one in which only one political community represented by a global state exists which occupies a territorial area corresponding to the entire earth's surface. Even in this scenario, there would be boundaries – for instance 'temporal' boundaries – but these would not be territorial. However, differently from the case of cloud communities, a global state would still configure as a territorial polity; this kind of political association could be considered global through reference to territorial criteria.

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[16] Indeed, there are good reasons to suspect that cloud communities would present relevant democratic deficits (Baubock, 2018a). This is because, in order to work properly as a democratic system, a political community needs internal plurality (Baubock, 2018b). A non-territorial community including all those who share certain religious commitments would not seem able to satisfy this condition. This would make this non-territorial criterion for the definition of political membership problematic. To be fair, there are examples of non-territorial criteria of inclusion that would not be affected by this problem. The most obvious example, thus, is the criterion of the All Actually Affected Interests. According to this criterion, membership in the polity would be determined by actually being (and not merely hypothetically) affected by the consequences of the same corpus of decisions. This criterion of inclusion, however, would be problematic for other reasons. Indeed, though it would not lack internal plurality, in an interconnected world in which the consequences of our actions may affect the interests of an ever-changing class of human beings across the world, a community of all the affected would certainly lack population stability, a condition that – as we know from a previous chapter – is required for the well-functioning of democratic systems.

Indeed, a global polity would be global exactly because it would be authorized to exercise its power in any territory of the earth. In the same way, the inclusion of individuals would be determined by territorial criteria, for they would be considered members of the polity of all the human inhabitants of the earth.

Nonetheless, if we mean territorial boundaries as boundaries separating territories from each other, the fact that no territorial area would be out of its control makes talking about territorial boundaries meaningless. Some might be tempted to describe a world state in dystopian terms as a Leviathan, highly centralized, exercising the monopoly of legitimate use of force and disciplining every aspect of the life of its individual subjects. Starting from this image, it would be quite easy to conclude that the introduction of boundaries would be something desirable. But this characterization of the world state, as has rightly been noted by many authors, besides being dystopian, is also a caricature (Scheuerman, 2014, Ulas, 206, Wendt, 2003, Cabrera, 2010).

A world state might also take the form of a more decentralized institution like a *federal* world state (Scheuerman, 2014, pp. 425-431; Wendt, 2003, p. 506; Ulas, 2016, p. 7). In this context it would be difficult to provide an exhaustive description of all the relevant properties of this global federal institution. However, I think it useful to provide a short list of the generic properties that this legal framework would have, collecting them from those mentioned by authors who try to describe it, for the sake of criticizing (Archibugi et al., 2011) or defending it (Tannsjo, 2006). Generally speaking, we may imagine a global federalism as characterized by nine main properties:

1) *The existence of global legislative institutions*: obviously, a global political community could not exist if it had no capacity to legitimately approve binding norms holding in every area of the globe. These legislative institutions, for instance, can be imagined as a world parliament. The world parliament would not necessarily have authority on every issue. Rather, we can imagine that it might divide the legislative power with more local institutions according to the principle of subsidiarity, leaving the legislative power to them on issues that concern only specific subsets of the global community. However, the world parliament should be conceived as directly

representing the citizens of the global state, rather than merely representing the administrative subunits composing it (Cabrera, 2010, p. 521; Marchetti, 2006, pp. 299-300). Furthermore, how the power is divided between local and global units would be determined by a global constitution (see point 5) and subject to discussion in the global parliament.

2) *A degree of centralization of coercive power*: this does not necessarily amount to a monopoly on the legitimate use of force. Federal coercive powers could coexist with more local armies. Central coercive powers would have the function to enforce the legal norms approved by the world parliament (Scheuerman, 2014, p. 435; 2009, p. 51; 2008, p. 141; Ulas, 2016 p. 7; Tannsjo, 2006, p. 2).

3) *The supremacy of federal law over local law*: in case of antinomies between federal and local norms, federal norms would be considered superordinate. This condition, according to some, is necessary in order for the global state to have the effective capability to coordinate the actions of the subsets composing it (Archibugi et al., 2011, p. 8; Koenig-Archibugi, 2010, p. 522).

4) *The existence of global executive institutions*: in a broad sense these institutions would have the task to apply the norms approved by the global parliament. These may be both judiciary institutions, like courts, but also executive institutions *stricto sensu*, namely a global government (Scheuerman, 2008 and 2009).

5) *The existence of a global constitution*: broadly speaking, with this condition I mean the existence of a set of general rules globally recognized as legitimate that define the general normative principles that the entire global community must observe and the institutional structure of the community in itself. This also includes, as mentioned, the division of competences between federal and local institutions.

6) *Limited possibilities for secession*: according to this condition, the possibility to secede from the global community would be disciplined by constitutional norms, and the request for secession would be subject to the approval of federal institutions. This condition can be interpreted as serving the purpose, so to say, of enforcing global cooperation when it is required (Wendt, 2003, p. 525; Archibugi et al., 2011, p. 8).

7) *The existence of a global citizenship*: this condition can be interpreted in a first, more formal way as stating that every individual in the world should be formally recognized as a member of the global community. Secondly, in a more substantive sense, this condition prescribes that all the members of the global state should, at least to some degree, identify with the global polity and feel part of it. For instance, every citizen of the global polity should recognize the exercise of power by global institutions as legitimate and feel a sense of loyalty towards them (Ulas, 2016, pp. 6-8).

8) *Some degrees of economic integration*: this condition states that, for a global federal state to exist, it is necessary that the members of the polity are united within the same economic order. This is required insofar as one of the properties that, together with the legitimate use of force, most prominently characterize the state is the capacity to raise taxes. Every state needs this capacity in order to be able to finance those services whose production justifies its existence. An obvious example is the function to ensure equal protection for every citizen. This may be considered one of the most basic functions of a state, and thus this should be a function that even a global state should meet. Furthermore, a certain degree of economic integration is required insofar as, if the subunits of the federal union have distinct economies, this may determine that they have systematically different economic interests, with the possibility that they enter into conflict with each other. This eventuality would threaten the stability of the global republic, since it might stimulate the fragmentation of the global 'we' into a plurality of distinct particularistic identities which see each other as antagonists (von Hayek, 1958, pp. 255-258). This suggests that a global federal state would require the existence of a shared set of economic rules (von Hayek, 1958; Weingast, 2005; Vo, 2010; Dietsch, 2011). Obviously, this does not imply that all economic issues should be administered by the central authority. For instance, it is still possible to think that the production of specific public goods, such as health or instruction, would be more efficient if devolved to the subunits of the state (Vo, 2010, pp. 4-6). But this does not seem to deny

the general point that some centralization of economic policy would be required for the stability of the global state.[17]

9) *A global public sphere*: as long as we remain within a liberal-democratic framework, we should recognize that a global state which holds coercive powers will need democratic legitimation. This requires the existence of a global public sphere, an ideal place in which the members of the global polity meet to deliberate in order to participate in the construction of the general will which orients the action of the global state (Habermas, 2013 [1992], pp. 382-384). The existence of a global public sphere requires the existence of a global

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[17] What this concretely means depends on the theoretical orientations one chooses to adopt. For instance, some would probably think that the purpose of granting collective stability would require at least some limitation of tax competition (Dietsch, 2011; Genschel, 2002). Others might have more sympathetic attitudes towards tax competition between the subunits of the polity and prefer to view the central authority as a 'minimal state' (von Hayek, 1958, p. 266; 2007 [1944], p. 231; Vo, 2010, pp. 4-6). I prefer to remain agnostic on this point, since taking a position in this debate would require a dedicated work. However, there are some aspects of economic policies whose centralization in federal systems is substantially unanimously viewed as desirable. An example is monetary policy, that according to most authors should not be devolved to the discretion of subunits of the federal state. Similarly, given that economic integration determines multiple interdependencies between subunits, and that then they come to have similar distributive goals, it is commonly held that income distribution is more efficiently driven from the central government (Vo, 2010). Moreover, provided that there is disagreement as to what extent the central government should be able to tax citizens, it is less controversial that the central state should have at least some power to limit the subunits' capability to tax, which does not necessarily include the power to prevent competition between subunits. For instance, the central state's power to limit the subunits' ability to impose indirect taxation is not a particularly controversial point (von Hayek, 1958, p. 260). This is a very rough reconstruction of what economic integration would require. Providing a complete description of the conditions for this integration is not the aim of my work. What I am interested in is only to point out that a global political federalism would require global economic federalism as a structural condition, and that a global economic federalism would require a division of decisional powers on economic matters between central and local authorities in which economic competencies are reserved to a significant degree to the central authority (von Hayek, 1958, p. 268).

civil society and, so to speak, the existence of a global mediatic system in which public opinion is constructed.[18]

To sum up, the scenario characterized by the absence of territorial boundaries is represented as one in which a global polity exists having the capability to approve binding norms and to enforce them through the use of coercive force and executive functions. More local decision-making structures are not totally absent, but they coexist with the action of a central global government having decisional powers on issues of common concern that, furthermore, disciplines the decisional competences of local units. In this sense, boundaries dividing distinct spheres of competence of local authorities exist. However, they do not count as boundaries according to the definition given, for they do not determine the existence of separate spheres of sovereignty in which specific legal authorities have ultimate power. Finally, the global polity is sustained by a global patriotism shared by the members of the polity, facilitated by the existence of relevant degrees of economic integration and by the presence of a common public sphere.

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[18] To clarify the idea of the global public sphere, it is useful to compare it with the global public sphere imagined by Habermas. Habermas conceives the global community as a much looser union than a global state, which he calls a transnational community. This transnational union has the task to fix the general aims of global justice but not government functions (Habermas, 2007 [2004], pp. 130-131). This, according to Habermas, justifies the idea that the global public sphere can be conceived in weak terms: namely, global institutions would not have strong duties of accountability towards global public opinion. Moreover, the processes of construction of global public opinion can be much more indirect than the ones we find within comprehensive polities: the construction of global public opinion should come out of an interaction between porous public spheres connected to specific polities (Habermas, 2007 [2004], pp. 137-139). Now, if we imagine a global state, I think that the existence of this weak public sphere would not be enough for the democratic legitimacy of the unity. Indeed, contrary to the model imagined by Habermas, a global state would have, as we have seen, significant government functions. And the existence of these functions, I think, would be democratically legitimate only if the global government is held accountable to a heedful public opinion that emerges from the interaction of global citizens within a strong public sphere, which is much closer to the kind of public sphere Habermas desires for the democratic legitimacy of national polities (Habermas, 2013[1992], pp. 403-410), rather than to the kind of weak public sphere to which he refers for the global community.

This does not mean that more local loyalties cannot exist, but these feelings should be conceived as feelings directed to districts of a unique political system that are not incompatible with patriotic feelings for the latter (Marchetti, 2006, p. 300). These properties are very general and probably not completely exhaustive. Furthermore, not every proposal of global federalism exactly corresponds to the model I have just described in its properties. This model can be considered as an ideal type with respect to which different models of global community can be classified on a continuum which goes, for instance, from the Westphalian model to the one represented by the global federalism just described. The models of global community that can be considered as the subjects of my analysis are only those that to a sufficiently relevant degree correspond to the ideal type described.

For instance, the models of partial integration to which some authors refer using the expression *demoicracy* do not fall under the ideal type just described. Indeed, demoicratic authors prescribe the existence of supranational institutions. However, they do not perceive them as supplanting the nation-state. More importantly, the goal of demoicratic projects is not to create a global unity in which particularistic identities are diluted in a single global 'we' (Bohman, 2007; Ronzoni, 2016; Bellamy, 2013). Rather, the aim is to provide a place for democratic negotiation between distinct polities which share common problems. This implies that significantly higher degrees of autonomy, within demoicratic views, are left to national polities.

This, for instance, is concretely instantiated by the fact that demoicrats do not foresee as a part of their project the centralization of coercive power (Ronzoni, 2016); demoicracy, furthermore, does not require the existence of global government structures (Bellamy, 2013), nor the existence of a global comprehensive public sphere (Bohman, 2007). Finally, demoicracy does not require the same degrees of economic integration that would be required by a global republic, nor the existence of a global citizenship[19] (Bellamy, 2013).

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[19] Conversely, whether national polities within the demoicratic supranational structures should have exit options is debated between demoicrats: while some demoicrats think that denying the possibility to exit the association would constitute a form of domination (Bohman, 2007; Bellamy, 2019), others think that national polities recognizing the possibility to exit would risk undermining global cooperation (Ronzoni, 2016).

This seems enough to prove that in the demoicratic models, supranational institutions are conceived as much less invasive. In this sense, it seems reasonable to conclude that the existence of supranational demoicratic institutions would not imply the suppression of boundaries. Since these models do not foresee the suppression of territorial boundaries, therefore, they fall outside the interest of this chapter.

On the other hand, the so-called cosmopolitan models such as those defined by Daniele Archibugi and David Held appear in a more borderline position. Indeed, these authors generally stress the fact that they prescribe the existence of global legislative *but not executive* institutions (meaning global government) and are basically sceptical of the hypothesis of a centralization, even partial, of coercive power, considered potentially dangerous and superfluous (Archibugi, 2012, p. 15; 2004, pp. 454-455; Erman, 2019, pp. 144-147). For this reason, supporters of cosmopolitan models prefer to talk about *global governance*, in order to distinguish their position from world state hypotheses (Held, 1997, p. 310; 2009, p. 537; Keohane, 2003, p. 2). However, they prescribe the existence of a cosmopolitan citizenship, which seems to suggest that the members of the cosmopolitan union should feel strong attachment to the global community. This point suggests that the cosmopolitan projects foresee the construction of a more massive global 'we'. And this point, to my view, brings cosmopolitan theses much closer to global state hypotheses.

Now, would the global federalism characterized above lack some relevant social good? Many authors would answer positively to this question for different reasons, and probably giving fair consideration to each of these possible answers would require a dedicated work. Nonetheless, I collect for the sake of simplicity the sceptical arguments about the global state into two classes: *first*, republican arguments, that question the democratic credentials of the hypothetical global state. *Second*, communitarian arguments, that maintain that territorial boundaries constitute a relevant source of personal identity, and that suppressing them might induce a lowering of individual personal well-being and self-esteem. In what follows I consider each class of arguments, and argue that they fail to provide definitive reasons in defence of territorial boundaries.

Republican arguments for territorial boundaries

The first argument I shall consider has to do with the idea that the existence of territorial boundaries somehow serves a democratic function. Namely, that they preserve the possibility of the polity to express a democratic political system combined with a democratic form of life (namely a democratic culture). This, in turn, is considered a desirable result, besides the obvious relation between individual freedom and democratic government, but because the democratic system allows individuals to fully express their social nature and to reinforce the internal cohesion of the polity. I call these republican arguments. Indeed, it is a typical republican view the idea that living in a political reality characterized by well-functioning democratic mechanisms in which each member feels they have a relevant say in the collective body reinforces the members' belief of being part of 'a common world' that they have constructed together, which in turn raises citizens' self-esteem, for it permits them to see themselves as co-authors of a political project, rather than mere passive recipients of a system of rules. At the same time, the idea of sharing a common world facilitates the perception of 'being in the same boat', namely the idea that a positive circularity exists between our private well-being and 'the common good', which then incentivizes citizens to accept the costs of membership in the polity.

Thus, inhabiting a polity governed by well-functioning democratic mechanisms facilitates the construction of strong we-feelings, that in turn constitute a source of collective solidarity and individual well-being (Baubock, 2018b, pp. 20-25; Bellamy, 2013, pp. 501-504; Christiano, 2006, pp. 85-87; 2012). Clearly, there is nothing contradictory in imagining that this view of the republican community may be implemented in a global polity which occupies the entire earth's surface. However, an old conviction held by republicans maintains that a global polity would face more difficulties in expressing a democratic political system.

This point is defended on the basis of a number of arguments that often, given their traditional status, are assumed (sometimes even implicitly), rather than defended. Nonetheless, with many simplifications it seems possible to reduce this republican conviction to three arguments: the *first* is that the preservation

of democratic mechanisms in a global polity would be complicated by the absence of exit options; the *second* contends that the absence of an external other would make it impossible to identify the demos, and this then would make impossible the implementation of a democratic system on a global scale. Probably, however, the more influential argument is the *third*, which contends that the polity's capacity to maintain an authentically democratic structure decreases as its size increases (Benhabib, 2006, pp. 176-177; Song, 2012, pp. 54-58; Laborde and Ronzoni, 2016, p. 286; Urbinati, 2007, pp. 38-45; Honohan, 2007 and 2009).[20] In what follows I shall discuss each of these arguments. Given that the third argument seems to be the more influential, I will dedicate more space to it.

Does democracy need exit options?

A popular argument in defence of territorial boundaries is that a global borderless state would entail the absence of exit options (Hirschman, 2017 [1970]). In this case, for exit options it is meant the possibility for individuals to renounce to membership in their actual polity in order to relocate in another association of individuals. This possibility would obviously be suppressed in a scenario in which the world is inhabited by a single all-inclusive global polity. And this, according to many, would entail relevant democratic drawbacks. According to the classical view, indeed, there is a relationship

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[20] The republican scepticism towards the idea of a global democratic state can be declined in other forms. Among these, it is worth mentioning the idea – offered for instance by Iseult Honohan – that the existence of a global state would entail a reduction of political pluralism. The presence of territorial boundaries dividing distinct areas of sovereignty, indeed, permits to experiment with different ways to deal with similar political issues, with the consequent possibility for any given polity to grow through competition and comparison with other political realities. Honohan offers this argument as a reason to prefer a world of bounded states over a world state scenario (Honohan, 2007; 2009). A similar position can be associated with Hayek, who argues that the presence of boundaries permits to better satisfying a principle of subsidiarity, according to which the treatment of any public problem should be assigned to the closest unit of decision capable of dealing with the problem(Hayek, 1958). However, in this chapter I will not consider these arguments. This choice is dictated by the fact that both arguments seem to convincingly support the view that a global state would work better as a federal union. Since the hypothetical scenario considered is a world federal state, this reduces the relevance of these arguments for the purposes of our analysis.

between the absence of exit options and the possibility for the polity to take a despotic form.

According to a popular view, the presence of exit options preserves the well-functioning of democratic mechanisms, and this represents an instrument against authoritarian drifts that would be lacking in a global state scenario. This is because, using terminology inspired by the famous works of A. O. Hirschman (2017 [1970]), the possibility to use exit options reinforces the capacity to use the voice, namely, to express one's dissent through contestation. Indeed, the presence of exit options entails that if citizens are not satisfied anymore with the administration of their polity, they can leave, and this constitutes an incentive for the state to take into account the demands of citizens (Hirschman, 1993; Warren, 2011; Baubock, 2018b). At the same time, the presence of exit options permits the use of the levels of emigration registered in a given polity as a proxy of the level of satisfaction of citizens with the community (von Hayek, 1958).

This argument, however, is only partially convincing, insofar as it has been argued that the possibility to use exit options may have, so to say, benign and malign effects on the capability to use the voice (Hirschman, 2017 [1970]). This is the case, for example, because as a matter of fact those who can more easily use exit options are, at the same time, those who can more easily use the voice. This, to the extent to which individuals prefer using exit over voice, may determine the presence of a disincentive to active democratic participation, with a consequent transformation of democratic citizenship into something close to an aggregation of private persons that, if not satisfied with the polity within which they live, they simply leave – as we would do, for example, when we are not satisfied with the products offered by a given company.

This point may be obviously contested. Indeed, many would argue that this risk is not that actual after all, since, due to the inherent costs of exit, many would not choose to leave even in the case of a deterioration of the quality of life in the home community. After all, leaving one's own polity means leaving the place in which our social networks are located, and the persons that are more primarily involved in our life plans, and this constitutes a cost many

would reject.[21] In the same way, a liberal (or a libertarian) might complain that the view surrounding the counter-objection mentioned above presupposes a moralistic understanding of citizenship according to which political participation, rather than being an opportunity offered to the members of the polity to pursue their own interests, is something individuals owe to co-members or, on the basis of some understanding of the idea of human flourishing, to themselves.

However, neither argument is definitive. They do not seem to constitute strong reasons to prefer a form of political community in which exit options exist over one in which they do not exist, such as a global state. Concerning the first point, indeed, the fact that exit options are costly seems to successfully answer the objection that the possibility to pursue exit options would void democratic citizenship of meaning – for it entails that few individuals would use this option – but at the same time it seems to prevent the possibility to assign to exit options the role that supporters of this argument do assign to it. If it is true that exit options are too costly to be considered real options, indeed, it is not clear that their presence can constitute a significant contractual advantage for citizens in their relationship with authority.[22] To this point, further, it may be added that even in the

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[21] This, in a way, retraces what has been said in the previous chapter concerning the relationship between open borders and population stability. As well as in that context it has been argued that an open borders policy would not threaten the population stability of the existing polity, so it might be argued that the possibility to exit the polity would not undermine the disposition to use the voice for, given the costs of exit, few would choose to use this option.

[22] Notice that this has not to be confounded with what has been said in the previous chapter concerning the right of exit. The reflections proposed in the previous chapter, indeed, apply in a scenario in which the existence of territorial boundaries is assumed. Here, granting a right of exit is necessary to grant individuals the possibility to move, a possibility that, for reasons illustrated in the previous chapter, has to be considered valuable. What we are discussing here, rather, is whether the fact that a world state would not have exit options is a sufficient reason to conclude that we should not desire it. In this case, exit is not considered as a possibility related to other kinds of possibilities (such as the possibility to move), but for its essential nature as a form of dissociation from one's own community. Thus, the point is that the argument from exit options cannot be used by referring to the "democratic function" of the possibility to dissociate. Arguing that, given what has just been said, the presence of

absence of exit options, other classical instruments of protection of individuals against authority – like for instance balance of powers, constitutional revision, the power of representative institutions or the independence of judicial power – would still continue to be available (Tamir, 2000; DuFord, 2017). And this contributes to making the argument from exit options opaque.[23]

Concerning the second point, it is true that the objection to exit options moved presupposes a demanding understanding of political membership. But this does not seem a sufficient reason to conclude that individuals should not have the possibility to consider a form of association in which exit options are restricted. For individuals are supposed to be free to decide whether to renounce their freedom. Therefore, if a restriction of freedom (that in this case would come as a consequence of the restriction of exit options) is accepted by the individuals interested, it is normatively legitimate. But then, in the same way as individuals may accept the restriction of their exit options in order to grant better degrees of democratic citizenship, they can choose as well to pursue a global polity that would entail the renunciation of the possibility to pursue exit options. This argument still leaves open the possibility that individuals would prefer a world of bounded communities, but it is sufficient to rebut the idea that they *should* prefer it over a global state scenario.

While what has been said seems sufficient to rebut the role of exit options assigned by the argument, a second possible way to use exit options as an argument against a global state exists. This consists in maintaining not that the right of exit is necessary to avoid the state becoming authoritarian, but that it is necessary as a remedial right *if* the state becomes authoritarian. For

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exit options does not seem a sufficient reason to think that boundaries should exist does not appear in contrast with saying that if, for whatever historical contingency, boundaries exist, it is desirable that the possibility to exit the polity is granted.

[23] Another possible way to use exit options to argue in defence of boundaries is maintaining that the possibility to leave, that would be lacking in a global polity, grants the voluntariness of individual membership in the polity, and then, according to some theoretical perspective, its political legitimacy. This argument, however, presupposes accepting a voluntarist conception of political legitimacy. Therefore, I shall postpone the treatment of this argument to the next chapter, where we will be concerned with the issue of legitimacy.

in this case, the possibility to use exit options would grant individuals a sort of right to leave. However, even this argument is not clear. Indeed, often authoritarian states deny their members the possibility of exit (Hirschman, 1993). Therefore, arguing that the existence of territorial boundaries would be preferable to a global state scenario because of the function that the right of exit can serve in case of authoritarian drifts is problematic. In other words, it is plausible to think that individuals in an authoritarian state would find themselves in the same condition of impossibility of exit, independently of whether the state configures as a global state or not. From the standpoint of this hypothetical argument, therefore, whether the state is global or not would not make much difference.

Of course, one might still argue that a plurality of sovereign states is desirable because, in case one of the existing states inclines to authoritarian drifts, the other states can recognize for members of the authoritarian state those rights that the latter state denies to them, among which the right of exit is included. The same, conversely, would not be possible in a global state scenario. However, this argument might reveal a contradiction, insofar as it seems to curiously lead us to embrace the idea of a global state that it is supposed to reject. This is because the mere recognition of the rights of individuals subject to an authoritarian state from other states composing the international system does not constitute an effective defence of those individuals while other states are not authorized to coercively intervene to protect them from their degenerated state. The problem, however, is that imagining that states may be authorized to coercively interfere in the actions of other states presupposes imagining the existence of another authority having the power to decide when states are authorized to do so. This authority, that unavoidably will be superordinated to the authority of states, will need to be impartial with respect to the particular interests of each single state and, in order to be effective, operative over the entire earth's surface. But then, it appears evident that the argument that allegedly should lead us to reject the idea of a global state, leads us on closer inspection to imagine the existence of a global public authority having the power to authorize the use of coercive power on a global scale. And this, if it is not the image of a global state *stricto sensu*, is something that comes very close to it.

Thus, it turns out that the effective defence of individuals persecuted by authoritarian states presupposes the existence of a superordinated global authority. Therefore, it follows that the fact that within an international system composed of a plurality of states individuals might count on the protection of other states in cases in which the state they belong to becomes authoritarian is problematic as an objection to the global state, for this protection can mean something only within a scheme that includes the presence of supra-national coercive authorities. As such, then, the objection turns out to be self-defeating. Of course, this point leads us circularly to the question we started from: what happens if these imagined supra-national authorities get corrupted and take an authoritarian form?

I think that the answer to this question is that in case public authority becomes authoritarian, be it global or not, all the institutional frameworks we might think within our spectrum – from the Westphalian international anarchy to the global state, with what we find in the middle – will prove insufficient and inadequate defences. This, in a way, follows from the simple fact that the effectiveness of public institutions as guarantors depends on the will to cooperate of those who are involved in them, while an authoritarian state is almost by definition the expression of brute coercive will which refuses cooperation. Therefore, it seems that both a global state system and a system of sovereign states would have analogous difficulties in remedying authoritarian degenerations: the first given the difficulty to remedy the hypothetical degeneration of the global authority as such; the second given the difficulty of states to intervene within the internal affairs of other states that the system entails. This seems to ground the conclusion that the capacity to pose remedies in case of authoritarian degenerations cannot really be considered a pro that a pluralist system of sovereign states presents against a global single-state system.

Even this second interpretation of the argument from exit options, then, seems to fail to prove that a world of bounded states would be necessarily more desirable than a global state. This authorizes the conclusion that this first argument in defence of boundaries fails, and permits us to move to the second argument we should consider. This contends that democracy presupposes the existence of an external other.

Does democracy need an external other?

Another classical argument against the global state has to do with the fact, already mentioned in the previous chapter, that democracy requires that it is possible to identify a demos, namely a group of subjects that share political power in an equal measure. We have seen that this requirement entails that the composition of the demos cannot be too fluid, for this would make it substantially impossible to determine to whom representatives have to be accountable. At the same time, however, according to some this condition requires the existence of boundaries dividing citizens from non-citizens, and then a division between those who compose the demos and an external other (Walzer, 2007b, pp. 189-193, Miller, 1989, pp. 67-68; Baubock, 2018b; Benhabib, 2006 [2004]). This point classically draws on an analogy between the processes of construction of individual and collective identity. In this perspective, the construction of identity is a dialectical process in which the subject revises the way in which s/he perceives him/herself on the basis of whether his/her identity is recognized by others (Taylor, 1994). It is clear that this makes the construction of personal identity a collective process that can take place only if other human beings are involved. Now, if the same logic is applied to the case of the identity of collective entities, this entails that a collective can be said to own an identity only if an external other exists that can recognize this identity.

However, this argument has been brilliantly rejected by Arash Abizadeh (2005). What Abizadeh argues is that the analogy between individual and collective identity is misleading, insofar as groups are, so to speak, aggregated objects composed of distinct individuals that are capable of accepting or refuting the definition of the collective identity proposed by other parts of the collectivity. That implies that the dialectical construction of identity, in the case of collectives, can be endogenous. By this, I mean that the dialectical process can take place between distinct subgroups of the collectivity, that are capable of deciding whether to recognize or not the identity that the collectivity gives to him/herself. And then, no external other is needed in order for the process of construction of the collective identity to

take place. This answer seems sufficient to reject the argument mentioned that, after all, appears rather weak.[24]

A more sophisticated way to defend a similar point, however, points to the fact that the existence of boundaries is necessary not to determine the identity of the demos, but for the possibility of politics to exist as a separate (specific) sphere of human agency (Baubock, 2018b). In this perspective, for example, my actions as an Italian citizen can be identified as belonging to the political sphere insofar as they involve some kind of relationship with other Italian citizens, as opposed to those spheres of action in which I relate with other human beings simply on the basis of common humanity. What this argument leads to is that in a world in which the entire humanity is united within the same polity, it would no longer be possible to distinguish between those interactions that qualify as political interactions and those representing interactions between human beings as such. For given the fact that in this scenario the classes of common humanity and common citizenship would coincide, the interactions with other subjects that count as political would end up collapsing into those interactions that count as simple interactions between human beings. And then political agency would no longer be identifiable as a specific sphere of human agency separated by other spheres.[25]

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[24] A similar argument might be offered on the basis of the idea that identity comes through difference. The intuitive reasoning behind this point can be explained by referring to an example: I can identify, say, the pen on my table because it is possible for me to determine where the pen ends, and other objects start. And this, in turn, is possible because the pen has physical limits that permit me to identify it by contrast. In the same way, some argue that the identity of the demos can be identified only by contrast with what is not part of the demos, and this requires the existence of boundaries. Abizadeh's objection seems to apply even to this way of defending boundaries. However, notice that a global community would still have boundaries – though not territorial – such as temporal boundaries. Even assuming that the argument successfully proves the necessity of the existence of boundaries, then, it does not seem to prove the necessity for the existence of territorial boundaries dividing human beings into distinct groups.

[25] This kind of reasoning is well exemplified, in an extreme form, by Schmitt's analysis of the difference between political and human equality surrounding his critique of the liberal understanding of parliamentarism. Indeed, Schmitt argues that one of the mistakes of liberalism is collapsing political equality into human equality, so that being equals on a political level turns out to coincide with being equals as human beings. From this, what

However, even this argument appears opaque. This is because it seems, so to say, that other kinds of boundaries may be used to distinguish the political sphere of human agency other than territorial boundaries. An obvious example is constituted by the boundaries between the private and public spheres. These permit to distinguish the interactions between individuals that count as political from those that do not even in the case of relationships between individuals belonging to the same political community. After all, the capacity to impose limits to the spheres of influence of political action on individual lives by delimiting the spheres in which politics cannot enter is what characterizes liberal-democratic communities, as testified to, for example, by Michael Walzer, who referred to this capacity of liberal-democratic communities as *the art of separation* (Walzer, 2007a).

What Walzer meant was the capacity of the liberal state to draw demarcations between different spheres of human life by limiting the capacity of the public authority to intervene and influence specific classes of human choices. The already mentioned case of the separation between private and public spheres constitutes an obvious example of this mechanism.[26] This separation, indeed,

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derives is a conception of democracy in which the right to political participation is not grounded on common political membership, but on common humanity. The natural result of this argumentative move is the ideal of 'a democracy of mankind' (Schmitt, 1988, p. 11), that might be considered corresponding to what here we are referring to as the ideal of a global democratic state. Conversely, Schmitt argues that democratic equality has to be intended, so to say, as a dominion-specific equality. In this perspective, only those who are included in a certain sub-class of human beings have to be considered equals, that in Schmitt's view must coincide with a culturally homogeneous group. The reason for that is exactly that this is necessary to preserve the specificity of politics as a sphere of human action. Indeed, politics is the sphere in which human beings face '[…] as citizens, governors or governed, allied or opponents' (Schmitt, 1988, p. 11). But all these categories have a meaning only if it is possible to distinguish what it means being a citizen and what being a non-citizen, and this requires the existence of citizens and non-citizens. In the absence of this distinction, it would no longer be possible to assign any specific meaning to the idea of 'acting as a citizen', so that the political sphere of action would be diluted in the general, and, according to Schmitt anonymous, category of human action. What would remain would be: '[…] an equality without the necessary correlate of inequality, and as a result conceptually and politically meaningless, an indifferent equality' (Schmitt, 1988, p.12).

[26] To be fair, this argumentation presupposes the existence of the distinction between a public and a private sphere. A distinction which, nonetheless, is contested by different authors

is a consequence of denying – or at least strongly limiting – to public authority the possibility to question specific classes of personal choices, such as choices related to sexual or familial lifestyles, or choices related to work and the economy. This limitation generates a specific sphere of human life that is distinct from the political sphere because of it being subtracted from the process of public negotiation characterizing the political sphere of action: nobody can publicly contest my choices concerning whether to engage in a sexual relation with another person, and this makes this a choice belonging to the private sphere of my life.

At the same time, we might add, the exercise of self-limitation made by the liberal state permits the isolation of the political sphere of human activity as

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among whom, most notably, are feminist scholars (Landes, 1984; Fraser, 1990; Rendall, 1999; Ryan, 2003). Indeed, feminist literature problematizes the distinction between the public and the private both in its normative desirability and in its descriptive accuracy. For, on the one hand, it is maintained that this distinction, while presenting itself as an instrument of emancipation for its capability to limit the sphere of intervention of public authority, turns out on closer inspection to be an instrument of oppression of women. This would be the case because the private, that is usually associated with the domestic, is traditionally understood by liberalism, that according to this reading finds its roots in a sexist culture, as the proper sphere of action of women. So it turns out that the real function of the distinction between the public and the private is to put women outside the realm of the political (Landes, 1984; Rendall, 1999). On the other hand, feminist scholars point out that the public and the private influence each other, for the public shapes personal life-styles and, at the same time, structural inequalities we find in the private – namely, the civil society – emerge in the public, constituting an obstacle for the possibility of dominated actors (such as women) to join the public life of their society (Fraser, 1990; Ryan, 2003). This theme is found in a rich literature that in this work I cannot fully address. What I think can be said, however, is that this literature, while criticising the distinction between the public and the private, makes use of it at least as a theoretical tool to diagnose the different ways in which women's domination takes place (which, according to what seems to be the message of this literature, takes different forms in the private/domestic/hidden and in the public/visible, forms of oppression which surely sustain each other but that remain nonetheless distinguishable). So that it seems that at least the less radical readings of this literature would lead to a call for the elimination of mechanisms of domination we find in the public and the private, rather than to an elimination of the distinction as a descriptively or normatively inadequate conceptual tool. This point seems to be corroborated by the fact that often these objections turn not into a dismissal of the distinction altogether, but into a re-interpretation of it that attempts to correct the rigidities that affect its earlier conceptualizations.

distinct from other spheres (familial, religious, economic etc.). In this vein, the political sphere is identified as the one in which other members of the polity are authorized to ask for justifications from the perspective of the common good for our choices or, alternatively, as the place in which other citizens are entitled to ask for a negotiation of the choices leading our conduct. What is more important for us is that this permits the identification of politics as a distinct sphere of action that nonetheless belongs to (or at least intersects with) more general classes of spheres of action that involve relationships with the same class of human beings. This proves that the sphere of political action can be separated, so to say, even remaining within the same polity – namely, within the same class of individuals – and then that no external other is necessary in order to identify politics as a distinct sphere of human agency. Even this second argument in defence of boundaries turns out to be fallacious. I now turn to consider the third argument in defence of boundaries, namely the argument from size.

Are small sizes more suited to democracy?

The last argument I shall consider derives the impossibility for a global polity to take a democratic form from the fact that it would be too big (Erez and Laborde, 2020, p. 197; Benhabib, 2006, pp. 176-177; Song, 2012, pp. 54-58; Laborde and Ronzoni, 2016, p. 286; Urbinati, 2007, pp. 38-45; Honohan, 2007 and 2009). This is clearly the most popular argument against the global state among republicans, and a version of it can be found even in classical republican literature (Kant, 2003 [1795], pp. 77-78; Rousseau, 2005 [1762], pp. 120-122). Therefore, the analysis of this argument will require more space. Non-nationalist republicans usually defend this perspective on the basis of the idea that, as the size of the polity increases, the incidence of citizens' participation in the construction of the general will becomes more indirect. This would imply that bigger dimensions lower citizen's sense of effectiveness in democratic participation so that they come to perceive their membership in the polity as less meaningful. This lowers their sense of loyalty and induces political apathy in them. The result would be a lowering in the degree and quality of citizens' political participation that would

reinforce the process of decline of democratic institutions. In sum, republicans worry that a global state could only be a de facto cold technocratic structure in which citizens have no voice and, as a consequence, lose the sense of their membership in the polity and fail to flourish in one of their most characteristically human properties, that of being part of a self-governing collective body. In this section, I address this argumentative strategy against the global state.

The idea that bigger size polities are less suited for democratic government can be supported on the basis of different reasons. Below I gather some of them:

1) First, regarding representative systems, facilitating democratic participation implies guaranteeing the representativeness of institutions. However, institutions become less representative as the size of the polity increases. This follows from an obvious mathematical fact: a representative institution composed of, say, five members in a polity comprising ten citizens, is more representative than one composed of five members where the total number of the citizens in the polity is twenty. In order to avoid deficits of representativeness, the size of representative institutions should increase proportionally to the size of the overall population. However, as, say, the size of a parliament increases, its debate becomes more and more costly, and more restrictions on participation in the debate are needed. This undermines the parliament's capacity to synthetize different positions in a final one capable of representing the general will, and, as a consequence, compromises the responsiveness of collective decisions (Dahl and Tufte, 1973, pp. 80–84).

2) Communicative interaction between citizens is classically identified as a core property of democratic systems, and an equal distribution of communicative power as a condition of democratic agency (Habermas, 2013 [1992], pp. 340–345). However, when the size of the polity increases, direct communicative interaction between citizens is more difficult (Dahl and Tufte, 1973, pp. 66–75). This does not immediately represent a democratic problem. But the lost capacity for direct communicative interaction determines the need for intermediary figures that indirectly put citizens in communication with one another. The presence of intermediary figures is also required to deal with the complexity arising from a bigger polity size, i.e. an increase in the number of

organized interest groups, which makes conflict of interests more frequent (Dahl and Tufte, 1973, pp. 35–40). As a consequence, there is a greater need for the administration of conflict to be professionalized, and intermediary figures fulfil this need. What is problematic, however, is that the communication between the intermediary figures – the leaders – and the rest of the community is asymmetrical. This means that leaders can communicate directly with citizens through mass communication technologies, but citizens cannot directly communicate with leaders (Dahl and Tufte, 1973, p. 87). This seems to imply that citizens lose communicative power to their leaders and, therefore, that the democratic requirement of equal distribution of communicative power is not met (Song, 2012).

3) The bigger the size of the polity (and the territory it occupies), the more abstract its administrative system: if the administrative system must be suitable to a large territorial area, it needs to be constructed without reference to specific subsections of the area. This implies that the issues at stake in the political debate become more complex as the size of the polity increases, and, as such, less accessible to citizens (Christiano, 2006, p. 104; Miller, 2010, p. 155).

These arguments raise serious concerns. However, they are not successful in justifying the necessity of boundaries. I maintain this point on the basis of three arguments. First, despite it being true that smaller polities are more suitable for direct political participation, the claim that any possibility to engage in more participatory forms of democratic agency is precluded in bigger polities is partially inaccurate. Indeed, there seem to be instruments of direct participation whose applicability does not directly depend on the size of the polity. One example is the instrument of the referendum (Stojanovic and Bonotti, 2020, pp. 605-606). The referendum as an instrument of democratic participation seems to be suitable for polities of every dimension. And although this is a descriptive hypothesis that needs to be tested, it might be hypothesized that a frequent use of the referendum as a form of political

participation can sensibly reinforce citizen's sense of effectiveness even in bigger polities.[27]

Second, an obvious concern is related to the fact that modern nation-states present all the aforementioned issues. This means that applying the democratic explanation of the function of territorial boundaries to the boundaries of present nation-states is problematic. In order to avoid the democratic deficits described in points 1–3, we should look at much smaller political units. For instance, municipalities. If we really want to argue that the function of territorial boundaries is to guarantee the existence of independent political units that are small enough to allow the occurrence of 'authentic' democratic participation, we should imagine these boundaries as borders of municipalities. Obviously, nothing logically precludes the adoption of this argumentative strategy, and a hypothetical supporter of this position might consistently defend the democratic interpretation of the function of boundaries in this way.

Nonetheless, this position would be weak because, as is well known, below a certain threshold, the system's capacity for self-determination decreases. Indeed, the polity's capacity for self-determination depends on its ability to independently deal with the issues that affect its members' interests. But the number of the matters that are under the system's control decreases proportionally to the decrease of the system's size (Dahl and Tufte, 1973, p. 13). This follows from the obvious fact that small units cannot exercise control over issues whose influence on their members' interests depends on the actions of a class of individuals whose perimeter overcomes that of the

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[27] To this point it might be objected that the participatory potential of referendums depends on the possibility to integrate them with the presence of a vibrant public sphere in which discursive interaction between the members of the polity, at least indirectly, takes place. A possibility that within a global state would be undermined by the presence of linguistic heterogeneity or by low levels of internal cohesion due to cultural diversity. However, in this case the argument against the global state would collapse into a culturalist argument, for the result would be that the obstacles to the realization of democracy in the global state would depend on the difficulty in granting what allegedly are its cultural preconditions. In this sense the objection does not apply to the discussion of the relation between size and democracy as such. Therefore, it should be redirected to culturalist considerations that will be discussed in the next section.

set of the polity's members. What this consideration seems to suggest, in other words, is that the republican version of the democratic interpretation of the function of boundaries is consistent only if we interpret it in a formulation whose defence would be highly costly.

The third argument is that bigger communities have not only democratic drawbacks, but also democratic benefits. On closer inspection, the very same properties of larger polities that may be viewed as democratic deficits can at the same time produce democratic advantages. For instance, as seen above, in larger polities conflicts of interests are more frequent, and this implies that the administration of conflict needs to be professionalized. But if, on the one hand, this causes an unequal distribution of communicative power between citizens and leaders, on the other hand, it implies that conflicts are less likely to induce hostility between the members of the polity. This is due to the fact that while in smaller units disagreement can easily lead to personal conflict, this does not happen in large associations, where conflict is anonymous. Therefore, in larger polities disagreement is not a threat to the cohesiveness of the community (Dahl and Tufte, 1973, pp. 91−94). Furthermore, the constant existence of distinct groups of interests in large polities lowers the likelihood of the formation of stable majoritarian factions exercising domination over minority groups (Dahl and Tufte, 1973, pp. 98−103; Koenig-Archibugi, 2010, pp. 529−530; Madison, 2020 [1788], p. 25).

This means that bigger polities can better satisfy the democratic requirement of protecting minorities' capacity for self-determination. From this point a corollary seems to follow concerning the fact that we should not be too hasty in claiming that in smaller polities communicative power is more equally distributed. Indeed, it is true that the distribution of communicative power between leaders and citizens is more equal in small communities, but it is also true that in bigger polities the communicative power is more equally shared between majoritarian and minoritarian factions. What this suggests is that even the relation between size and distribution of communicative power is more nuanced than supporters of smallness might think.

Both the fact that in larger polities conflict is less likely to take hostile forms and that minoritarian factions are better protected from domination seems to be supported by solid recent literature on the relation between size and

democracy (McDonnell, 2019, p. 6; Newton, 1982, pp. 200-202; Rysavy and Bernard, 2012, pp. 6-9; Karlsson, 2013, pp. 15-17; Gerring and Zarecky, 2011; Veenendaal, 2016, pp. 188-190; 2013, p. 247; 2018, p. 33). Furthermore, this literature adds further elements that seem to go to detriment of smallness: first, in small polities, like for instance micro-states, ideological difference plays a much more marginal role than in large units. Second, due to the fact that people have more opportunities for direct informal communicative interaction, the formal procedure that takes place at the institutional level has less importance.

These phenomena together determine that personalistic considerations are leading both in public debate and in citizens' private electoral choices (Veenendaal, 2013, pp. 251-253; 2018, pp. 34-35). This is not simply to repeat the already mentioned fact that in small polities political conflict leads to personal conflict. Rather, the point is that in small polities political disagreement focuses on candidates' personal characteristics, and these considerations shape citizens' electoral preferences. Furthermore, often citizens in small polities form their preferences on the basis of clienteles' calculations. These mechanisms seem to undermine the democratic requisite of taking in equal consideration every instance present in the debate, and to lower the quality of the debate. Therefore, they constitute a further element of doubt about the 'small is democratic' thesis. To be sure, this literature is primarily – though not exclusively – concerned with the relations between size and democracy in municipal units. However, it seems that the results we find in this literature can be cautiously used as indicators of the relation between size and democracy even at the state level.

These arguments lead us to conclude that the claim that democracy needs small sizes in order to exist is ill-grounded. At most, it can be argued that *different* forms of democracy are better suited to larger or smaller polities. For instance, big sizes may be more suited to less participatory, more anonymous, but more diversity-friendly forms of democracy, while small sizes are suited to more participatory and diversity-adverse types of democratic community. What is important to understand is that the virtuous properties we find in big size polities, like for instance higher degrees of

internal diversification, are characteristics as essential to democracy as citizen participation.

Indeed, the existence of disagreement is what makes democracy both necessary and possible. On the one hand, we need democracy because we disagree on what the collectivity should do and what justice requires. If we had the guarantee that all the members of the polity are perfectly like-minded, who should govern would become an irrelevant problem (Baubock, 2018b, p. 4). On the other hand, the existence of a plurality of groups of interests validates the choices that citizens are required to make. There would be no point in asking citizens for their choice without giving them a range of competitive alternatives. Therefore, the point is not only that in big sizes 'weaker forms of democracy' are still possible. Rather, the point is that different kinds of democracy are possible in bigger sizes, that are, so to say, more weakly democratic in some respects – for instance citizen participation – but more strongly democratic than smaller units in other respects, like for instance the capability to include in the public debate minority factions.

My argument against the 'small is democratic thesis' might be contested. Indeed, it might be argued that precisely the fact that already existing nation-states present some of the democratic deficits mentioned should lead us to think that these deficits would be even worse in a global republic (Song, 2012). According to this line of argument, the average size of nations might be viewed as a better compromise on the polity size able to mitigate both democratic problems related to largeness and smallness: nation-states, on average, are small enough to mitigate the problem of citizens' sense of alienation from the public life of the republic, but big enough to grant sufficient degrees of internal diversification and system capacity. However, this line of argument is not convincing. This is because the alternative we are considering to a world of bounded nation-states is not a global totally centralized system, but a global federal government. The government functions of this structure would reasonably be limited to those issues of common concern that can be democratically addressed only through global cooperation.

In this case bigger size would grant higher system capacity. For that reason, then, we should conclude that a global state would be able to offer a better,

though not perfect, degree of democratic control on these issues. At the same time, a federal system would be able to grant democratic authority to single local units on problems concerning only parts of the global polity, following the principle of subsidiarity. This would permit the existence of spaces suitable for those highly participatory forms of democracy that republicans desire. Thanks to its capability to create multiple levels of government, then, a world state would turn out to represent a better compromise between the necessities of democracy than the current nation-state: indeed, it would be able to grant the same level (if not more) of citizen involvement on issues on which the subunits have an authentic system capacity, and at the same time it would grant higher degrees of system capacity on the issues managed at the global level. The nation-state, conversely, would have less system capacity in the face of a level of citizen involvement that is increased only to marginal extents, if at all.[28]

The only dimension with respect to which a nation-state could be thought of as offering better democratic performances than a global federal state is

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[28] An alternative way of pursuing the 'not too large but not too small' argumentative strategy is to propose that the big city, namely the metropolis, becomes the main political unit. This would still configure as a defence of territorial boundaries, insofar as this proposal seems to point to a world composed of bounded city-states that are an alternative to the modern nation-state, but also to a global unit which comprehends all territorial areas of the world (Barber, 2013). Some authors, indeed, suggest that the 'not too large but not too small' thesis can apply to this kind of unit. Indeed, the argument goes, the metropolis is small enough to grant authentic political participation (Bensson and Martì, 2021, pp. 348-349; Barber and Means, 2016), and at the same time big enough to have system capacity on many issues. To prove this point, it is often mentioned that mayors of big cities have relevant influence on the solution of global problems, like for instance climate change (Barber, 2013, p. 6; Barber and Means, 2016; Angelo and Wacshmuth, 2020, pp. 2209-2212). This is so, thanks to the fact that mayors of big cities create numerous networks of cooperation with other cities and non-governmental organizations. This argument, however, is weak. I do not want to discuss whether big cities effectively have a system capacity comparable to that of nation-states or to the one a supra-national association would have. What seems problematic, however, is the 'not too large' side of the argument. Indeed, in big cities composed of millions of people it seems that political alienation of citizens would be a risk not significantly less present than it is in real or hypothetical bigger units, like national or supranational political units. Therefore, all that has been said of the nation-state seems to hold even for the hypothesis of a world of city-states.

related to the degree of internal plurality. Indeed, some might fear that a global federal state would present too high degrees of internal diversification. I am not referring to cultural diversity only, but also to higher degrees of diversity between opposed interests. Conversely, the nation-state would be more able to find a middle-way between the excessive homogeneity of small units and the excessive plurality of large ones.

With respect to this point, notice that the main reason why the nation state is able to contain the levels of internal diversification is the fact that it works on polity cohesiveness constructing a common public culture. Thus, what we should ask is whether similar processes of construction of we-feelings can be reproduced at the global level in order to facilitate the creation of the global political association we are imagining. The argument just mentioned relies on a sceptical view of this last point. In this sense, however, this argument does not constitute a democratic argument *stricto sensu*. For it does not aim to question how the functioning of democratic mechanisms would be modified in a global state due to its dimensions, but to inquire into one of the conditions on which these mechanisms can rely, namely cultural conditions, that per se do not directly depend on polity size. As such, then, this source of scepticism about the idea of a global state would collapse into a culturalist communitarian argument. Arguments of this sort will be addressed in the next section.

Communitarian arguments for territorial boundaries

The second argument in defence of territorial boundaries I want to consider is the communitarian argument. Here, what I mean by communitarianism is a conception of the relationship between the individual and the community according to which human beings have a need to belong to a human group that they can call their own. Nowadays, communitarianism takes the form of a nationalist argument according to which national communities are the best candidates to satisfy this need to belong. This kind of argument can be defended, first, on the basis of the instrumental benefits in terms of internal social cohesion, and then of the well-functioning of the democratic mechanism, determined by sharing a common national identity (Miller, 2009). This form of the argument is substantially analogous to the

instrumental argument for border controls considered in the previous chapter. Alternatively, communitarian arguments may point to the inherent benefits of membership in the specific kinds of groups that nations represent (Walzer, 2007c). Given that the first version of the argument has already been mentioned, in this section I will focus mainly on the second, pointing to the inherent benefits of collective identity. Nonetheless, the reflections I will propose later on in the section may be thought of to hold even for the instrumental version of the argument and, as we will see, different overlappings between the two kinds of argument are possible.

Communitarian arguments that are not grounded on instrumental perspectives usually point to the relevance of group membership for individual well-being (Margalit and Raz, 1990; Moore, 2009, pp. 394-397; Lenard and Moore, 2013; Tamir, 2019, p. 45; Taylor, 1994, pp. 31-35). What these arguments contend, indeed, is that the possibility to identify a community as one's own is necessary for individuals to fully express their nature as human beings. This is because any human community generates a set of values, practices and ways of life that influence the sensibility and the capacity to create orders of preferences of the members of the community, and then their capacity to make meaningful choices (Herder, 2020 [1773-1774], pp. 66-67, p. 123; Berlin, 2000, p. 503; 2013). That is because, first, existing forms of life shape the plurality of life options from which we can choose (Tamir, 1993; Kymlicka and Straehle, 1999). For example, I can decide whether I desire to become a physician, a footballer, or a financial counsellor because these are among the job options that are offered by the system of cooperation the community I live in represents. At the same time, I could not decide to become a miller. This proves that what makes possible the existence of a range of life options we can choose from is the existence of a community that, creating a form of life, generates these options.

In a second sense, the existence of community influences our capacity to choose, for this presupposes the existence of a pre-existing system of values through which we can assign specific meanings, if not to specific alternatives of action, at least to specific spheres of choice (Taylor, 1999). In this perspective, for instance, I can identify my choices concerning job options as a relevant sphere of choice because of the presence of a cultural background

in which, for whatever reason, a job is considered one of the most relevant sources of self-realization. This permits me to assign specific relevance to this sphere of choice and to distinguish it from irrelevant choices such as, say, what toothpaste I should use. In the absence of a community creating these cultural coordinates, according to communitarians, the only alternative would be a nihilistic world – where the word nihilistic has a negative connotation – in which every choice has, at least potentially, the same value and then, a priori, no particular value (Taylor, 1999). This, according to communitarians, would be a negative result, for it would frustrate the human need to share something with other individuals by making impossible the presence of a shared horizon of meaning and, at the same time, it would deprive the subject of the capacity to establish what – namely, what choice – matters and what does not. In this perspective, individuals would fail to express one of the capacities that more distinctively characterize their nature as human beings, namely the capacity to choose by assigning different meanings to different possible alternatives of action.

Furthermore, these scholars often maintain that group membership is a relevant source of individual self-esteem (Berlin, 2013). This point is usually derived by the already mentioned fact that human beings are social animals which construct their identity through a dialectical process with others (Taylor, 1994). The construction of personal identity, and then of one's own self-image, in this vein, is not a private matter. This dialectical process, however, requires the existence of a shared system of values and beliefs that is given by common group membership. For in the absence of this commonality, mutual understanding becomes impossible, and then this process of joint construction of personal identity cannot take place. In this perspective, an individual living in a group that s/he does not recognize as their own 'community of character' would face the frustration of being among persons who cannot understand him or her, and then who cannot recognize his or her identity, with a consequent lowering of individual self-esteem deriving from the lack of others' recognition that this condition would entail. The idea that group membership, as well as cultural commitments, play an important role in individuals' personal identity and self-image seems to be difficult to reject. What remains to be clarified, however, is why this point

would imply a defence of territorial boundaries. Here, once noted the already mentioned fact that communitarians identify in national communities the best candidates to satisfy the human need to belong, the ultimate argumentative passage is given by maintaining that nations require states in order to survive (Walzer, 2007b, pp. 215; Miller, 1995, chap. 7). This is because the construction of a post-national state, as a global state would be, would presuppose the construction of a post-national public culture which, in turn, would require relevant degrees of levelling of diversity between the national cultures of the collectives united in the post-national subject considered. This is because, otherwise, the global state would risk being fragmented between the plurality of sub-communities composing it. In this perspective, the problem is not that the construction of a global state with a global public culture would be impossible, but that it would not be desirable. This is because, though possible, the construction of a global state could come about only through accepting a significant reduction of the cultural plurality entailed by the existence of a variety of nationalist forms of life which, the argument goes, would be at least partially sacrificed for the purpose of constructing the global public culture.

A normatively problematic result, because the reduction of cultural plurality would end up in a reduction of the range of ways of life individuals can experiment with, for it would lack the plurality of cultural communities (namely, nations) that produce these options, and then a reduction of individual possibility of choice (Walzer, 1983; Song, 2012; Berlin, 2013). This would make the moral costs of constructing a global state superior to its benefits, and then its desirability dubious, independently of its feasibility. In this perspective, communitarians present a world of bounded nation-states as preferable over a global state scenario in the same way as a plural world composed of distinct forms of life, each offering different ranges of life options, is preferable to a homogenized world inhabited by a hegemonic form of life.[29]

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[29] This point is surprisingly well-summarized by a scholar who cannot be considered either communitarian nor nationalist, namely Rainer Baubock: 'A vision of a world without political boundaries is dystopian in the same way as a world in which all human beings share a comprehensive moral perspective or the same way of life' (Baubock, 2018b, p. 5).

As a prima facie source of perplexity about this argument, it should be noted that it is not clear that the existence of a plurality of national identities would be threatened by the existence of a global state. Indeed, it is certainly true that the construction of a global state would require the existence of a global public culture. But imagining that this would amount to suppressing any form of cultural diversity within the polity does not seem plausible. Conversely, it seems that the existence of a global public culture would be compatible with the presence of a plurality of distinct national cultures that, in this scenario, would take the role of sub-cultures of the global federal political unit (De Schutter and Tinnevelt, 2008; Kymlicka, 2006). To this point, it may be added that what has been said in the previous section gives us reasons to think that a global state could *better* protect cultural pluralism. This is because, as we have seen, in a global state majoritarian cultural groups would be less capable of exercising domination over minority groups. Thus, it is instructive to mention Yael Tamir's argument for the global state. From Tamir's liberal nationalist perspective, what makes a global state desirable is the fact that, if we have to guarantee the *equal* right to the self-determination of every national group, then we should acknowledge that a global state would be more apt for this purpose than a plurality of bounded states, insofar as it would be more apt to protect minority nationalisms (Tamir, 2000, p. 262).

This point can be further reinforced. Indeed, in the previous chapter we have seen that one of the limits of the liberal-nationalist project is, so to say, the fragility of the boundaries between liberal and non-liberal forms of national identity. Thus, it has been noted that stressing the separation between distinct nation-states can induce illiberal degenerations. To this point, it may be added that imagining national identities as subunits of a superordinated overarching unit, such as a global state, would reduce this risk. This is because in this scenario, distinct national communities might recognize other national groups as 'different ways to be part of the global polity', with a consequent reduction of the margin of risk for hostile feelings towards other national groups (Spinner-Halev and Theiss-Morse, 2003).

This suggests that constructing a global state would not necessarily lead to the suppression of the cultural specificity of distinct national communities.

This, after all, seems corroborated by the fact that actually existing states are not internally perfectly homogeneous monoliths, despite each expressing at least some sort of public culture. This, among other things, is one of the elements liberal nationalists praise about modernity. But if actually existing nation-states can express a public culture without stifling sub-national cultures, why wouldn't a global state?

To be fair, communitarians seem able to answer these sources of perplexity, by arguing that, differently from a hypothetical global state, nation-states can count on the presence of a we-feeling constructed over history which permits counterbalancing the internal plurality of the polity without suppressing it. The presence of collective identities of this sort is, as we have seen, the product of a mix of pre-existing spontaneous trends and a work of propaganda enacted by different agents (states, parties, media system etc.) along protracted periods of time. Now, the possibility that analogous processes take place on a global level cannot be strongly excluded. However, it seems reasonable to claim that the desirability of these processes would be dependent, for both instrumental and principled reasons, on their possibility to be led on a voluntary basis.

This seems to open up the space to argue that the construction of a global community would be desirable only as long as their hypothetical members desire it, and then that if existing particularistic communities do not desire to unite in post-national political associations, the enforcement of a global political system would not be desirable. In this perspective, the question would not be the desirability of a global state scenario per se, considered as a given state of things. Rather, the focus of the argument would shift onto the transition from a system of plural sovereign states to a global state. And in this vein, it might be argued that the existence of a global state would not be undesirable per se. It would be because of the strategies that would need to be employed to bring about the transition from a system of bounded states, taken as the starting point, to a global state scenario.

Indeed, given the fact that existing communities do not desire to unite, it seems likely that the construction of a global state would require the employment of illiberal means. This would make the project of a global state undesirable on a principled level, but also on a consequential one. On a

consequential level, indeed, the construction of the global state would be undesirable because the forceful annexation of specific communities might generate their resentment towards the global polity. Because of this resentment, forcefully annexed communities would transform into belligerent minorities which undermine the stability of the global polity. A similar argument, for instance, is defended by Richard Bellamy (2019).

This argument raises serious concerns. That is because, despite the already mentioned fact that collective identities are malleable, it seems that it is one thing to promote the existence of more porous collective identities capable of respecting each other and accepting some degrees of mobility, but quite another thing to think that the wide plurality of existing collective identities can be meshed into a single one capable of synthetizing them without, at the same time, stifling them. To this point, it must be added that no political community in history has come about as a consequence of a peaceful process, and this makes it difficult to imagine that the construction of a global state would be an exception to this trend. In this sense, what seems possible to argue is that the construction of a global state, combined with the construction of a global we-feeling, is not strictly speaking impossible, but it would likely require the employment of illiberal means. This may be taken by some as a sufficient reason to reject on prudential premises the desirability of a global state.

Notice, however, that in this case the instability of the global polity would not be a consequence of its internal diversity per se. Rather, the presence of an opposing will to its construction, with the consequent resentment toward the forceful annexation of the different subunits, would be responsible for the global state instability. So it seems that in this case the fact that the global state, and then the suppression of boundaries, is not desirable is a direct consequence of the fact that actually existing communities, representing the will of individuals composing them, do not desire it.

In this sense, the argument so presented seems to be closer to an argument for the *legitimacy* of territorial boundaries, according to which, to the extent to which people desire the existence of boundaries, it is both procedurally and instrumentally justified to give satisfaction to this desire; the existing communities would be acting legitimately in then preserving the existence of

these boundaries. As such, this argument seems to lead us to shift the focus of our analysis. What has been said so far, indeed, seems sufficient to conclude that there are no strong enough reasons to believe that a world of boundaries should be preferred. But it can still be argued that their existence is, if not desirable, at least legitimate.

Is the fact that existing communities desire to remain distinct polities a sufficient reason to conclude that boundaries should be accepted? Would existing communities be entitled to refuse annexation to a global polity? Another point to be raised is that, if the undesirability of a hypothetical global state has to be based on the legitimate desire of pre-existing collectives not to associate, then an analogous point should be accepted for these collectives themselves. This is because the same processes whose employment would be necessary to bring about the global state, and that allegedly makes it undesirable, have been employed to bring about existing collectives. Does this make their existence illegitimate? And if so, what agency should be accorded to these collective agents? What value should be assigned to their will? Answering these questions requires changing the vocabulary we have been using in this chapter and shifting toward the language of legitimacy. This will be the purpose of the next chapter, where, using what I consider the most relevant accounts of political legitimacy offered by the literature, I will try to determine whether the existence of territorial boundaries can be recognized as legitimate and, if so, on what conditions.

Conclusion

In this chapter we have inquired into the desirability of territorial boundaries. For this purpose, an ideal scenario has been constructed in which territorial boundaries do not exist, which has been characterized as a global state scenario, in order to determine whether the absence of territorial boundaries would entail the absence of some relevant social good. Two classes of argument in defence of boundaries have been considered. *First*, republican arguments, according to which the democratic credentials of a global state would be dubious. *Second*, communitarian arguments which, starting from the premise that group membership plays a pivotal role in individual well-being and self-esteem, conclude that the existence of territorial boundaries

would be desirable by arguing that national communities are the best candidates to satisfy the human need to belong, and that the survival of nations requires the existence of boundaries. Both arguments have been rejected. On the one hand, republican arguments have been rejected as relying on dubious descriptive hypotheses and/or problematic normative premises. Clearly, this does not mean that republican concerns are totally deprived of any foundation, but only that these concerns do not seem strong enough to conclude that a global state should necessarily be seen as a threat rather than as an opportunity. In this perspective, republican arguments against the hypothesis of a global state seem to excessively stress its risks while neglecting the potential reasons (such as an increased level of international peace, more global coordination, internal plurality, more proneness to deal virtuously with political conflict, and increased system capacity) why these risks might be considered worth being pursued.

This does not mean that the global state is about to come, nor, as some scholars suggest, that the coming of a global state in some indefinite future is unavoidable (Wendt, 2003; Carneiro, 2004). This, indeed, would amount to denying the centrality of human agency which every constructivist project must recognize (Shannon, 2005; Valentini, 2014, pp. 798-799). What the considerations offered here aim to suggest is simply that we can think about strategies to deal with the potential risks of a global state republicans are concerned with. This does not give any guarantee that these strategies would be successful, and then that the moral pros of a global state would be certainly superior to its cons. Therefore, the question of what, between a world of bounded states and a world state scenario, we should prefer, remains from a republican perspective substantially open. It seems nonetheless that the desirability of a global state from this theoretical perspective cannot be excluded.

On the other hand, communitarian arguments seem to work only to the extent to which the existence is assumed of a plurality of collectives opposing unification in a global political association. This assumption is not problematic per se. Nonetheless, it seems to determine that this class of argument works better as an argument for the legitimacy of boundaries, rather than for their desirability. Whether the attempt to defend boundaries on the

grounds of legitimacy succeeds requires the introduction of the theme of political legitimacy. This will be the purpose of the next chapter.

The legitimacy of territorial boundaries: a sceptical view

Introduction

In the previous chapter it has been argued that the existence of a plurality of territorially bounded polities is not necessarily preferable to a hypothetical world state scenario, for all the arguments traditionally offered against the possibility of a global state turn out to be problematic, or at least not definitive. This, however, does not completely rule out the possibility of imagining an ideal world as a world of bounded polities. Namely, while it is not possible to affirm that the existence of territorial boundaries is necessarily required by justice, the theoretical possibility exists for their existence to be at least legitimate. If it is possible to prove that the existence of territorial boundaries would be at least legitimate, this would permit us to justify the existence of some sort of co-citizen partiality. For if it is true, as mentioned in previous chapters, that the existence of co-citizen partiality is inherently related to the existence of distinct political units, then proving the legitimacy of boundaries would automatically entail proving the legitimacy of co-citizen partiality.

Therefore, the question we have to address is: is the existence of territorial boundaries legitimate? This is the aim of this chapter. Now, as to how territorial boundaries have been defined, it seems possible to claim that the function of territorial boundaries is to distinguish groups of people that are distinct from each other given the fact of their being subject to different overarching legal authorities. In this sense, then, questioning the legitimacy of territorial boundaries amounts to questioning the legitimacy of one's own membership in a given group. And since the kinds of groups identified by territorial boundaries are distinguished from each other by being subject to different sovereigns, this amounts to asking what makes one's own subjection to a specific sovereign rather than to another legitimate.

This conceptualization permits me to reconnect the question of this chapter to this more general one: is it possible to justify the legitimacy of the existence of specific legal authorities exercising sovereignty over specific classes of

human beings? Is it possible to justify the legitimacy of one's own subjection to a specific legal subject entailing the existence of a specific political community? This is a classical question in political theory. The aim of this chapter is inquiring into the legitimacy of territorial boundaries by dialoguing with what I consider the most significant theoretical perspectives offered by political theory to answer this question, from which, as I will show during the exposition, specific accounts of the legitimacy of territorial boundaries can be derived.

Thus, I think that, with many simplifications, the main accounts of political legitimacy present in the literature can be reduced to two macro-categories: functionalist accounts, according to which the legitimacy of a specific political authority is determined by the contribution it makes to the achievement of normatively desirable goals; and historical accounts, according to which the legitimacy of political authority depends on the nature of the process through which it came into existence.

To be fair, I am aware that other accounts of political legitimacy may exist. However, a complete consideration of each conception of legitimacy offered by political theory would require a dedicated work. Therefore, for the sake of brevity, I chose to restrict the focus of my inquiry to these two macro-categories. Nonetheless, if it is true, as claimed above, that most accounts of legitimacy can be de facto considered instantiations of one of these two categories, this choice proves only partially arbitrary. Of course, this does not deny the possibility that alternative conceptions of legitimacy are offered that cannot be reduced to the macro-categories I consider. In this sense, I set myself the goal to determine whether one of these two theoretical perspectives is capable of convincingly proving the legitimacy of specific political authorities and, relatedly, of territorial boundaries, without denying the possibility that other accounts that I do not consider here can invalidate the considerations I offer.

What I will argue is that both accounts of legitimacy fail to convincingly prove the legitimacy of specific political authorities. From this, I will derive my own theoretical perspective on political legitimacy, which coincides with the negative view according to which, given the state of the debate on the idea of legitimacy, we are not able to prove full political legitimacy for specific

political authorities. Further, this conclusion will ground a sceptical view concerning the possibility of legitimizing the existence of territorial boundaries. This is because, despite the fact that the accounts of political legitimacy being considered seem able to justify the existence of political authority generally speaking, they do not seem able to determine the exact boundaries within which specific legal authorities should be entitled to exercise sovereignty. So it turns out that, when it comes to specifying the composition of the polity, we notice that this will be unavoidably arbitrary.

In order to articulate this perspective, I start by considering, and rejecting, functionalist accounts of legitimacy. I shall do so by arguing that they seem to have implications that we would consider normatively problematic, such as the implication of benign colonization. Further, I will show that the analysis of these problematic implications seems to reveal the procedural nature of the liberal-democratic system of values. This will lead me to consider historical accounts of legitimacy. Thus, I will focus on the most classical historical account of legitimacy, namely the idea of legitimacy by consent, according to which individual membership in the polity must, in order to be legitimate, derive from consent.

Despite the idea of legitimacy by consent having an intuitive appeal, I will discard it insofar as it is too unrealistic. This is an old objection moved against the principle of consent. To support this objection I will try to prove that if we try to imagine a global order relying on a universal application of the principle of consent, we easily conclude that this idea of legitimacy is self-defeating. For, given the fact that not every individual in the world would consent to the same things, it is quite likely that the possibility of some giving their consent to the constitution of specific political authorities could be accepted only at the expense of accepting the denial of the same possibility for others. This implies that any application of the principle of consent would turn out to be asymmetrical, and this jeopardizes the theoretical credentials of the idea of legitimacy by consent. Once this reflection is concluded, my own negative perspective on the matter will emerge as the consequence of the absence of alternatives.

Clearly this conclusion will involve a sceptical view of the legitimacy of territorial boundaries. Thus, the problem will be to understand the

implications of the view I defend. Does this sceptical view of the legitimacy of boundaries entail that they should be removed? To this question, I will answer negatively. This is because my conclusion concerning the illegitimacy of territorial boundaries follows from a more general scepticism concerning the possibility of legitimizing any possible constitution of the polity. This would affect even the legitimacy of a hypothetical cosmopolitan community of human beings of the sort imagined in the previous chapter, and then implies that the hypothetical removal of boundaries for the constitution of this kind of community would not help us solve the problem.

Rather, my view entails that, given the presence of disagreement on the right composition of the polity – and the incapacity of our theoretical instruments to solve this disagreement by synthetizing it in one position defensible on a principled level – how the boundaries of the polity should be drawn can only be the object of a conflict between opposed groups taking place in history, with this implying that the existence of boundaries (or their non-existence) is an arbitrary product of historical contingency. Thus, I argue that, provided we are not able to completely remove arbitrariness and partiality in the composition of boundaries, we can at least mitigate them. And the solution I propose to mitigate this arbitrariness is, starting from the composition of the boundaries contingently given by history, to acknowledge to both insiders and outsiders the right to contest boundaries, as parties involved in the disagreement over the right composition of the polity. The fact that insiders have a right to contest the boundaries of their polity – and then to call for a revision of them – is certainly not a novelty. However, I shall argue that the same right should be extended to outsiders as well. The extension of this right to outsiders should de facto give way to the constitution of a transnational discursive space in which boundaries – their existence and composition – is an object of negotiation between insiders and outsiders. Notice, however, that for reasons that I will specify during the exposition, this conclusion is not to be meant as solving, on principled grounds, the conflict on the right composition of boundaries, but only to mitigate it.

Clearly, the way in which I address the issue of the (il-)legitimacy of territorial boundaries, and the following considerations concerning the right to contest them for both insiders and outsiders, will have significant

implications for the issue of the legitimacy of border controls, to which in the closure of this chapter I will briefly refer, but that I will discuss in more detail in the next chapter.

The chapter is divided into five sections. In the first section I discuss functionalist accounts of legitimacy. The second section offers a preliminary reflection on the inquiry into the idea of legitimacy by consent, which I discuss in the third section. In the fourth section I will present my view. Finally, a short conclusion follows.

Functionalist accounts of legitimacy

In order to address the issue of the legitimacy of territorial boundaries, I would like to offer a more general reflection concerning the legitimacy of political authority as such. What justifies this argumentative choice is the fact that, clearly, the existence of territorial boundaries presupposes the existence of a specific political authority, whose sphere of sovereignty is delimited by these boundaries. Given this point, it seems clear that the legitimacy of territorial boundaries is dependent on the legitimacy of the public authority whose sphere of sovereignty is identified by these boundaries. Indeed, if a specific public authority is declared illegitimate, then clearly their boundaries will be illegitimate as well. On the other hand, it seems that the legitimacy of a specific authority depends on the legitimacy of the boundaries delimiting its sphere of sovereignty. For inquiring into the legitimacy of a public authority amounts to inquiring into whether it is entitled to exercise sovereignty in the territorial area considered. So that refuting the legitimacy of boundaries identifying the sphere of sovereignty of a given authority seems to entail refuting the legitimacy of that authority as such. In the light of this premise, it seems that the question from which our inquiry has to start is the following: is the political legitimacy of specific public authorities possible? Is it possible to prove that specific legal subjects have a right to command specific classes of human beings – and on specific territorial areas – and not others?

Political theory offers a large variety of hypotheses to answer these questions. However, to my knowledge, most of the possible answers offered by modern political theory can be reduced to two macro-categories: on the one hand,

historical accounts, according to which the legitimacy of a certain political authority – and then of a certain polity whose composition is defined in a certain way – depends on the nature of the process through which that authority has come into existence (and then on its "history"); on the other hand, functionalist accounts, according to which the legitimacy of the authority depends, roughly, on the consequences its existence brings into the world. In this section I consider functionalist accounts and argue that they fail to provide satisfactory conceptualizations of legitimacy. Functionalist accounts do not constitute a unitary block, and distinct sub-categories can be identified within this macro-category. However, all specifications of them present enough similarities to justify treating them in pairs. So, I shall start by presenting what I consider the most influential conceptualizations of the functionalist account in order to explain what does not seem to work in them. The first way in which the functionalist account can be defended is by referring to the idea of beneficial consequences. According to beneficial consequences accounts, the main point is that what makes the existence of the state legitimate, and the existence of authority in general, is the fact that its existence brings beneficial consequences (Wellman, 1996). The origin of this traditional interpretation of legitimacy is usually identified in Hume's essay on the original contract (1978[1752]). Here Hume criticizes social contract theorists by rejecting the idea of the social contract as a theoretical fiction. After that, Hume argues that the existence of the polity is legitimate if its existence produces effects that we have reasons to consider valuable. For instance, along these lines of argument, we might contend that the state is legitimate because it grants a significantly increased level of peace or social security (Wellman, 1996, pp. 217). Alternatively, it might be argued that the existence of the state is legitimate insofar as, and to the extent to which, it is necessary in order to achieve some independently desirable goals of justice, such as liberty, democracy, equality and so on. (Buchanan, 2002, pp. 703-709; Pettit, 2010, pp. 145-147; Ypi, 2012, pp. 289-291; Hershovitz, 2011).

In contemporary political theory, one of the most prominent accounts of legitimacy based on the notion of beneficial consequences is defended by Joseph Raz. Raz's account, which he calls the *normal justification thesis*, contends, roughly, that the existence of authority is legitimate to the extent

that it compels us to do something we would have reasons to do independently of the authority's commands (Raz, 1986, pp. 53-57; 1994, pp. 361-364). Imagine, for instance, that the state to which I am subjected requires me to respect the private property of other subjects. In such a case, I would have both moral and pragmatic reasons to do what the state requires of me, for I have an interest in having my private property respected, hence I am morally bound to respect that of other people. And then the authority can legitimately force me to respect others' private property.

A second influential way to conceptualize the legitimacy of political authority in functionalist terms is by referring to the idea of hypothetical consent (Peter, 2017). Theories of hypothetical consent, as the term suggests, claim that the consent required for legitimacy should not be actual consent. Rather, the key for legitimacy is consent given by agents in specified hypothetical conditions (Rawls, 1971, p. 115; Pitkin, 1966, p. 39). For instance, a classical view in political theory maintains that the existence of an authority is legitimate if it were freely accepted in a hypothetical discursive situation composed of entirely rational individuals. This approach is classically instantiated by Rawls's thought experiment of the original position (Rawls, 1971, pp. 136-150).

While the way in which these accounts can justify the existence of the state generically is quite clear – the 'creation' of the state would bring about beneficial consequences because of which rational individuals would give their consent to it – it might be wondered how they can justify the existence of specific states exercising power on specific territorial areas and on specific groups of human beings (Simmons, 2013). For instance, provided that the exercise of power by some authority is justified by its instrumental benefits, what justifies specifically the power exercised on me by the Italian state? Ideally, functionalist accounts can provide an answer to this question. The answer would be that the exercise of power on me by the Italian state is legitimate to the extent to which it can be proved that it is the best candidate to grant the production of certain social goods in a certain territorial area of the world and the protection of these social goods for individuals residing in that territory.

This, in the terms of the two different accounts, would amount to saying, on the one hand, that the existence of the Italian state, and then of the Italian polity with its boundaries, brings some beneficial consequences that are functional to justice. On the other hand, in the terms of the hypothetical consent account, that given the benefits associated with its existence, rational individuals in a hypothetical discursive situation would give consent to creating a political community that unites a certain group of people residing in a certain (continuous) territorial area of the world under the authority of the Italian state. This approach, then, would give way to justify the legitimacy of territorial boundaries on an instrumental basis. Thus, for instance, it might be argued that the existence of territorial boundaries is justified by a principle of division of moral work according to which desirable moral goals are more likely to be achieved if human beings are divided into distinct (specific) groups and controlled by specific authorities on the basis of who is more likely to govern each distinct class of individuals in a functional way for the purposes of global justice (Goodin, 1988).

However, this conception of political legitimacy seems to have two problems. First, notice that, despite that in principle the functionalist account is able to indicate which composition of the polity has to be considered legitimate, given what has been said in the previous chapter, it might face some concrete difficulty in fulfilling this task. For, given what has been said in the previous chapter, it seems that we do not really know what would be more functional to the cause of justice between a global federalism and a plurality of specific sovereign states whose boundaries are composed in a certain way. What the previous chapter aimed to clarify, indeed, is that a global state might have the potential to bring about beneficial consequences as well as risks, and that the probabilities that the benefits and the risks of this hypothetical scenario would show up are not completely clear. This undermines both the views according to which a global state would clearly be undesirable – and then that the existence of territorial boundaries is desirable – and those according to which it would be clearly desirable. So that we have to conclude that the question concerning what is preferable between the two options mentioned is, given the present state of the debate, undecidable. Since what we are considering here are substantially justice-based accounts of legitimacy, the conclusion

concerning the undecidability of the desirability of territorial boundaries entails an analogous conclusion concerning their possible legitimacy (or the legitimacy of their absence).

Secondly, functionalist accounts of legitimacy seem problematic independently of their capacity to diagnose the legitimacy of territorial boundaries, for they seem to have suspect implications. Among these, for instance, there is the fact that functionalist accounts seem incapable of ruling out the legitimacy of what I shall call, following other scholars, *benign colonization* (Stiltz, 2011; 2019, pp. 90-93). Suppose, for instance, that I am the member of a certain polity, call it *A*. Suppose, furthermore, a border divides A from another polity, B. Now, imagine that things are much better in *B*. The political authorities of *B* are preferable to those of *A* in every possible sense: more efficient, more just and so on. Citizens of *B* are freer and happier than citizens of *A*. And there are good reasons to think that even citizens of *A* would increase the quality of their life, were they governed by the public authorities of *B*. Now, on the basis of this description, it seems that, were it the case that *B* decides to colonize *A*, the colonization would bring beneficial consequences for members of *A*.

Some might contest that this is not the case because the colonization would necessarily come through the use of violence, and this would imply that the moral costs are superior to the moral benefits. But this is not necessarily the case. We can stipulate, for instance, that the political leaders of *B* enact their colonization by using instruments of soft power such as manipulation and so on. Therefore, it seems reasonable to claim that things would be better for the members of *A* were they governed by *B*. This also seems to imply that the members of *A* should consent to be governed by *B,* were they rational. And then, it turns out that both accounts of legitimacy would legitimize the colonization. If the logical correlation between functionalist accounts of legitimacy and the impossibility of identifying the wrong of benign colonization is correct, then we should discard this way of conceptualizing political legitimacy.[30] At least to the extent to which it is accepted that the

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[30] To be fair, it must be noted that even some supporters of functionalist accounts of legitimacy recognize the inherent wrong of colonization, or of similar phenomena such as forceful annexation, on a procedural basis (Ypi, 2013; Morgan, 2020). How this fact should

possibility of states exercising benign colonization is something we desire to avoid.

Not all would accept this line of argument. Some, indeed, might use the relationship between functionalist accounts of legitimacy and benign colonization the other way around, arguing that what the example of benign colonization explains is that colonization is not always wrong after all, and that the reason why colonization is often wrong is just that usually, as a matter of fact, it is not benign (even if perhaps it pretends to be). According to this perspective, in other words, it might be argued that what makes real cases of colonization wrong is the fact that they often involved violence, exploitation, and other morally problematic elements, but a truly benign colonization would not be necessarily normatively problematic (Valentini, 2015). Some might go further arguing that even real cases of colonization, despite having morally problematic dimensions, proved at the same time to be, in the long run, a vehicle of progress in history, and that then it is not clear that the

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be read is not completely clear. On the one hand, it might be read as a sign of the fact that even supporters of functionalist accounts recognize the necessity of some sort of hybridization between functionalist and historical-procedural accounts of legitimacy. This would constitute a further corroboration of the point we are making here. Alternatively, it might be read as a sign of the fact that, despite supporters of functionalist accounts recognizing the existence of procedural duties, they do not consider them as necessary conditions for the legitimacy of political authority. For example, it might be argued that political communities join procedural rights – involving the right not to be colonized – only once they are recognized as legitimate, a recognition which may come on other grounds, such as functionalist ones. However, this interpretation of the wrong of colonization would be rather weak. For, if the reconstruction of functionalist accounts provided is correct, the basis for the legitimacy of specific authorities in this theoretical perspective is their functionality for justice. But this would imply that, if it is possible to prove that the colonizer would be more capable of granting justice than the colonized, then the existing political authority would lose its legitimacy –it not being the best candidate to grant justice – and, in this theoretical framework, its procedural rights with it, comprising the right not to be colonized as well. In this sense, it seems that this approach would be effectively capable of ruling out the possibility of colonization only in a very limited number of cases. This seems to confirm that those who want to argue that colonization is inherently wrong are compelled to abandon purely functionalist accounts, and to accept some sort of hybridization of them with other sources of political legitimacy.

balance between the moral pros and the moral cons of colonization is negative (Harari, 2017, pp. 373-375).

However, these counter-objections appear problematic. This is because it seems that if we accept this logic, we have to accept further dubious implications that perhaps we might want to avoid. After all, if the idealization involved in these kinds of thought experiments is accepted, we should admit that as well as colonization, even slavery or dictatorship can be benevolent and bring about positive consequences, at least in principle. Obviously this argument is logically possible, but it seems rather costly. This is because the fundamental premise on which modern liberal theory relies is that there are things that are not negotiable, or at least hardly negotiable. This seems to imply that almost no benefit can compensate for what we lose when we find ourselves in a condition of slavery, colonization, or subjection to a dictator (conditions that seem to be related to each other). Those who want to defend colonization on the basis of the aforementioned logic challenges this traditional view, and then owes the burden of proof.

What seems to emerge from this reflection, then, is that the liberal-democratic system of values has an inescapably procedural core. What we learn from the analysis of the case of benign colonization, indeed, is that the achievement of normatively desirable goals does not justify every process through which these may be brought about. The fact remains, in other words, that a given state of things would be considered illegitimate if its achievement involved a process that somehow has violated some relevant procedural principle, even if once it has come into existence it brings desirable consequences.

This, while permitting the rejection of functionalist accounts of legitimacy, suggests at the same time alternative ways to conceptualize them. What I shall argue, indeed, is that inquiring into the wrong of benign colonization permits highlighting a second condition for legitimacy, besides functionalist conditions, according to which the legitimacy of a specific public authority is dependent on its capability to get some sort of consent from those subjected to its power. This, in turn, leads to a sort of communitarian conception of legitimacy based on the notion of collective will (or collective self-determination) that, when declined in terms that are acceptable for liberal-democratic standards, converges with another conception of political

legitimacy: the idea of legitimacy by individual consent. In the next section I clarify this passage.

The wrong of colonization, collective self-determination, and the principle of individual consent

In the previous section we have seen that the case of benign colonization induces us to discard functionalist accounts of political legitimacy. Now, I want to argue that inquiring into the wrong of colonization helps us, at the same time, to identify what other conditions for political legitimacy should be added to functionalist ones. Thus, I think it is useful to start with a very broad conceptualization of the practice of colonization. And following what seems a standard understanding of what colonization is, it qualifies as the subjection of a group occupying a territorial area operated by a second group and the imposition by the latter group of a new system of rules on the former without its consent (Ypi, 2013; Moore, 2016; 2019; Miller, 2016; Valentini, 2015).

Now, on the basis of this definition, the non-consensual nature of the political relationship between the colonizer and the colonized stands out as a central property characterizing the practice of colonization. From this it seems possible to derive that, if it is accepted that colonization is always illegitimate, the legitimacy of public authority requires some sort of consent from those it governs. That is what leads some scholars to add, besides functionalist conditions, a condition of collective self-determination for the legitimacy of political authority. According to this view, besides the functionalist conditions, the legitimacy of political authority is determined by whether the subjects composing the polity recognize that polity as their own, the identity of the group on which authority exercises its power as salient, and then their membership in that group as normatively significant (Moore, 2016; 2019; Miller, 2016). Indeed, for similar reasons to those analysed in previous chapters, these scholars recognize the possibility of collectives constituting a form of life to autonomously express a freely chosen political order reflecting this identity as an inherent part of collective self-determination. This perspective, in turn, would offer an obvious way to conceptualize the legitimacy of territorial boundaries on an identity-based argument. As an

example of this approach, I shall consider the account of political legitimacy recently offered by Anna Stiltz.

What Stiltz contends is that individuals have a right to be governed by public institutions reflecting the collective identities they perceive as their own, so that membership in a given polity is justified to the extent to which it expresses a collective identity the members of the polity identify with (Stiltz, 2011; 2019). However, the reference to the idea of collective identity, if intended in substantive terms, is problematic, for it would lead us to a pre-political conception of political membership and collective identity, and then, to an illiberal image of the political community whose legitimacy seems to be ruled out by the fundamental normative premises on which this work relies. The reference to the idea of collective identity can have space within a liberal-democratic framework only if conceptualized in procedural terms. Stiltz acknowledges this point (2019). That is why she contends that what counts as collective identity is the identity of a group which is constructed, so to say, following the right procedure. And what the procedural principles offered by Stiltz require is that the identity of a collective emerges from a public process of will formation in which all the individual members of the group are respected as rational deliberators capable of agency.

Now, what I shall argue is that, in this perspective, the collective self-determination based account of legitimacy offered by Stiltz turns out to converge with another classical account of legitimacy, namely, the idea of legitimacy by *individual* consent. This is because the way in which Stiltz conceptualizes the notion of collective will, and the role it plays in the legitimacy of public authority, seems to presuppose the idea of individual consent on two levels. First, what has been said seems to imply that subjects can legitimately be said to recognize the political authority to which they are subjected only to the extent to which they expressly accept it. And this seems to require that, in some way, they explicitly give their consent to it. On a second level, the fact that individuals must be respected as deliberators capable of agency requires that even the initial entry of individuals into the polity is approved by them, for the capacity to decide whether to approve the constitution of a political community with a shared political project makes part of the agential capacities of individuals as rational deliberators.

To be fair, other accounts of political legitimacy based on the idea of collective self-determination exist in which a procedural understanding of the notion of collective identity and public will is substituted with a more substantive one (Walzer, 2007; Moore, 2016; Miller, 2016). What these perspectives contend is that the proceduralist understanding of the notion of collective self-determination, leading to the convergence with voluntarist accounts of legitimacy just illustrated, has to be avoided due to the risks involved in the idea of legitimacy by consent, such as, for instance, balkanization (Miller, 2016). According to these perspectives, the reference to the idea of a shared cultural or political identity as a condition of legitimacy distinguishes itself precisely because of the non-voluntary nature of collective identity.

This point, however, appears problematic even according to communitarian and liberal-nationalist parameters, for presenting national identities as necessarily not-chosen seems to be in contrast with the typical descriptions of national identity liberal nationalists offer in order to stress the difference of their position from non-liberal nationalism which, conversely, understands national identity in substantive, and then pre-political, terms. This approach, for instance, is exemplified by David Miller's words, according to which the existence of national identity "[…] depends on a shared belief that its members belong together, and a shared wish to continue their life" (Miller, 1995, ch. 1). But then, if the existence of the nation depends on the presence of a wish, we face the question of how to establish whether there is this wish. And thus, it seems that the most obvious way to verify whether a certain collective identity is salient for a given class of subjects avoiding paternalistic approaches – that would be problematic within a liberal-democratic framework – is asking people for their consent to subjection to the specific legal authority reflecting this identity.

In this sense, it seems possible to affirm that a truly liberal nationalism can qualify only as a procedural nationalism. This, in turn, permits me to reaffirm the convergence of collective self-determination based accounts of legitimacy and voluntarist ones. The only accounts of legitimacy based on collective self-determination capable of falsifying this point are those based on a

substantive pre-political understanding of collective will. Given their illiberal nature, however, these fall outside the interest of this work.

The point just made concerning the convergence of procedural accounts of collective self-determination and consent-based notions of legitimacy seems to authorize the conclusion that a public authority can be considered to be reflecting the identity of the collective over which it governs only to the extent to which it is possible to claim that the individuals composing the collective express, in some way, their identification with the authority considered. And this seems possible only when individuals express their consent to subjection to the authority. Should we conclude that the legitimacy of political authority depends on individual consent to it? Addressing this question will be the aim of the next section.

Legitimacy by consent?

After having discarded functionalist conceptualizations of the idea of legitimacy, in this section I turn to consider the idea of legitimacy by consent. Differently from accounts previously analysed, this idea of legitimacy identifies the source of legitimacy not in hypothetical consent or in beneficial consequences. The basic idea, rather, is that the existence of political authority is legitimate if actual flesh and blood individuals consent to it. To be sure, few would be disposed to maintain that consent is all that is needed for authority to be legitimate. For instance, we would not subscribe to the idea that consent given to clearly unjust institutions makes them legitimate. Nobody would think so of the institutions of Nazi Germany. At the same time, large agreement exists on the idea that there are duties so basic that their enforcement does not require consent in order to be legitimate (Estlund, 2008; Raz, 1986; Valentini, 2015; Reinikainen, 2019; Locke, 2010 [1689]; Pitkin, 1965). This is the case, for instance, with the duty to accept at least some sort of political cooperation (which does not necessarily entail political membership in the same polity) with other human beings in order to grant basic moral benefits, and of the duty to accept political membership at least in one polity (which does not entail the duty to accept political membership with every individual in the world).

Nonetheless, supporters of the idea of legitimacy by consent will want to argue that, notwithstanding these points, consent plays a role for the legitimacy of political authority, at least as long as it is accepted that it is possible to imagine different alternative (hypothetical) political authorities that, once having come into existence, would be capable of promoting basic justice. What these scholars will maintain, indeed, is that provided that the existence of some sort of political authority does not require consent, this does not immediately legitimize the existence of specific authorities. Which authority, among a range of possible alternatives that satisfy minimal requirements of justice, comes into existence should be determined by consent. For example, despite the fact that the achievement of minimal goals of justice requires the existence of some sort of state, it does not require specifically the existence of the Italian state. Since it is possible to imagine a world with decent levels of justice in which Italy as a state does not exist, the existence of Italy is legitimate to the extent to which: 1) the Italian state is not clearly unjust (namely, its existence is not detrimental to the achievement of justice); 2) individuals give their consent to its existence. This passages generate a view of legitimacy according to which, given a *specific* legal authority L, the existence of L is legitimate if and only if it holds that

1) L is committed to the respect of basic principles of justice. This condition demands that the legal authority must accept the duty to respect and protect basic human rights, among which the right to be governed according to democratic rules can be included.

2) The existence of L is based on individual consent to it.

Since subjection to a common legal authority is what makes individuals part of the same political community, this conception of legitimacy can be translated into an idea of the legitimacy of the polity – and then of the legitimacy of boundaries – according to which the legitimacy of the existence of a given political community C, with a specific composition of members, is to be reached in individual consent to it. What needs to be stressed is that, in this view, the fact that individuals consent to membership in the polity is not per se sufficient for its legitimacy. For this would have the problematic implication that, for instance, an autocratic government, to which eventually individuals consent, would be legitimate. The idea of legitimacy by consent,

rather, requires that individual consent constitutes *the basis on which the existence of the community relies*. What this means is that the existence of the polity must be causally determined by individuals' consent to it. This seems to be possible only to the extent to which individual consent is a necessary condition for the existence of the polity. So that from this analysis we can derive the following conception of the legitimacy of the polity:

Given a certain community C, individual consent to the existence of *C* must be a necessary condition for the existence of *C* in order for *C* to be legitimate.

This conception of the legitimacy of the polity is a classical one. As is well-known, it is associated with the work of Locke (2010[1689], ch. 8) and, subsequently, to his libertarian interpreters (Nozick, 1974, p. 316; Steiner, 2005, p. 32). Nonetheless, the consent the principle of consent gets is not limited to this class of scholars. Despite libertarians being usually considered the most representative defenders of the principle of consent, similar ideas can be found in republican and democratic literature as well (Rousseau, 2005 [1762], pp. 64-65; Habermas, 2001, p. 772). Further, the idea of legitimacy by consent, or close variants of it, is accepted even by some contemporary scholars (Kukathas, 2003; Levitov, 2018; Greene, 2016; Enoch, 2017; Estlund, 2008; Reinikainen, 2019, pp. 371-373; Abizadeh, 2008 and 2012; Nasstrom, 2007; Angell and Huseby, 2020; Owen, 2012). In this sense, the principle of consent seems to constitute a common ground on which authors with different normative inclinations meet each other. This point is not that surprising after all. Indeed, the idea of legitimacy by consent seems to be somewhat implicit in the metaphor of the social contract.

Nonetheless, this idea of legitimacy appears on closer inspection problematic. Many scholars reject the idea of legitimacy by consent, for different reasons. Some of them, for instance, seem to think that there is a tension between the idea of consent and justice, and that qualified forms of the principle of consent, such as the one presented, run the risk of being an unfortunate attempt to combine different criteria of legitimacy that respond to distinct logics. In this vein, for instance, it has been argued that what I referred to as the first condition for the legitimacy of the polity makes the second condition, in which the principle of consent is expressed, superfluous (Pitkin, 1965; Raz, 1986; 1994).

There is, however, another extremely popular, and perhaps more intuitive, objection to the idea of legitimacy by consent on which I shall focus in this context, for its elaboration will be useful for the purpose of this chapter. This has to do with the fact that the principle of consent is unrealistic. This is because, as a matter of fact, political communities do not come about as a consequence of individual consent. This point, as we have seen in the previous section, had been famously made by Hume, who argues that substantially every political community in human history is a product of usurpation and conquest (Hume, 1978). Many scholars followed Hume on this point (Christiano, 2020; Valentini, 2015; Bellamy, 2019; Buchanan, 2002; Wellman, 1996; Fried, 2003; Simmons, 1976; 2001; Pettit, 2010; Peter, 2017; Pitkin, 1965). And it seems that the fact that polities are not a product of individual consent is further corroborated by previously mentioned studies on the genealogy of nations, that seem to constitute a concrete example of political communities that, rather than being the product of the consent of actual members, are a product of a project of unification led by elites.

Usually, supporters of the principle of consent try to refrain from this critique by finding some surrogate for actual explicit consent. And thus, a common strategy is arguing that, if the idea of the polity as a consequence of explicit consent is an untenable idealization, it is still possible to find a source of legitimacy in *tacit* consent. This is, for instance, the strategy employed by Locke. By tacit consent is meant a consent given to the constitution of the polity that is not expressly communicated, but that is implicitly communicated through the omission of an action. For instance, a sign of tacit consent to the existence of the polity can be interpreted in the fact that individuals do not refuse the benefits accruing from membership in it.

After all, in our everyday life, we benefit from advantages that are the product of the action of the state. We use public streets constructed by the state, we take advantage of the public health services and of public instruction, we are protected for our social security by systems of prevention of crime created by the state. The fact that we do not explicitly refuse these benefits can be interpreted as a sign of the fact that we accept them. But since these benefits are correlated to membership in the polity, our implicit acceptance of these benefits can be interpreted as a sign of the fact that we implicitly accept

political membership in our polity, with the burdens this acceptance entails. In this vein, the principle of consent may be thought to come close to the so-called idea of legitimacy as *fairness* (Peter, 2017). According to this view, the legitimacy of subjection to public authority derives from the fact that, if we accept the benefits of political membership, we must accept, as a matter of fairness, its costs.

Notice, however, that this argument can work only if it is the case that members of the polity have an effective possibility to refuse membership's benefits. For it would appear clearly unfair to impose on subjects the acceptance of some benefits and then arguing that this acceptance forces them to accept costs. What we have to ask, then, is whether individuals have the possibility to refuse the benefits of membership if they so desire. Thus, supporters of the principle of consent contend that in fact there is this possibility, for individuals can always decide to exit the polity they belong to. In this case, by exit is meant the action of interrupting one's relation of cooperation with the members of the polity (Hirschman, 2017 [1970]; 1993; Kukathas, 2003). I can exit, for instance, by stopping complying with the common rules of the polity, or by refusing to accept the benefits of membership. Nonetheless, given the territorial nature of political communities, pursuing these courses of action is de facto possible only by exiting the territorial area in which the state considered exercises sovereignty. As long as I reside in the territory considered, indeed, I will be forced at least to some extent to comply with the common rules of the polity. For instance, I will be subject to its penal laws. At the same time, I will be forced to accept even some of the benefits of social cooperation. An obvious example is given by the fact that some health treatments, that arguably may be considered benefits of political membership, are mandatory.

To this point it must be added that, as a matter of fact, the entire earth's surface is covered by states. There is no terra nullius in the world (with few exceptions). Clearly, this is only contingently true. Nonetheless, it seems a fact difficult to reverse, that even an ideal theory of political legitimacy should take into account. Confronted with this point, it seems that individuals can exercise exit options only to the extent to which two conditions are satisfied:

1) The plurality of states inhabiting the earth is not substituted by a single global state occupying the entire planet (this would make the use of exit options physically impossible).

2) At least some state is willing to accept hypothetical newcomers from other states.

Now, these two conditions would make the idea of legitimacy by consent self-defeating, in two senses. *First*, the satisfaction of condition (1) requires that the possibility to consider political unification in a single global polity is precluded, for this would undermine the possibility of exit options for hypothetical future individuals. This means that, should the political will to unify into a single global community exist, it could not be satisfied. This, however, would imply that individuals would be forced to accept membership in some particularistic community, instead of membership in a global one, even in the hypothetical case in which they prefer the latter. This would mean that their membership in these particularistic communities is not ratified by consent to it.[31]

Second, the satisfaction of condition (2) would require that at least some state is forced to accept new members seeking to exit from their actual polity. This would make political association with these subjects involuntary and then, according to the account considered, not legitimate. What this seems to prove is that, following the principle of consent, we come to the paradoxical conclusion that, on the one hand, the voluntariness of political membership requires that the existence of exit options is granted to individuals. On the other hand, granting exit options for some requires that the possibility to refuse association is denied to others, with this undermining the voluntary nature of specific political associations, and then their legitimacy.

In the light of this analysis, it seems that we can conclude that the idea of legitimacy by consent is untenable. Since the main alternative to consent-

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[31] Some might object that the enforcement of a global state, by entailing the denial of exit options for its members, would violate basic principles of justice, and then this possibility would be ruled out by the first condition of legitimacy spelled out above. In this sense, denying individuals the possibility to consider political association in a global state would not violate the idea of legitimacy considered. However, the objection works only by assuming that the guarantee of the right of exit is a condition for basic justice of the polity considered, an assumption that I consider problematic, as may be understood from what has been said in the previous chapter concerning the right of exit.

based accounts of legitimacy, namely, functionalist accounts, has already been discarded, what seems to emerge is that we lack an account capable to convincingly prove the legitimacy of political authority. This, in turn, seems to imply that full legitimacy is not an option. Nonetheless, I shall propose a partial way out of the problem of political legitimacy. Thus, notice that, from what has been said, it seems that what makes the idea of legitimacy by consent untenable is the fact that its universal application would be self-defeating. For, given the presence of a plurality of bounded political authorities, individuals subjected to them can be said to consent to their existence and composition only if the same possibility is denied to individuals subjected to other legal subjects.

The only scenario in which this conclusion can be avoided is the one in which every individual in the world agrees on what they should consent to. In this case obviously there would not be the possibility of a conflict between the wills of distinct individuals. And this would permit the universal application of the principle of consent. The satisfaction of this condition, however, is so unlikely that it seems to be an excessive idealization even for an ideal-theoretical framework. Furthermore, the problem of the legitimacy of the constitution of the polity takes place in a context within which how its boundaries should be drawn is the object of disagreement. If we all agree on the point, there would be no need to address the question. In this sense, saying that the principle of consent can successfully help us to deal with the matter, just imagining a scenario of general agreement demonstrates its conceptual, and not only factual, inadequacy. What emerges, indeed, is that the principle of consent can solve the problem only in a scenario in which some conditions would be satisfied that would imply the absence of the problem. In other words, the principle of consent can solve the problem only if the problem is already solved by the spontaneous choices of human beings.

What we learn from this point is that we should locate our reflection within a context in which the right constitution of the polity, and then the right composition of boundaries, is a contested matter. And I shall argue that it is in the notion of contestation that we should look for a partial way out of the defect of legitimacy that the analysis conducted so far seems to signal. In the next section I articulate this position.

From consent to contestation

Before going on, it may be useful to briefly summarize the argument as so far conducted in this chapter. The first section opened with the question concerning whether it is possible to justify the existence of specific legal subjects having the power to command on specific territorial areas of the world and, then, on specific classes of human beings. Then, two hypotheses were considered as answers. The first, which we labelled the functionalist answer, would contend that this is possible if it is possible to prove that the existence of those specific authorities is functional to the achievement of justice. This answer, nonetheless, was rejected as being in conflict with the fundamental value of self-determination. The second answer, the historical – or, alternatively, procedural – answer, would claim that the existence of these legal subjects is legitimate to the extent that it can be considered the consequence of individuals subject to these legal authorities giving their consent to their subjection to them. This answer, nonetheless, was rejected because the fact that political power gains the consent from those over which it governs does not only seem practically unfeasible, but also and more importantly conceptually problematic.

By hypothesis, the accounts of political legitimacy providing these two answers constitute the two most common answers to the issue offered by modern political theory. What seems possible to derive from what has been said is that both accounts are not able to satisfactorily justify the legitimacy of political authority. From this, then, it follows that, until an alternative perspective on the legitimacy of specific public authorities is provided, we lack a fully convincing reason to believe in political legitimacy. And since I do not see an alternative to functionalist and historical accounts of legitimacy, the argument seems to lead us to substantial scepticism about the notion. Now, remember that we came to the issue of political legitimacy for the purpose of inquiring into the legitimacy of territorial boundaries. Therefore, if the aforementioned sceptical conclusion concerning the legitimacy of political authority is accepted, then it seems that an analogous conclusion should be accepted concerning the legitimacy of territorial boundaries.

Given these premises, it seems hard to reject the conclusion that, until a satisfactory notion of the legitimacy of boundaries is provided, the existence of specific political authorities, with a specific composition of boundaries, can only be a product of conflict between distinct groups of interests taking place in history, with this determining a defect of legitimacy of their existence. [32] Given this, one might be tempted to infer that, given the illegitimacy of boundaries, their suppression would solve the problem. This would lead to the idea of a borderless cosmopolitan community of human beings of the sort imagined in the previous chapter.[33]

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[32] Some scholars try to restore the legitimacy of territorial boundaries by arguing that, despite being the original product of historical contingency, once come into existence boundaries acquire normative relevance, and this legitimizes their existence. Thus, an example is given in the already mentioned work by Anna Stiltz (2019), Another possible example is Rainer Baubock's idea of stakeholder citizenship (2018). Indeed, Baubock argues that what justifies the existence of specific boundaries is the fact that, despite originally determined by the arbitrariness of history, they contribute to constitute specific systems of cooperation because of which a special condition of reciprocal interdependence between those who are included in these systems comes into existence. This, in Baubock's view, determines that the existence of those specific boundaries, notwithstanding their arbitrary origin, creates a value that legitimizes their existence. However, these theoretical perspectives are problematic. This is because the existence of boundaries does not affect only the lives of insiders, but also those of outsiders. Indeed, the existence of boundaries entails that outsiders are excluded from the possibility to pursue specific social goods, namely, social goods produced by specific systems of cooperation. Now, on the basis of what has been said, this exclusion is at least initially determined by an historical contingency, and the fact that insiders constructed, after time, boundaries against polities whose boundaries have been initially so determined does not seem to reduce their arbitrariness in the eyes of outsiders.

[33] Alternatively, it might lead to the more radical anarchist view that territorial boundaries should not exist because political authority as such should not (Fiala, 2021). This would amount to proposing anarchism as the positive ideal of a stateless world (Wolff, 1999 [1970]), that is distinct from anarchism meant as a purely negative attitude of scepticism about the possibility of justifyinf the existence of the state, that is offered by some scholars as a weakly anarchist view (Simmons, 2009). The anarchist ideal meant as a positive ideal, however, would face big difficulties. This is due to the fact that anarchism underestimates the presence of conflict, namely the presence of divergence of interests between different actors with incompatible desires that can be solved only through one imposing their interests on the others (Burelli, 2020). Anarchism can only work starting from the assumption that this

However, the constitution of a territorially unbounded polity will not help solve the problem we are dealing with. Indeed, notice that our conclusion concerning the arbitrariness of territorial boundaries follows from a more general sceptical consideration concerning the arbitrariness of any possible specific political community. A global community would count as an instantiation – among the many possible – of a specific polity. Therefore, it seems that all the considerations made about the illegitimacy of political authority would apply to the case of a global authority as well. Even in this case, indeed, we should accept that the existence of this authority would not be legitimized by the functional benefits it might bring about for the purposes of justice. At the same time, it seems plausible that its existence would be brought about by the action of specific groups of human beings, and since the constitution of any polity in history did not come through a voluntary process, it seems difficult to imagine that the global polity imagined would make an exception to this trend.[34]

So, we conclude that the classical accounts of legitimacy offered by political theory are not able to legitimize either the existence of territorial boundaries, or their non-existence. Confronted with this result, I propose another perspective on the normative status of territorial boundaries, which somehow is implicit in what has been said so far. What I want to argue is that the existence of territorial boundaries – whether they should exist and, if so, how they should be composed – is an essentially contested issue. What I mean by

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condition of conflict is not in place. However, this seems to require an idealization too onerous, that would lead us to a scenario that is too far off from our one. In this sense, anarchism seems to be an ideal that is not fit for human beings as we know them. Furthermore, the aforementioned condition of conflict is what makes the existence of politics necessary. As such, then, anarchism seems to work only in a scenario in which politics is superfluous. This does not make anarchism simply an unfeasible ideal, but something that cannot be called a political ideal at all.

[34] Should this point not sound convincing, it must be noted that, in any case, a cosmopolitan community would be almost by definition a non-voluntary association. Indeed, even if we imagine a scenario in which the global polity comes about through voluntary consent, we should anyway admit that membership in the global polity is not voluntary for members of future generations, given the non-voluntary nature of birth and the fact, mentioned in the previous section, that a global polity would not offer exit options for individuals.

this is that the matter is subject to disagreement between different but equally partial perspectives promoted by distinct groups. And what has been said so far suggests that the existing theoretical perspectives on the matter are not able to address this disagreement. Namely, they are not able to fully convincingly indicate on principled grounds one among these different views as the more legitimate and then to synthetize the disagreement.

Given this result, it seems that the best we can do is to think of ways to channel this disagreement. Namely, to think about channels giving the possibility to express this conflict without the ambition to offer a definitive solution to it. And thus, I suggest that, starting with the composition of boundaries that is contingently given by history in any given time, we recognize that both insiders and outsiders – where who is the outsider and who is the insider clearly depends on which boundaries we are considering – have the possibility to contest them, as parties involved in the disagreement on the right composition of boundaries.

The fact that insiders have a right to contest boundaries – namely, the boundaries of the polity they belong to – does not seem such a contested point. Rather, it seems to be recognized as a standard right. For instance, I am supposed to have, as an Italian citizen, a right to call for a revision of the composition of the Italian community. I can do that, on an individual level, by renegotiating my membership in the polity. Indeed, I can decide to give up my status of Italian citizen – for instance by using exit options (or trying to do so) – and, in so doing, determine a change in the composition of the Italian polity. But I can take part in a process of revision of the boundaries of Italy even within a collective process. This, for instance, would be the case if I took part in a political project of European unification within a European federalist party. This would count as a form of revision of boundaries in an integrative way, for it would configure as a dilution of existing European sovereign states in a single one through the suppression of the internal boundaries of Europe. A more controversial way to contest boundaries within a collective process is the case of secession. Thus, for instance, some would contend that I am entitled at least to negotiate secession with the rest of the polity in conjunction with a subgroup of it, if I so desire (Reinikainen, 2019; Angell and Huseby, 2020). In this case, the contestation of boundaries would

have a divisive function. Namely, it would have the aim to create new boundaries in order to fragment an existing political community into two (or more) distinct associations. All these cases, insofar as they involve some sort of revision of the boundaries of a polity, can be conceptualized as cases of contestation of the boundaries of the polity considered.

At the same time, I argue that an analogous right to call for a revision of territorial boundaries should be acknowledged for outsiders as well. Extending this right to contestation to outsiders would de facto determine the constitution of a transnational discursive situation in which the existence and composition of territorial boundaries comes to be an object of negotiation between insiders and outsiders. Some might be tempted to read this passage as the proposal of a third perspective on the legitimacy of territorial boundaries – and with them of specific public authorities – according to which a specific composition of boundaries and the existence of specific public authorities related to them is legitimate to the extent to which it gets the approval from the process of public negotiation of the existence of boundaries which I prescribe between insiders and outsiders.

This, however, would be a mistake. This is because the existence of this transnational discursive situation would require in itself to be legitimized in some way. Here, however, we would find the same difficulties preventing us to infer the legitimacy of the existence of boundaries or, alternatively, of their non-existence. Notice, furthermore, that the conflict on boundaries does not only pertain to how boundaries should be drawn, but also who should have the power to construct and re-construct them. This is evident if we think about the paradigm of national sovereignty, which arguably may be considered one of the parties that nowadays are contingently involved in the conflict we are dealing with.

Indeed, the idea of national community includes the fact that *only* members of the national community are recognized as having the authority to ask for a revision of the composition of the polity and of its boundaries. The perspective I offer on the matter is clearly non-neutral with respect to this theoretical perspective. And the already mentioned fact that even the perspective I offer is not fully able to legitimize itself, combined with this non-neutrality, makes this perspective something more similar to an

imperfect mediating solution rather than a theoretical perspective fully acceptable on principled grounds.

Notwithstanding this point, the solution I offer seems to have the merit of being capable of reducing the degree of conflict involved in the matter that, given what has been said, seems to be to some extent unavoidable. This is because, provided that our conceptual instruments do not permit us to establish an order of priorities between different perspectives on the existence of territorial boundaries, allowing that the composition of boundaries is open to negotiation between insiders and outsiders permits all possible views on the matter to be expressed within a discursive practice in which any of these views has its own fair chance to succeed.

Notice, furthermore, that this negotiation is not meant to mediate exclusively on different understandings of the composition of boundaries, but also on the distribution of decisional power on the matter. What I mean by this is that the transnational discursive space imagined has to be understood as also having the function to reflexively problematize its own existence which, as may be understood from what has been said above, is in itself part of what the disagreement is about. In this sense, it should be clear that the transnational space imagined is not simply a neutral platform within which the negotiation between different substantive positions on the matter takes place. Rather, it is by itself already part of this negotiation and, as such, open to ongoing revisions and contestations.[35] In a way, it may be argued that it is exactly the reflexivity of this discursive situation which permits it to minimize the degree of conflict involved in the solution I propose. For it is this reflexivity that

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[35] In this way, the perspective I offer distinguishes itself from others other similar ones present in the literature which prescribe that the existence of boundaries should be the object of negotiation between insiders and outsiders as justified by the commitment to a universal right, that is, I submit, to have a control over what affects our capacity to be authors of our life plans and to exercise agency. I consider examples of this approach to be Benhabib's idea of democratic iterations (2006 [2004]), and Abizadeh's idea of the unbounded demos (2008; 2012). I do not think that these theoretical proposals succeed. However, given that these accounts are relevant for the issue of the legitimacy of border controls, I postpone a more detailed consideration of these accounts to the next chapter, where the question of border controls will be object of analysis. In this chapter, I shall focus on the illustration of my account.

gives way even to positions that would adversely affect the existence of this transnational discursive space to put into question its own existence, and then to concur in a fair competition with other perspectives on the matter. On the basis of this reflexivity, then, the solution here proposed seems able to offer the possibility to win others to all perspectives which, according to what has been said so far, may arise on the matter without our theoretical instruments permitting us to determine which one, among this variety of possible positions, should be preferred.

In this sense, the existence of this imagined discursive space, combined with its reflexivity, permits to put under discussion not only the composition of boundaries, but also what should be the right distribution of decisional power on the matter, allowing both the expression of particularistic and more inclusivist views on the issue considered. This permits the discursive space imagined to channel the conflict on boundaries, allowing all positions animating it to be expressed, and then to the conflict in itself to be expressed in a regulated way. It is this aspect, then, that leads me to think that the one considered is so far the best – or, rather, the less defective – normative perspective on how we should deal with the existence of territorial boundaries.

Of course, what has been said so far does not constitute in itself a complete and definitive defence of a full theoretical perspective on the matter. Rather, it has to be understood as a set of general considerations having the potential to playing the role of a starting point for the construction of an independent and complete normative position. Transforming these general considerations into a complete theoretical position would require further elaboration which, nonetheless, in this space I am not able to provide. In this sense, I suggest reading the considerations here offered not as the proposal of a finite theory of boundaries, but rather as the indication, once alternative approaches have been discarded, of a possible basis on which a new one can be constructed through future work.

This being said, something more can be done to provide an example capable at least of giving a more vivid idea of how the perspective sketched should work. This may be done by providing examples of how the discursive practice we are imagining should work, and by better characterizing the context of

conflict within which it takes place. This permits me to reconnect to the issue of the legitimacy of border controls. Indeed, I shall argue that the practice of border controls gives way to a conflict between opposed perspectives on the matter of which the theoretical positions presented in chapter 1 are the expression, and that constitutes by itself an instantiation of the forms that the conflict over the existence of boundaries highlighted here can take. Now, the position offered here on the (il-)legitimacy of territorial boundaries is meant to be the basis on which to construct a perspective on the legitimacy of the practice of border controls. Nonetheless, on the basis of what has been said, it seems that the use of our theory of boundaries as a conceptual tool to be applied to the issue of the legitimacy of border controls may also be thought to have the additional function of giving a clearer illustration of how this theory – whose fundamentals have been presented in this section – should work. I postpone the clarification of these passages to the next chapter, where the legitimacy of border controls will come back to the centre of our concerns.

Conclusion

In this chapter we have inquired into the legitimacy of territorial boundaries. Thus, two possible ways to conceptualize the legitimacy of the polity – functionalist accounts and consent-based accounts – have been considered. The conclusion of the analysis offered seems to be that both accounts are not able to fully justify the legitimacy of political authority and, by extension, of territorial boundaries. Indeed, functionalist accounts seem to have problematic implications. Conversely, consent-based accounts seem to break down given that political communities are not the product of individual consent. This is not simply because, as a matter of fact, the constitution of political power is not determined by voluntary processes. A deeper point, rather, is that a universal application of the principle of consent would turn out to be self-defeating, with this determining not only that polities are not a product of consent, but that they cannot be. This led us to the negative conclusion that full legitimacy for specific political authorities is not an option. And this conclusion clearly results in an analogous point concerning the legitimacy of territorial boundaries.

Nonetheless, the point concerning the arbitrariness of boundaries does not authorize the conclusion that they should not exist. For the illegitimacy of territorial boundaries is a consequence of the more general incapacity to legitimize any possible form of political power with a specific territorial constitution and a specific composition of members. That means that imagining a cosmopolitan community of the sort envisaged in the previous chapter would not help us solve the problem. In this sense, the theoretical perspective here offered does not end up in a defence of a cosmopolitan project. Rather, it leads us to a sceptical conclusion concerning the fact that the composition of the polity is the product of a conflict taking place in history between different groups with different understandings of the right constitution of the polity competing with each other for power.

In order to mitigate this conflict, I proposed, starting from the composition of boundaries that are contingently given by history, to recognize for both insiders and outsiders a right to contest boundaries – their existence and their composition – with this generating the existence of a transnational discursive space in which their definition is the object of negotiation. A solution that, for the reasons explained in the last section, has to be understood as an imperfect way to mitigate the conflict, rather than as a theoretical perspective capable of solving it and fully acceptable on principled grounds.

At this point, it seems that we had arrived at an answer, though negative, to the question of the legitimacy of territorial boundaries posed in the opening of this chapter. As the reader might intuitively understand, the way in which the matter has been addressed has relevant implications for the issue of the legitimacy of border controls. Indeed, remember that the reason why we came to question the legitimacy of territorial boundaries is that the possibility to justify – on the grounds of desirability or on the grounds of legitimacy – the existence of territorial boundaries was necessary to justify co-citizen partiality that, as we have seen in chapter 1, plays an important role in arguments for (unilateral) border controls.

What has been said in this chapter seems to authorize the conclusion that co-citizen partiality is not fully justifiable. For, given that it has been argued that the existence of boundaries is the consequence of an original historical contingency, permitting co-citizen partiality would amount to perpetuating an

exclusion – implying a condition of disadvantage for outsiders – that is determined by the arbitrariness of history. Nonetheless, notice that the way in which we came to this conclusion concerning the illegitimacy of territorial boundaries does not authorize a conclusion in favour of open borders. For the source of the illegitimacy of territorial boundaries is not the denial to outsiders of the right to be included. Rather, it is their being the product of a brute equilibrium of forces. In this sense, the inclusion of those who, given the present composition of boundaries are outsiders, would be the result of the arbitrary consequence of a group of subjects succeeding in promoting a conception of the right composition of the polity which, per se, is as partial as the others. Then, if recognizing the right to co-member partiality presupposes recognizing, for a given idea of the right constitution of the polity, a theoretical legitimacy that it cannot fully redeem, an analogous problem would be involved in concluding in favour of open borders.

In this vein, rather than to an open borders perspective, our conclusion concerning the illegitimacy of boundaries leads us to a conflictual view, analogous to the one illustrated in this chapter, concerning the fact that that between open borders views and border control perspectives is a conflict between opposed and probably incommensurable views that, per se, are equally partial. So that prioritizing one over the other would be, from a theoretical perspective, not justifiable. In this vein, it seems to turn out that any possible course of action available to us in the case of border controls proves to be not completely normatively legitimate, so that it results that all we can do is choosing the course of action that minimizes partiality. However, what normative perspective on the legitimacy of border controls follows from the theoretical framework just constructed – and what possible course of action should be considered as minimizing injustice – will be the matter of a more detailed analysis in the next chapter.

The legitimacy of border controls: a conflictual perspective

[…] when the equipoise of the vessel in which he sails, may be endangered by overloading it upon one side, is desirous of carrying the small weight of his reasons to that which may preserve its equipoise.

Edmund Burke, *Reflections on the Revolution in France* (1790), in *Revolutionary Writings*, 2014

These collisions of values are of the essence of what they are and what we are. If we are told that these contradictions will be solved in some perfect world in which all good things can be harmonised in principle, then we must answer, to those who say this, that the meanings they attach to the names which for us denote the conflicting values are not ours. We must say that the world in which what we see as incompatible values are not in conflict is a world altogether beyond our ken; that principles which are harmonised in this other world are not the principles with which, in our daily lives, we are acquainted; if they are transformed, it is into conceptions not known to us on earth. But it is on earth that we live, and it is here that we must believe and act.

Isaiah Berlin, 'The Pursuit of the Ideal' (1947), in *The Crooked Timber of Humanity*, 2013

Introduction

With our account of the (il-)legitimacy of territorial boundaries in mind, now we can come back to the question that was opened in the first chapter: is the practice of border controls legitimate? In chapter 1 we saw that traditional political theory standardly recognizes that bounded polities have the right to control movement across their borders. Nonetheless, this conventional view is put into question by what we referred to as the open borders challenge, according to which the practice of border controls is in tension with the standard liberal-democratic principles of individual freedom and universal moral equality. We have seen that scholars who try to defend the conventional view in the face of this challenge offer different arguments to reject it, among

which the most relevant is identified in the argument arising from the principle of collective self-determination.

This is the point at which the reflection I offer in this chapter starts. Indeed, in chapter 1, I argued that the fact that bounded polities have a right to collective self-determination on the matter is exactly what the open borders challenge questions. This is because recognizing the right to collective self-determination for a given collective agent presupposes recognizing its right to exist as a collective identified by specific boundaries, and then recognizing the legitimacy of the boundaries in turn in identifying the collective. However, unless we want to commit ourselves to the problematic view that borders separating political communities are naturally given, the legitimacy of borders has to be justified on the basis of some sort of argument. And the work done in previous chapters clarifies the fact that the existence of such arguments is far from obvious.

This point clearly affects our evaluation of the arguments for border controls which, as we saw in chapter 1, presupposes the acceptance of the legitimacy of co-member partiality. Indeed, the illegitimacy of territorial boundaries seems to translate itself into the illegitimacy of practices whose existence can be considered in some way or another the consequence of the existence of territorial boundaries, such as the practice of prioritizing co-members' interests and/or rights. In this vein, indeed, it would turn out that allowing co-citizen partiality would amount to perpetuating a condition of exclusion that is originally determined only by historical contingency. Our theoretical framework, then, seems to invalidate collective self-determination arguments for border controls.

Of course, many supporters of open borders have already raised this point. However, I shall argue that this consideration, while invalidating the arguments for the legitimacy of unilateral border controls, does not authorize a conclusion in favour of open borders. Rather, it permits us to highlight weaknesses involved even in the open borders perspectives and, subsequently, to arrive at a conceptualization of the issue which is an alternative to both traditional views. This is because, as the previous chapter should have clarified, what prevents us from concluding that the existence of territorial boundaries is legitimate – and then that outsiders can legitimately

be included – prevents us at the same time from justifiably arguing that outsiders have a right to be included. In the theoretical perspective constructed, indeed, who is in and who is out is determined by a conflict between concurring conceptions of the right composition of membership which, nonetheless, are equally incapable, on the basis of existing accounts of political legitimacy, to justify themselves on a theoretical level. And this is exactly what generates the illegitimacy of territorial boundaries. That implies that, if the exclusion of outsiders derived from the composition of boundaries given by history cannot be considered normatively justified, the same would be true about their hypothetical inclusion in forms of political association not realized in the given state of things.

This theoretical construction will permit us to reject open borders perspectives once it is understood that what is at stake in the issue of border controls is an instantiation of the conflict arising on the right composition of boundaries. Indeed, what is at stake in the debate on border controls is substantially political membership. And, more precisely, the possible re-composition of the boundaries of political membership that would be entailed by the entrance into the political community of new members. In this perspective, open borders proposals can be interpreted as a specific account of the right constitution of boundaries – that in this case must not be meant as *territorial* boundaries, but as the boundaries of political membership – which stands in need of legitimation. Here, nonetheless, we find the same difficulties we have pointed out in the previous chapter, and which led us to our sceptical view concerning the illegitimacy of boundaries.

In this perspective, rather than an open borders conclusion, the theoretical framework constructed leads us to a conflictual perspective according to which the issue of border controls admits only imperfect normative solutions. For, on the one hand, acknowledging to receiving polities the right to sovereignty on the matter would have the problematic implication that outsiders are denied a relevant part of the authorship of their life choices as a consequence, so to speak, of an initial historical contingency (the constitution of boundaries). On the other hand, denying sovereignty to receiving polities on migration involves taking a position on the right constitution of boundaries which, in turn, would require some sort of legitimation that, given what has

been said, we do not seem able to provide. So, we conclude that, on the one hand, the practice of unilateral border controls cannot be considered fully legitimate but, at the same time, an analogous defect of legitimacy would be registered in the enforcement of an open borders regime.

Thus, I will consider a possible way out to this dilemma that has been proposed to avoid this apparently paradoxical conclusion. I will refer to this proposal as the *democratic solution*. Roughly, this consists in arguing that migration policies coercively interfere with both insider and outsider interests. Therefore, according to the standard democratic principle that individuals should be authors of the norms to which they are subjected (Rousseau, 2005 [1762]), the enforcement of migration policies should receive approval from both insiders and outsiders. This, according to scholars proposing this view, would solve the conflict between insiders and outsiders generating a conceptualization of the legitimacy of border controls that is both superior to sovereignty accounts and to open borders views. For, on the one hand, it is able to acknowledge to insiders the possibility of having a say on who can pursue membership in their polities, without having the problematic implication of legitimizing practices (such as *unilateral* border control) that dominate would-be migrants. At the same time, it permits respecting the agency of outsiders without denying to insiders the possibility at least to negotiate some social significance on movement across borders and, relatedly, to political membership.

As we will see, different accounts are proposed in the literature that can be considered as possible declinations of this approach. What I will argue is that these approaches are problematic in proposing themselves as capable of *solving* the conflict between insiders and outsiders and, more generally, to offer a normative perspective acceptable on principled grounds. This, I argue, is problematic, because what is at stake in the issue of border controls is not only whether borders can legitimately be sites of some sort of control. Rather, who (if anyone) should have authority to control them is an integrant part of the conflict. Indeed, the interest of insiders is not simply in having a say on who can pursue political membership, but on the *exclusiveness* of access to this decision. As is evident, this passage retraces what has been said in the previous chapter. And in line with what I argued in the previous chapter, I

will argue that the interest of insiders in exclusive access to border controls entails that its restriction would require legitimation. Here, we find the same problems as mentioned above. In this respect, then, the prescription of a transnational negotiation of border controls remains an imperfect proposal which can be accepted more as a mediating solution suitable for practice rather than as a fully justified principled view.

I will propose my own way to understand this theoretical perspective. Thus, I will argue that the right to sovereignty on border controls of the receiving polities should be integrated with – and then limited by – a right for hypothetical migrants to contest migration policies. I will present this perspective as capable of mitigating the conflict over border controls by giving the possibility to express the conflict itself, without the ambition to solve it.

After having presented and defended this theoretical perspective, the problem will be to understand how the right to contest migration policies for outsiders can be institutionalized. Clearly, this is a problem that would require a dedicated work. So that this question will be left partially unanswered by this dissertation. Nonetheless, it seems possible at least to briefly sketch what options are available and which, among them, seem at first glance to be more appealing. This brief sketch of how to apply in practice the normative perspective offered in this work will close the chapter.

The chapter is divided into five sections. In the first section I propose a brief summary of the steps that have been taken so far, illustrating how our reflections in the previous chapters affected the questions that chapter 1 left open. In section two I address what I call the democratic approach to the issue of border controls. In section three I present my perspective on the matter. Section four is dedicated to a brief analysis of the available institutional options capable of implementing the right to contest migration policies for outsiders. Finally, a short conclusion follows.

An undecidable problem?

In order to illustrate the position I want to defend in this chapter, I think it will be useful to start by a brief summary of the argumentative passages in the previous chapters. In the first chapter we started by pointing out that,

according to the conventional view, states have the right to control movement across their borders. Nonetheless, we have seen that this conventional view is currently faced by the open borders challenge, which points out tensions between the practice of border controls and the commitment to the values of individual freedom and universal moral equality of human beings. Thus, we noticed that arguments for open borders indicate that border controls may constitute a limitation of the would-be migrants' right to individual freedom and to their capacity to pursue equal opportunities to realize their life plans (Carens, 1987; 2013; Kukathas, 2021; Cole, 2011).

Additionally, border controls may have further normatively problematic dimensions in qualifying as a practice that disrespects would-be migrants as individuals capable of agency. This is because, as long as border controls are unilaterally enforced by receiving polities, would-be migrants remain passive recipients of the norms disciplining these controls. As such, then, unilateral border controls fail to treat would-be migrants as individuals entitled to negotiate norms that may affect their capability to realize their life plans and then, to recognize them as agents capable of evaluating whether to approve these norms depending on their compatibility with the pursuit of their personal projects.

After having ascertained the undeniable force of open borders arguments, the problem has been to determine whether principles congruent with those mentioned in support of the open borders claim can be brought in defence of the more conventional view. And thus, our attention has been led to what seems the most compelling argument in defence of border controls, namely the argument from collective self-determination. As we have seen, different formulations of this argument are possible. But it seems that all its possible formulations – or at least the formulations that are more relevant to the debate – pertain to issues of identity (Walzer, 1983; Moore, 2015; Miller, 2016; Song, 2019). We have noticed, indeed, that immigration can be a vehicle of change in the identity of receiving polities. The presence of significant immigration flows can determine, for instance, an increase in the polity's internal cultural plurality and, as a consequence, erode the number of shared practices between the members of the community. This, according to some, may imply that membership in the polity loses part of its meaning for those

who are already members of it, for it entails that communal membership is no longer accompanied by a commonality of values.[36]

Of course, these points are counterbalanced by the numerous benefits that can be associated with an increase of internal plurality (Putnam, 2007). The presence of internal plurality, for instance, reduces the risk of domination by a single majoritarian sub-group in the polity. Furthermore, increasing the level of plurality amounts to increasing the number of ways of life the polity is capable of experimenting with. This fosters a growth in the range of life options available for *all* the members of the community. In this sense, the increase of plurality fostered by immigration may constitute a resource for receiving polities. To this must be added that the fact that the identity of the polity changes over time would be true even in the absence of immigration

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[36] To this point, it should be mentioned that, contrarily to what some conceptualizations of the right to control borders might be thought of to suggest, political communities are not unitary blocks. Rather, they are aggregates of individuals inhabited by profound divergences of values, interests, and desires. So that the right to enforce border controls could realistically be traduced not in the right of the community as whole to express its identity, but rather in the possibility for a majority of the polity to privilege their particularistic interests on the matter. In this sense, it might be argued that the interest in open borders is not simply an interest of outsiders, but at the same time an interest of insiders in being protected by the possibility that a given majority imposes on other components of the community its own views on the matter (Kukathas, 2021). However, in my opinion this position does not really challenge the border controls view. For, as well as the right to control borders might be translated in the right of a majority to impose its interests on a minority, removing this right for receiving communities could transform in the possibility of hypothetical factions within the polity more prone to openness to impose their non-intervention views on the matter. In this sense, the position considered is problematic as entailing the problematic view that, given the presence of internal plurality, the only way to ensure that public decisions acceptable from an objective perspectives are made is to highly limit the possibility for intervention of the state. However, it seems that imposing this non-intervention approach is far distant from guaranteeing impartiality in public decisions. Conversely, the recognition that receiving polities are inhabited by a plurality of perspectives on the matter of immigration should lead us, from the perspective of insiders, to conclude that these perspectives have to be balanced in a public negotiation between members of the polity. Until the interests of outsiders are not put in place, however, it would result that whether borders should be controlled or not should remain the object of *internal* deliberation for receiving polities. A point that does not really challenge the sovereignty view.

flows, and changes in the collective identity are to some extent beyond the control of the collective (Fine, p. 261). Therefore, the purpose of granting more or less thick levels of internal homogeneity – or that of protecting from change a communal identity of the receiving polities that, as we have seen in chapter 1, is often partially fictitious – does not motivate, per se, an interest in border controls.

All these points, nonetheless, do not deny the fact that, for receiving communities to be self-determining collectives, it is necessary that the changes determined by immigration, be they positive or negative for the polity, are approved by the collective itself, at least to the extent to which this is possible (Pevnick, 2011). In this sense, the point is not that we have reasons to consider the effects of immigration for receiving polities undesirable, and then to infer from them an interest in controlling borders in order to mitigate these effects. Rather, the point is procedural. In this vein, given the importance assigned by individuals to communal identity and the possible effects of immigration for it, it seems that if we value the possibility of self-determination of existing collectives, then we should admit that, even if we accept that an open borders regime would be desirable on a substantive level, its acceptance has to come about as a consequence of a free choice of receiving communities and their members. In this sense, the interest in border controls would not be the closure of borders per se. Rather, it would be in the possibility for receiving communities to enforce more open borders by a free choice, a way to open borders that would still count as a form of border control.

From this perspective, what I find the more compelling argument for border controls does not really challenge the substantive desirability of open borders. Rather, it maintains that the principle of self-determination commits us to the view that even substantively desirable choices should be freely made by sovereign communities rather than constituting the constraints within which collectives can express their will, unless we want to void of meaning the practice of democratic agency. The purpose that collectives arrive at just public decisions by choice requires that they pursue the authentic possibility to make other choices on the matter. And this, applied to the case of border

controls, would entail recognizing at least some degree of discretion to receiving polities.

This argument has the merit of relying on a normative principle that, according to liberal-democratic political theory, can be considered as fundamental as individual freedom and equality. Nonetheless, we have noticed that referring to the value of collective self-determination is not per se sufficient to reject the open borders challenge. This is due to the obvious fact that saying that collective self-determination is a value does not prove that the collective self-determination of receiving communities should take priority over the rights of outsiders in the case of movement across borders. And challenging the axiological priority of the rights of receiving communities over those of outsiders is exactly the aim of open borders perspectives (Carens, 2013). So that in this vein it turns out that, unless a reason is provided why the collective self-determination of receiving communities should come first in our normative concerns related to the issue of movement across borders, simply mentioning the value of collective self-determination is not sufficient. In a way, we might say that the collective self-determination argument begs the question.

In the face of this problem, it has been pointed out that the usual argumentative strategy employed by supporters of border controls is referring to the idea of co-member partiality, according to which, in cases of conflicts of interests and/or rights, collectives are entitled to prioritize the interests and/or rights of their members over those of outsiders. This would justify the practice of border controls, for it would justify prioritizing the self-determination ambitions of receiving communities over the claims of hypothetical migrants. However, the problem has been to understand how co-member partiality can be justified. And thus, we started by noticing that co-member partiality is inherently related to the existence of specific bounded polities and then, given the territorial nature of political communities, with the existence of territorial boundaries. Thus, justifying co-member partiality amounts to justifying the existence of territorial boundaries.

Now, the central chapters of this work have been dedicated to support the view that the existence of territorial boundaries cannot be fully justified. For, on the one hand, it seems that we have no strong reasons to conclude that the

existence of territorial boundaries is desirable. What is more important, however, is that the existence of territorial boundaries does not seem to be even fully legitimate, as is proved – I think – by the arguments offered in the previous chapter. Now is the moment to come back to the issue of border controls and to clarify how the steps taken affect our understanding of the normative status of border controls.

And thus, it is easy to see that our conclusion concerning the illegitimacy of territorial boundaries invalidates the argument for border controls based on collective self-determination. This is because, since co-member partiality is obviously related to the existence of territorial boundaries, it seems that the illegitimacy of the latter automatically translates itself into the illegitimacy of this practice. So that referring to the idea of co-member partiality fails to qualify as a convincing argumentative strategy to justify the priority of the interests of receiving communities in the case of border controls.

The arbitrariness of territorial boundaries is often mentioned by open borders theorists as an element corroborating their position. Nonetheless, I shall argue that while what has been said so far invalidates classical arguments for border controls, it does not authorize an open borders conclusion. Rather, it permits us at the same time to point out the weaknesses of the open borders thesis, and then to highlight a theoretical perspective on the matter as an alternative to both open borders and border controls views.

Here, the considerations offered in the previous chapter become relevant. Indeed, in the previous chapter we have seen that the right constitution of boundaries is an essentially contested issue. In this sense, the existence of territorial boundaries defined in a certain way is merely the consequence of some groups, with a specific conception of the desirable constitution of the polity, winning over others. Now, while this undermines the legitimacy of territorial boundaries – for it entails that they exist only as a consequence of brute historical contingency – it does not give any normative priority to the interests of outsiders in being included. In this perspective, the inclusion of those who, given the present composition of boundaries are outsiders, in some hypothetical form of political association that is not actually realized in the given state of things would be as arbitrary as their exclusion. This is because, when trying to justify their inclusion, we would find the same difficulties we

register in justifying their exclusion. So that it turns out that, in the theoretical framework adopted, their inclusion would merely be the consequence of them winning in the attempt to affirm their conception of the right composition of the polity within a struggle with alternative views which are equally incapable of justifying themselves on a theoretical level as more desirable.

Now, to this point it must be added that what is at stake in the issue of border controls is substantially an instantiation of the problem we approach when considering how boundaries should be drawn. Indeed, the problem we deal with when approaching the problem of the legitimacy of border controls is how political membership should be determined. In this perspective, would-be migrants seeking to enter into a new polity qualify as subjects asking to become members of it, and then for a re-constitution of the boundaries of political membership in the polity considered. Therefore, the open borders thesis might be rephrased as a claim concerning the right composition of boundaries – where, in this case, by boundaries it is not meant territorial boundaries, but the boundaries of political membership. In this vein, the open borders thesis qualifies as the view according to which the right composition of boundaries is the one arising from each individual in the world exercising the freedom to choose where and with whom – namely, in which collective – to spend his or her life.

As a claim on the right composition of the polity, the open borders thesis stands in need of legitimation. And to verify whether it is able to redeem a claim for legitimacy, the same theoretical tools identified in the previous chapter can be applied. Here, we might, first, adopt a functionalist perspective. For instance, it might be argued that the composition of boundaries defended by the open borders thesis would be justified by its capacity to maximize the amount of equal freedom for every individual in the world. However, we have seen that functionalist accounts of legitimacy are problematic, insofar as they imply that a given composition of boundaries can be justified independently of whether existing individuals approve it. This, however, qualifies as a form of disrespect for the agential capacities of individuals, insofar as it deprives them of the possibility to evaluate the normative desirability of the composition of given boundaries, reducing them to passive recipients of this conception of boundaries.

Alternatively, the open borders view might be evaluated on the basis of the idea of legitimacy by consent. When applied to the open borders thesis, the idea of legitimacy by consent should not be understood as claiming that the idea of the right composition of the polity it includes is legitimate if it gets individual consent. Because, how the open borders thesis has been presented, and how the contrast with border controls views has been conceptualized, saying that open borders are legitimate if they are accepted would amount to rejecting the open borders thesis. Alternatively, the principle of consent might be used to justify the open borders thesis by arguing that the enforcement of an open borders regime would permit the realization of the idea of political membership by consent, by admitting that the composition of the polity is the spontaneous consequence of individuals' free choices. Nonetheless, it is easy to see how this view is problematic. Indeed, the considerations made in the previous chapter concerning the self-defeating nature of the idea of legitimacy by consent would apply here. For an open borders regime would limit the possibility of members of existing polities to refuse association with newcomers. So that it would turn out that the possibility to choose with whom to engage in political cooperation for some would entail a restriction of the same freedom for others.

This brief attempt to apply standard conceptions of legitimacy to the open borders claim, in a way, seems to signal the fact that border controls views have a point in denouncing possible moral drawbacks of open borders positions. If we consider the open borders thesis in the way in which it has been conceptualized – namely, a substantive understanding of justice in immigration which grounds a principle constituting the constraint within which democratic agency on the matter can be exercised – it is clear that it requires a restriction of the democratic agency of some actors – namely, members of existing communities – that standard conceptions of legitimacy are not able to justify: on the one hand, functionalist accounts of legitimacy might ground the open borders thesis, but they are problematic on their own insofar as contradicting the procedural spirit of democratic liberalism. On the other, the normative core on which the idea of legitimacy by consent relies would be violated by the open borders thesis precisely for its being in contrast with the agency of members of existing communities.

The mistake of border control perspectives is in identifying the moral drawbacks of open borders in the drawbacks they imply for members of existing polities *as such*. This is problematic for, in some way, it implies recognizing some sort of normative status to existing communities which, nonetheless, given the dubious credentials of legitimacy on which boundaries defining their existence rely, proves as a disputable, if not openly wrong, argumentative strategy. This, however, does not authorize disrespecting the agency of members of existing communities *as individuals*. And since, as a matter of fact, the individuals considered are members of given polities, this will de facto imply the requirement for the respect of the democratic agency of these polities.[37]

Of course, all this by no means implies that there is a right to enforce unilateral border controls. For it is easy to see that this would entail analogous problems of disrespect for the agency of outsiders. In this sense, this passage must not be read as contradicting what has been said above concerning the inadequacy of border controls views. But it seems sufficient to highlight analogous problems of legitimacy in the hypothetical enforcement of an open borders system. In this vein, it turns out that, if the illegitimacy of territorial boundaries makes border controls perspectives problematic, the same reasons explaining this illegitimacy determine the illegitimacy of the idea of political membership included in open borders views. What emerges, then, is that the open borders view is unable to redeem a claim for full theoretical, and then political, legitimacy. And then, it qualifies as one of the conceptions of the right composition of the polity which are in competition with each other without any of them being able to prove its superiority. The same could be said of border controls perspectives.

In this sense, rather than to an open borders conclusion, our theoretical framework seems to lead us to a conflictual perspective according to which

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[37] This does not imply recognizing the moral status of these bounded polities. The respect we owe to them is only a consequence of the respect we owe to the individuals composing them, combined with the contingent fact that they are members of these communities. This, as far as I understand, is not in tension with rejecting the idea that the self-determination ambitions of bounded polities as such is, as I argued above, normatively not compelling for the issue considered.

the practice of border controls involves a conflict between two opposed interests – the interest of receiving communities in border controls and that of would-be migrants in movement across borders – pertaining to who should be allowed to pursue membership in the polity considered and who should not.[38] This conflict is represented by the divide on the theoretical level between the two normative perspectives considered. The nature of political membership as an essentially contested issue, nonetheless, prevents us from solving the conflict on a principled ground. This seems to entail that any prioritization of one of the two classes of interests involved in the conflict would turn out not to be fully justifiable on a theoretical level. And this, in turn, seems to induce the somewhat problematic conclusion that both alternative courses of action contemplated in this case by standard positions – sovereign discretion on the one hand, enforcement of an open borders regime on the other – turn out not to be fully legitimate.

In order to avoid the problems involved in this conclusion, one might be tempted to try to find an alternative course of action – and then a possible normative perspective – to border controls and open borders proposals. Indeed, it seems that, in a way, the conflict we are dealing with is the consequence of the fact that, given the open contradiction of preferences between insiders and outsiders, it does not seem possible to synthetize opposed perspectives into a normative perspective on the issue of border controls capable of giving equal respect to the agency of all parts involved. But to this point, one might contend that the obvious solution to the problem is that border controls, and then the composition of the boundaries of political membership, is negotiated between insiders and outsiders.

This is the strategy pursued by supporters of what I shall call *the democratic solution* to the issue of border controls. What some scholars contend, indeed, is that borders can legitimately be sites of control, but that this control should not be unilateral (Abizadeh, 2008; Owen, 2012). In this way, supporters of this solution seem to think that the normatively problematic elements involved in both conventional proposals is avoided. For, on the one hand, the fact that borders can be sites of control permits insiders to have a say on a

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[38] And relatedly, as we will see in the next section, a conflict concerning who should pursue decisional competence on the matter.

possible vehicle of change to the identity of the receiving polity. On the other hand, the fact that control is not unilateral entails respecting outsiders as individuals capable of agency. In this light, supporters of the democratic solution maintain, this theoretical perspective would prove superior to both (unilateral) border controls perspectives and open borders proposals, being capable of offering a shared practice on border controls capable of putting together the respect for the agency of members of both existing communities and outsiders, and then capable of solving the conflict of interests highlighted by the analysis here offered. Does the democratic proposal succeed? In the next section I address this question.

A democratic solution to the dilemma of border controls?

A group of scholars offers a solution to the issue of border controls which is an alternative to both border controls and open borders. This maintains borders as subject to control which, nonetheless, is the object of some sort of democratic negotiation between *both* insiders and outsiders, subjects who recognise each other as free and equal individuals capable of discursive agency. Based on this general idea, it is quite easy to reconnect this theoretical proposal to the so-called *democratic boundary problem*. This is the problem of determining, given a certain decision or class of decisions, which individuals should be included in the decision-making process in order for the decision to count as democratic (Dahl, 2005 [1980]; Whelan, 1983).

As we saw in chapter 1, indeed, the problem of border controls is usually presented as the problem to determine whether the practice of border controls can be said legitimate. Conversely, a boundary problem theorist would start from a different question: how the 'demos' approving migration decisions should be composed for these decisions to count as democratic? And since this literature addresses mainly democratic scholars which recognize in democratic procedures a source of legitimacy, this question translates itself in the following: how the demos approving migration decisions should be composed for these to be *legitimate*?

Here, the existing debate on the boundary problem offers, among the many possible answers, two most popular, interestingly, point in the same direction. The first contends that, given a certain decision, all those whose interests are

– or might be – affected by the consequences of this decision should be included in its approval (Goodin, 2007; Arrhenius, 2005; Angell, 2020; Nasstrom, 2011). A second, normatively less ambitious, answer maintains that all those who will be coercively forced to abide by it should be included in the approval of the decision (Biale, 2019; Blake, 2002; Erman, 2014; Owen, 2012; Honohan, 2014; Abizadeh, 2008; 2012). Both perspectives would conclude that outsiders should be included with an active role in the control of borders (Abizadeh, 2008; Goodin, 2016). For it is obviously true both that they would be affected by the consequences of the decisions, and that they will be coercively obliged to obey them.

This approach can be ascribed to scholars with different theoretical orientations, mainly various kinds of republicans and critical theorists (Forst, 2021 [2015]; Honohan, 2014; Owen, 2012; Angell, 2020; Bohman, 2007). Nonetheless, probably the most representative scholars of this approach are Seyla Benhabib and Arash Abizadeh. In what follows I shall briefly present their views and, subsequently, illustrate what, in my opinion, does not work in them. I take Benhabib and Abizadeh to be representative, to significant degrees, of the entire category of theoretical perspectives which I comprise under the democratic view. Thus, I maintain, in a partially stipulative way, that the considerations based on the models of these two scholars can apply as well to those offered by scholars belonging to this category.

Benhabib's perspective: the dialectic between sovereignty and universal rights and the idea of democratic iterations

Benhabib starts with a presentation of conflict between the sovereignty of receiving communities and the right of would-be migrants to be recognized as individuals capable of agency. She proposes as a solution to this conflict the idea of *democratic iterations* (Benhabib, 2006 [2004]). Thus, the social meaning of political membership, together with the perimeter within which the exercise of sovereignty of bounded polities can be recognized as acceptable, is the object of a never-ending process of negotiation between insiders and outsiders. However, Benhabib only partially succeeds in solving this conflict, because she combines her normative ambition concerning the

constitution of a transnational discursive space with scepticism about the feasibility of transnational democratic interaction (Benhabib, 2007).

That is why Benhabib contends that the negotiation process should be understood as *imaginary*, one that receiving communities should construct when approving their migration policies.[39]Thus, receiving communities are held to be entitled to sovereignty to the extent to which they approve migration policies on the basis of which measures, in an imagined discursive situation, would be accepted not only by insiders, but by outsiders as well. The fact that this negotiation is only imagined, nonetheless, makes Benhabib de facto a supporter of unilateral border controls, even though in a moderate and universalist spirit. This seems to authorize the conclusion that Benhabib's proposal does not really overcome the dichotomy she highlights. I now turn to consider Abizadeh's proposal.

Abizadeh's proposal: the real inclusion of would-be migrants in the democratic approval of border controls

Abizadeh's position can be considered a radicalization of Benhabib's ideas. What Abizadeh contends, indeed, is that the liberal-democratic commitment to the value of individual freedom compels us to accept that individual freedom can be legitimately limited only to the extent to which the individual interested in this limitation consents to it (Abizadeh, 2012). Since, as mentioned, migration policies obviously limit the individual freedom of both insiders and outsiders, this point would ground the desirability of a constitution of a *real* transnational discursive space that, according to

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[39] An analogous conclusion would hold should we interpret Benhabib's position from a Rawlsian perspective. In this vein, for instance, it might be argued that Benhabib should be interpreted as claiming that, even though only receiving states can control borders, they should do so as if they were in a Rawlsian original position in which they do not know whether they on one side of the border or the other. This interpretation would guarantee impartiality, and probably the openness of borders. However, it does not seem to solve the problem here highlighted. This is because, as long as the authors of the thought experiment of the original position are members of receiving states, they de facto pursue the exclusivity of the decision, even if this decision has to be made following specified rules. And, more importantly, migrants would still remain passive spectators of the collective decision.

Abizadeh, would prove capable of overcoming the false dichotomy between would-be migrants' freedom and receiving communities' sovereignty (Abizadeh, 2008). In this perspective, indeed, it would result, on the one hand, that the value of collective self-determination does not really ground a legitimate interest for receiving communities in border controls. For insiders are not the sole subjects whose freedom is at stake by border controls and, more generally, immigration policies. On the other, that, if approved, so to speak, by the right demos, border controls may be compatible with the liberal-democratic system of values.

Clearly, difficulties are not lacking in this theoretical approach. For instance, many maintain that Abizadeh's proposal (and the others in the literature similar to it) presupposes an overinclusive interpretation of who should take part in democratic decisions (Baubock, 2018). Others raise issues of feasibility (Miller, 2009). Another possible objection to this proposal is that it is too demanding. Namely, it asks too much of would-be migrants (Biale, 2021). This is because the democratic solution proposes to solve the defect of legitimacy involved in border controls through the inclusion of would-be migrants in democratic participation surrounding the approval of these controls. Democratic participation, however, has its own costs: it requires people to become informed, for instance, and this may require a considerable expense of time and energy. In this sense, it might be wondered whether the constitution of this transnational democratic negotiation has an effective emancipatory power for outsiders or, rather, adds a further burden on them. Other scholars, still, find something paradoxical in the idea that outsiders should be included in the approval of norms that exclude them from membership in the polity considered and that, then, define by themselves outsiders as outsiders[40] (Baubock, 2018). In this context, however, I would

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[40] Other possible objections to this theoretical perspective are still possible. One of these, for example, is moved by Eva Erman (2022). According to Erman, Abizadeh's perspective relies on a misconception of which kind of liberty – or, using Erman's terminology, autonomy – the democratic principle is aimed at protecting. While Abizadeh, partially implicitly, thinks of liberty as personal liberty, namely the liberty of subjects as persons, the democratic principle aims to protect *political* liberty, namely the liberty of subjects as parts of a collective. Another objection – which Abizadeh rejects (2021) – comes from Ludvig Beckman (2023). What Beckman contends is that norms authorizing border controls are part

like to focus on another difficulty affecting the democratic solution that, to my eyes, invalidates it.

As we have seen, Abizadeh presents the democratic perspective as capable of offering a normative solution to the issue of border controls that is acceptable on rational grounds from both parties whose interests are involved and then, as proving that, in fact, there is no dilemma in the issue of border controls. For, on the one hand, insiders are recognized as having the right to refuse entry to outsiders on the basis of their right to democratic self-determination. On the other hand, however, since border controls affect outsiders as well, the same right grounds the right of outsiders to be included in the democratic approval of border controls. Thus, it would appear that there is no way to derive, from a standard liberal-democratic view, either the right to *unilateral* border controls or to open borders, if this is intended as a substantive principle of justice whose approval is posed outside the perimeter within which democratic self-determination can be exercised.

If proposed as a solution capable of solving the normative issue considered by overcoming the disagreement over it, however, this view appears on closer inspection problematic, for it faces the difficulty that it would de facto require some sort of second-level – issue-specific – global demos having the task to define the boundaries of sovereignty of first-level bounded polities. But since this perspective implicitly presupposes an idea of legitimacy by democratic approval, it follows that even the existence of this second-level global demos would require the democratic approval of those who are part of it in order to have legitimate authority. That means that the legitimacy of its existence – and then the legitimacy of its action – would require the acceptance of a prior

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of comprehensive normative systems in which meta-norms – namely, norms regulating the production of norms – are included which authorize the production of the former. Therefore, we have to say that who is subject to the authority of norms regulating border controls is also subject to norms authorizing their production, and then substantially to the authority of the legal system as a whole. From this, it would follow that, if Abizadeh's point is accepted, we should conclude that would-be migrants should not only be included in the approval of norms regulating border controls, but in the production of any norm composing the legal system. This would substantially amount to saying that they should pursue full democratic membership in polities of which they are not yet part, and this is absurd. However, for the sake of brevity, I will not consider these objections in this chapter.

global constituency, then a third-level global demos. The latter, in turn, would need to be legitimated by the approval of another prior constituency. This logical process can be repeated ad infinitum. In this sense, it becomes clear that Abizadeh's proposal induces an infinite regress.

The only way to avoid this infinite regress would be to find a strategy to justify the composition of the second-level demos on the basis of a substantive pre-political criterion. This, however, generates the problem of understanding whether a criterion of this sort is available to us. Secondly, and more importantly, this strategy seems to be in contrast with the philosophical underpinning surrounding the democratic approach, according to which the identification of the right composition of the demos on a pre-political ground has to be rejected as a violation of the principle of both collective and individual self-determination. The procedural understanding of these rights on which Abizadeh's proposal relies, indeed, requires that the composition of the demos is in itself subject to democratic approval (Abizadeh, 2012).

This is what generates Abizadeh's view that the demos should be unbounded in principle (Abizadeh, 2008; 2012). What Abizadeh means with this expression, indeed, is that the principle of self-determination requires that the composition of boundaries we find in the world is subject to an ongoing process of revision that, in principle, may end up even in a complete suppression of boundaries. Precluding this possibility would amount to removing an option of choice for the second-level global demos, and then to reducing its capacity for democratic agency. What Abizadeh does not seem to see, however, is that he should consistently admit that even the existence of the second-level global demos should be in principle revisable. This is what generates the infinite regress mentioned above.

Thus, what seems to emerge is a problematic conclusion. Either Abizadeh's proposal induces an infinite regress, or it requires a restriction of the capacity for self-determination of bounded polities and their individual members. Both options are problematic. Concerning the first, it appears obvious. Concerning the second, it is problematic insofar as, what has just been said proves that the very premises on which Abizadeh's thesis relies force him to refuse a restriction of the capacity for self-determination of both bounded polities and individuals composing them. Abizadeh does not recognize this point. But

since, given what has been said, this misrecognition does not seem to be justified by theoretical reasons, this makes Abizadeh's perspective a party to the conflict we are dealing with, rather than an objectively desirable solution capable of overcoming it.

This conclusion, while invalidating the democratic solution, suggests other possible ways to approach the matter. The fact that even the democratic solution fails to prove an acceptable solution capable of synthetizing in a consistent way the interests involved in the conflict, indeed, suggests that some degree of conflict is not avoidable. This point is presented by Sofia Nasstrom, that, while offering a solution to the issue of border controls that substantially comes close to the democratic solution (Nasstrom, 2021, pp. 214-219), misrecognizes it as a principled normative perspective. This point can be derived from what Nasstrom contends about the democratic boundary problem (Nasstrom, 2007; 2011). Here, Nasstrom maintains that the question of who should be part of the demos for any decision does not admit of a conclusive answer. Rather, any answer to the question of the demos has to be understood as an open and imperfect solution within a path of constant ongoing re-construction of the notion of demos. And as far as I understand, this position can be thought of to inform even Nasstrom's take on the inclusion of would-be migrants in the democratic approval of border controls. I think this is the right direction. In the next section I present my own way to understand this theoretical perspective.

Integrating receiving communities' right to sovereignty with outsiders' right to contest border controls: a tenable solution?

In this section I shall present my theoretical perspective on the matter. Thus, I would like to start by repeating that the issue of border controls is one, among the many possible, instantiation of the conflict between different groups arising on the constitution of boundaries. As we have seen, this conflict does not admit of a solution capable of being perfectly justifiable on normative grounds. Nonetheless, I have argued in the previous chapter that the conflict may be subject to some sort of mitigation, which I identified in extending to outsiders the right to contest boundaries.

Now, since I have mentioned that the conflict arising in border controls is an instantiation of the classes of conflicts arising in the constitution of boundaries, it is easy to see that the normative solution offered in the previous chapter, and the argumentative grounds on which they rely, can be applied to the case of border controls as well. That means that one of the ways in which the outsiders' right to contest boundaries can take form has to be understood as their right to contest migration policies approved by receiving communities when these relevantly affect their capability to pursue their own personal projects. In my view, this right has to be understood as integrating with the right to sovereignty of receiving communities on border controls. The integration of the two aspects should de facto give way to the constitution of a transnational discursive space in which the right to autonomous border controls of receiving communities and the right to freedom of hypothetical migrants is subject to an ongoing negotiation, similar to the one proposed by supporters of the democratic solution.

What has to be stressed, however, is that, differently from what supporters of the democratic solution contend, this must not be understood as a theoretical perspective capable of solving the conflict on principled grounds, but only to mitigate it. Indeed, we have already seen in chapter 1 that the interest of insiders is not simply in having a say on who can join their political association, but on the exclusivity of access to decision-making processes related to this point (Walzer, 2007). For this is necessary for members of the polity to be free to determine its identity and to recognize it as their own. After all, it seems quite intuitive that there is a sense in which who owns a certain social good – in this case, the social good of political membership in a certain community – is dependent on who is in the position to decide how this should be distributed. And even though granting normative relevance to the ambitions of collective self-determination of receiving polities does not require granting relevance even to the interest in the exclusivity of decisional competences pertaining to border controls, it makes it more difficult not to consider this interest and declaring it as illegitimate or unjustified. Confronted with this point, the proposal to extend to would-be migrants the right to contest migration policies remains susceptible to be contested in principle. As

such, it plays the role of a practical mediation rather than that of a theoretical perspective fully acceptable on principled grounds.

This point retraces what has been argued in the closure of the previous chapter. Therefore, even the way in which the granting this right to outsiders can be justified is in my perspective analogous to the one specified in the previous chapter. In order to avoid excessive repetition, I will limit myself to claiming that, though imperfect, the solution I offer could be accepted at least as minimizing the degree of conflict in our evaluation of the issue considered that, given how the debate has been framed, appears to some extent unavoidable. This is because, in the absence of the possibility to determine which one, among the many possible normative perspectives on the matter, should be preferred on principled grounds, allowing that the opposed interests of distinct groups is subject to negotiation permits each of these perspectives to be expressed, and then to fairly concur in a discursive practice for the purpose of obtaining approval from those who take part in the discursive practice. After all, it appears quite natural to think that, when we are not able to solve a conflict of interests between distinct groups, the best we can do is allow each candidate perspective to solve the conflict has the fair chance to convince those who are involved in it.

To this point, which substantially repeats what has been argued in the final section of the previous chapter, I would like to add two integrative considerations, in order to reinforce my argument in defence of the right to contest migration policies for outsiders. *First*, according to the theoretical framework constructed, the case of border controls is one of a conflict between incompatible – and probably incommensurable – claims that nonetheless have to be considered as equally partial. In these cases, given the difficulty to find a conclusive solution to the conflict, it seems argumentatively permissible to use as a heuristics that of defending the position that is less defended, and then weaker, in the given state of things. This spirit is well represented by Edmund Burke, who in the final passages of the *Reflections on the Revolution in France* describes himself in the following terms: "[…] when the equipoise of the vessel in which he sails, may be endangered by overloading it upon one side, is desirous of carrying the small

weight of his reasons to that which may preserve its equipoise" (Burke, 2014 [1790], p. 250).

Of course, there is no logical necessity that the least represented position is the right one. Nonetheless, political theory can be considered as having the task to consider the least represented claims in cases, such as our own, in which a definitive choice between the positions involved is not possible. For in this case, it might be argued that all that can be done is granting that all the claims involved in the conflict are taken into account in the making of messy negotiations, and that each of them has at least some possibility to succeed. Now, using Burke's words, it seems that staying on the other side of the vessel in the case of border controls amounts to making a case for an extension of would-be migrants' rights. Indeed, it is well-known that, while the receiving communities' right to self-determination in choices related to movement across borders is normally recognized as a standard right in the practice of existing political regimes, the way in which the recognition of this right negatively affects the interests of would-be migrants is less considered. According to the logic used here, this would give a motivation for political theory to call for a revision of this standardly accepted practice. This, of course, does not justify nullifying our consideration for the rights of receiving communities. That is what motivates the purpose of extending would-be migrants rights on the matter while at the same time limiting the ways in which this move may clash with the guarantee of receiving polities' rights. A purpose that I consider at least decently satisfied in the position I am defending in this section.

Second, and relatedly, notice that the account I offer requires a reasonably limited restraint of receiving communities' sovereignty on border controls. For instance, the limitation of sovereignty required in this case seems far less significant than the one entailed in the constitution of a global demos issue-specific that, as we have seen, some democratic scholars defend (Abizadeh, 2008). In the former case, indeed, outsiders are only marginally included in the decision-making process leading to public decisions on borders, while in the latter they pursue a level of inclusion so thick that it would require a substantial nullification of receiving communities' sovereignty. The fact that my proposal would require a relatively weak sacrifice of sovereignty for

receiving communities seems to make it, if not objectively desirable, at least an acceptable solution for the parties involved in the conflict. This normative perspective, however, would remain incomplete if it is not specified how this can be implemented in concrete practices. In this context I cannot provide a full illustration of how this implementation may take place. Nonetheless, it seems possible at least to sketch a broad range of possible options available to us. This is the aim of the next section.

How to implement outsiders' right to contest border controls? A sketch of possible options

After having defended on a theoretical level the right of outsiders to contest policies on immigration that are approved by receiving communities, the task is to understand how this right can be institutionalized. This question cannot be fully answered here, for it clearly touches on a broad variety of issues related to democratic transnational participation. Nonetheless, it seems possible at least to make a brief presentation of which options are available to us, and which among these appear to be prima facie more appealing. Notice that this brief exercise of "institutional design" has still to be considered as a part of ideal theory. Therefore, what is at the centre of our concerns here is not what institutional solutions are available in the here and now, but what might be thought of to be achievable in an imaginary world which respects the ideal conditions spelled out in the opening of this work. Remember, furthermore, that, consistently with what has been argued so far, the possible options have to be considered in the spirit of finding an intermediate solution capable, within the measure of possibility, of balancing the interest of members of receiving polities in sovereignty and that of migrants in freedom and in being respected as individuals capable of agency, being aware that, given the open contradiction of the two claims, this balance could only be an imperfect one. This desideratum should be used as a criterion to evaluate the alternative options we have available to us. To my view, we can think of four possible alternatives: 1) the institution of intergovernmental decisional units; 2) the institution of quasi-federal global issue-specific institutions; 3) forms of democratic interaction in an informal transnational public sphere; 4) the institution of transnational judiciary courts having contestatory powers on the matter. In what follows I consider each of these possibilities in turn.

First option: the institution of intergovernmental decisional units on border controls?

The first possible solution to implement would-be migrants' right to contest border controls is imagining that the issue of border controls is addressed by intergovernmental entities. What supporters of intergovernmentalism propose is that public issues of global concern are addressed by permanent *voluntary* associations of states under the coordination of those which can arguably be considered the most globally influential actors (Urbinati, 2007, pp. 49-51; Habermas, 2007 [2004], pp. 131-134; Bellamy, 2013, p. 510; Laborde and Ronzoni, 2016, pp. 286-291; Valentini and Ronzoni, 2020). Applied to our case, this model would require that the right to contest border controls for would-be migrants is represented by the action of states of which they are already members in a series of free negotiations with the institutions of the hypothetical receiving communities. A classical point of intergovernmentalism, further, is that these negotiations should not be thought of as giving way to the approval of transnational binding norms, but only to recommendations for sovereign states that they can decide whether to observe or not (Ronzoni, 2017, pp. 6-12). Importantly, intergovernmentalism often foresees that states' membership in these permanent associations is left free, so that member states are free to leave the association whenever they want (Christiano, 2012).

Of course, this solution would give full satisfaction to the interest of receiving communities in sovereignty, for their membership in a bigger association of states in which their migration decisions can be contested by other states can come about only as a consequence of their autonomous decision, so that their membership in these associations could not be said to be in contrast with their sovereignty. At the same time, it appears evident that the cost to be paid for this is that hypothetical migrants are recognized as active agents only in a very weak sense of the term, and arguably in a too weak sense. This is because within this scheme it turns out that their possibility to engage in discursive interaction with receiving communities is bound to the acceptance of it, which may come only through unilateral decision. In this sense, the would-be migrants capability to exercise agency would be dependent on the will of

another actor, and then they would still be, at least in a weak sense, subject to domination. This seems to authorize us to discard this first possible alternative.

Second option: transnational federal demoi?

The second possibility is that the issue of border controls is addressed by quasi-federal issue specific institutions involving thicker levels of political integration. As we know from what has been argued in other chapters of this work, indeed, some scholars propose that issues of global concern are the object of democratic control in global institutions including representatives of local states on a non-voluntary basis. These proposals usually foresee the presence of a series of issue-specific global democratic assemblies, elected on a global scale, capable of enforcing binding norms on the issues of their concern which are coordinated by some general federal institutions, such as a global constituency. Applied to the case of border controls, these proposals would require that each local state's migration policies are the object of a global coordination negotiated even with would-be migrants as recipients of the norms approved (Archibugi et al., 2011; Archibugi, 2004; 2012; Held, 1997; 2009). This hypothesis, however, would have the opposite problem to the one registered in intergovernmental proposals. This is because it would clearly give satisfaction to the desideratum to recognize would-be migrants as agents capable of agency, but not to that of giving at least partial satisfaction to the claims of sovereignty of receiving communities.

If the purpose is to preserve at least partially the significance of the existence of particular polities, and with it of membership in them, it appears clear that these cosmopolitan proposals are inadequate, for it turns out that particular local communities become only subunits of a global legal subject. Usually, supporters of these proposals reject this objection, trying to stress the nature of the institutional global assessment they imagine as a multi-layered system of governance having the purpose to promote decentralization, rather than global integration with the subsumption of particular communities under global institutions. To mention an example, Mathias Koenig-Archibugi's proposal (2012) might be considered, which is that following an all-affected

approach to the boundary problem, is that every national state reserves a certain number of seats in their democratic institutions to representatives of people outside the borders, which may defend the interests of outsiders when these are affected by the possible consequences of the community's public decisions. How many seats every community should reserve to outsiders' representatives, according to Koenig-Archibugi, has to be determined by how many resources the state in question controls. This, according to the logic that, the more resources one state controls, the more likely is that their decisions will have significant externalities for outsiders. Furthermore, Koenig-Archibugi proposes that the task to establish which resources should be included in the calculation to determine the number of outsiders' seats in any polity is the object of negotiation within a global constituency.

Koenig-Archibugi presents this proposal as facilitating global interaction without suppressing the existence of separate polities, but it is difficult to understand how this can be, given the extremely relevant power Koenig-Archibugi assigns to the global constituency mentioned. Given what has been said, indeed, it does not seem wrong to say that this global constituency has the task to determine on what issues polities can be autonomous, and to what degree. This seems tantamount to saying that the sphere of autonomy of any polity has to be authorized by the global constituency, that then would de facto pursue sovereignty.

Even trying to avoid this reading, Koenig-Archibugi's proposal – together with those similar to it – remains problematic as a matter of demandingness for *both insiders and outsiders*. Saying that every issue of global concern should be governed by issue-specific global democratic assemblies, indeed, can easily lead to a multiplication of demoi that would make the tasks of both insiders and outsiders as democratic agents extremely demanding. Relatedly, this point is relevant for the case of border controls. According to the logical implications of Koenig-Archibugi's view, would-be migrants would have the burden not only to pursue democratic participation with members of other polities on the issue of border controls, but also on a relevant number of other matters. This seems to prove the inadequacy even of this second possibility. Given the unsatisfactory possibilities we find in more institutional proposals,

one might be tempted to find the solution in more informal kinds of democratic agency. I now turn to consider this possibility.

Democratic inclusion through informal inclusion in a transnational informal public sphere: irregular migration as a political act?

Some propose that migrants' inclusion in the control of borders comes through informal means of political interaction. This, for instance, is the strategy followed by Robin Celikates (2019). Celikates's reflection focuses on the notion of civil disobedience as related to the practice of irregular immigration. According to Celikates, indeed, irregular immigration should not be interpreted simply as a private act pursued by actors to pursue personal aims. Rather, it should be intended as a *political* act. Within this reading, irregular immigration qualifies as a form of civil disobedience immigrants enact to manifest their dissent towards a practice – that of border controls – that is in their eyes illegitimate and, jointly, to call for a problematization of the existence and composition of territorial boundaries as such, whose legitimacy, as we have seen in previous chapters, is far from obvious. In this perspective, then, the right to contest border controls for migrants – that in our framework integrates the exercise of sovereignty of receiving polities – would find its satisfaction in this, and other similar, form of civil disobedience.

Celikates's approach shares some theoretical underpinnings with mine. As may be easily understood, Celikates starts at least implicitly from the idea that the existence of borders and border controls is a contested issue whose legitimacy has to be problematized on a transnational level. This leads Celikates, and me as well, to theorize a right to contestation for would-be migrants. Furthermore, the idea, that I find plausible, might be ascribed to Celikates, that since the practice of border controls in the eyes of outsiders is one whose legitimacy is at least disputable, this grounds, if not a moral right for migrants to disrespect migration norms, at least the view that there is no strong moral blameworthiness in the act of irregular migration.

Nonetheless, I find the way Celikates understands the realization of the right to contestation in practice problematic. The main reason for this, is that, once

again, Celikates's proposal requires too much of migrants. Indeed, according to standard views, civil disobedience acts include the acceptance of the punishment whose enforcement from the authority considered is consequential to the conscious and declared disrespect of the norm the subject enacts in order to protest against it. Clearly, the fact that people enacting civil disobedience have the duty to accept the punishment from the authority considered can be contested on a normative level. But this does not seem to modify the fact that realistically the act of civil disobedience involves serious risks.

This point is even more compelling if the act of civil disobedience is irregular migration. For migration is, by itself, a difficult experience. The practice of irregular immigration multiplies the difficulties. Therefore, arguing that would-be migrants should contest border controls while giving them only this option for democratic agency is problematic, for it amounts to imposing on them a choice between passive acceptance of border controls on the one hand, and contestation through a form of democratic interaction that is extremely costly on the other. Of course, this does not deny the fact that migrants *can*, if they so desire, contest border controls in this way. For denying this possibility would be paternalistic. But I maintain that this cannot be the only option of democratic agency available to them. This is motivated also by the fact that, as long as the possibility to contest border controls does not have some sort of institutionalization, there is no guarantee that existing public institutions – representing insiders – will prove accountable to these contestations, this possibility being left totally dependent on the factual effectiveness of these civil disobedience acts. To obviate these problems, a possible solution seems to be that of imagining the constitution of transnational courts of justice having contestatory powers on the issue of border controls [41] (Honohan, 2014). This seems at first glance a valid alternative. I now turn to consider it more in detail.

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[41] This solution is similar to the one proposed by Anna Stiltz, who prescribes that *internal* courts of justice have more power to question the justifiability of migration policies approved by bounded polities' parliaments (2019, pp. 212-213). In a way, this solution goes in the right direction. However, imagining that this role is assigned to internal courts of justice does not give enough guarantee for their impartiality on the matter.

Fourth option: transnational courts of justice having contestatory powers on the matter?

As I mentioned, in order to implement would-be migrants' right to contest migration policies, another alternative may be imagined in the institution of transnational courts of justice having the power to contest migration policies approved by receiving communities, and to call for a review of them. Clearly, when and how these courts would be entitled to intervene will be a disputable matter which does not seem to admit, a priori, a clear definitive answer. The most plausible hypothesis is that how the power of local democratic institutions and that of these transnational courts should be balanced is the object of an ongoing negotiation whose results may change over time. Nonetheless, it seems that at least a thin common ground on the basis of which it is possible to identify the limits of justifiable intervention by the courts is available to us. This work, indeed, starts with the basic premise that every individual in the world is entitled to pursue their own life plans, and assumes universal recognition of this principle. This entails that, notwithstanding the conflict of interests between insiders and outsiders, in this framework both actors are assumed capable of granting to each other this fundamental, very general, right. This may constitute the basis on which a dialectic between communities' sovereignty represented by local democratic institutions and universal rights defended by transnational courts of justice can be constructed. Indeed, transnational courts of justice may be imagined intervening in cases in which receiving communities' migration policies become too restrictive for migrants' freedom, stifling their capacity to choose from an adequate range of life options.

While this proposal would deserve a more detailed analysis, it seems, at least prima facie, to have the advantage of being capable of balancing the interest in sovereignty of receiving communities and more universalist perspectives. This is because the presence of transnational courts of justice seems to constitute a guarantee that receiving polities will be bound to consider outsiders' interests. At the same time, given the primarily contestatory nature

of the imagined courts, it seems that they will entail only a partial limitation on receiving polities' sovereignty, and arguably a largely acceptable one. After all, many of us already think that sovereignty, despite being to some extent a value, is not absolute. And many of us already accept that democratic power is counterbalanced by other kinds of non-democratic powers – such as constitutional courts or technocratic institutions – in the spirit of a balance of powers to avoid democratic absolutism, that, in a liberal-democratic perspective, would not be less undesirable than any other kind of absolutism. Therefore, it does not seem an extremely democratic sacrifice to accept the presence of analogous limitations of democratic sovereignty on the transnational level when democratic decisions can touch values and issues of transnational concern.

Conversely, one might complain that the representation of would-be migrants' interests that is granted by these courts is too weak. This is mainly due to the fact that, given that these courts would not be democratic institutions *stricto sensu*, this proposal still reserves to migrants the role of passive spectators (Biale, 2021). I recognize that this objection has a point. At the same time, however, I do think it is insufficient to discard the normative proposal we are considering. This is because, while it is true that the presence of transnational courts does not permit migrants to pursue democratic interaction with insiders, it does not seem the case that it is not able to give at least partial satisfaction to the purpose of recognizing them as individuals capable of agency. This is because, as long as it is accepted that the role of these contestatory courts is that of representing the interests of outsiders, it seems that they make, at least indirectly, receiving polities accountable to them. This implies the recognition of outsiders as subjects to which justifications for public decisions affecting their interests is due. This already contains a recognition of the would-be migrants' agency, even if perhaps not fully democratic agency.

This does not deny the mentioned defect this proposal presents. This defect, indeed, remains. At the same time, I do not see better alternatives. To this point, it must be added that other strategies may be thought to further mitigate the defect of representation of outsiders' interests involved in the proposal considered. For instance, it might be imagined that the dialectic between

receiving polities' sovereignty and universal rights determined by the presence of transnational courts of justice is integrated with transnational discursive practices facilitated by the action of transnational social movements in a more informal public sphere. The existence of transnational movements is already a reality made possible by communication technologies, such as social networks (Bohman, 2007; Dryzek, 2008).

The presence of transnational social movements does not grant a perfect representation of outsiders' interests. This is also due to the fact that movements do not grant equality in political participation. Nonetheless, it seems difficult to deny that it may represent a stimulus for national public opinion to focus on issues and interests neglected by democratic actors operating within more traditional public spaces – such as public institutions and national media.[42]

In the light of these considerations, it seems that the implementation of outsiders' right to contest border controls can take the form of a combination of more formal transnational systems of rights protection, exemplified by courts of justice, and the presence of more participatory forms of inclusion facilitated by the action of social movements capable of exercising democratic pressure both on courts of justice and the democratic institutions

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[42] Thus, another source can be found in political parties (White and Ypi, 2010). Probably the construction of fully transnational parties would require the presence of a transnational institutional framework. Furthermore, as long as parties are held electorally accountable only to members of bounded comprehensive communities, it is likely that they will remain primarily accountable to insiders. Nonetheless, the possibility exists for parties to construct transnational permanent allegiances – with parties from other polities and/or with movements – for the purpose of pursuing political projects. These are practices in which already existing parties are involved (White, 2014; Wolkenstein, 2018). This lets us think that political parties seeking to construct transnational allegiances may in principle be used as a means to introduce the point of view of outsiders within national public spheres even without these being formally included in the democratic life of bounded polities. The obvious advantage of parties is that they are included in the formal public sphere, and that they contribute, so to speak, to the authorial part of the democratic practice. Thus, the presence of political parties may constitute a further instrument to facilitate the introduction of outsiders' interests in the construction of receiving polities' border controls, without this being incompatible with the formal recognition of polities' sovereignty. The potentialities of this alternative, though, remain to be clarified by further investigations.

of bounded polities. Illustrating how, starting from the presence of these formal and informal contestatory powers, the imagined negotiation between them and local democratic institutions might be articulated would require a dedicated work. Nonetheless, it seems possible to give at least a few examples on the point.

Thus, consider first the well-known fact – mentioned in chapter 1 – that the existing practice on matter of border controls pursued by receiving states adopts a sort of civic-nationalist paradigm, according to which would-be migrants have to take tests in order to prove they are compatible with 'the way of life' of receiving communities before being allowed to come in (Orgad, 2015). Thus, what might be asked is to what extent this practice has to be considered legitimate and compatible with a commitment to the universal right to be the author of one's own life plan. Consider, for example, the following questions: are these tests justifiable as tools to grant the right to pursue personal life plans of members of receiving societies? what can these tests legitimately ask? What issues should they be entitled to touch? Can they pertain to issues related to religious commitments, for instance, or should they be limited to a more strictly speaking civic dimension – and then including only questions, for instance, related to characteristics of the political system of the receiving polity, its recent history, and its legal system?

Now, the existence of transnational courts of justice would permit bringing these questions into a transnational public negotiation capable of representing, at least to some extent, even the claims of would-be migrants. Thus, for instance, these transnational courts might contest the presence of religious issues within tests – and then the inclusion of religious requirements as conditions for entry in the country considered – as violating the religious freedom of outsiders, which in turn may be thought to be an extension of their right to be authors of their own lives. At the same time, the presence of transnational negotiation on the matter facilitated by the action of actors in an informal public sphere would permit receiving polities to get access to perspectives other than theirs. It would permit, for instance, to have better knowledge of what would-be migrants think of this practice, of how it influences their self-perception and how it affects their relationship with the hypothetical receiving polity. On the other hand, the intervention of courts

such as the one exemplified might be contested by bounded polities. Thus, for instance, bounded polities might defend their hypothetical desire to include religion-related questions as requirements for entry because of a certain religious commitment being a part of the communal identity of the receiving polity, and then vindicate the 'respect' of a specific religious way of life, or the inclusion of religious symbols, in public practices as something existing receiving communities are entitled to 'protect' from the change that would be implied by the entry of newcomers bringing with them different cultures.

Another possible example which might be made touches another dimension of migration policies currently pursued by receiving states. This pertains to the practice of 'selecting by merit'. Some scholars, indeed, point out that receiving states adopt specific programmes of admission for highly qualified migrants (Ambrosini, 2020, p. 369; Shachar, 2016, pp. 178-183). Indeed, states work on their capacity to attract from abroad workers with high professional qualifications, whose ingress may constitute a causal factor of economic growth for the receiving country. Therefore, states often facilitate the entry of these kinds of migrants assigning them special permissions once they have proved to be in possess of skills. In this sense, it has to be said that, far from being monoliths, migration policies pursued by states are composite programmes in which different selection criteria coexist with each other for different categories of migrants. So that, beside a civic-nationalist approach, we find a sort of meritocratic approach for highly skilled professionals.

What might be asked, though, is whether the practice of selecting by merit is legitimate in the liberal-democratic view. Here, for instance, a supporter of more open borders might contend that, given that skilled professionals are usually more concentrated in countries of origin capable of offering better life perspectives – and then to offer better chances to acquire skills – the practice of selecting by merit runs the risk of crystallizing existing inequalities between rich and poor areas of the world. Conversely, a supporter of sovereignty might contend that being included is not a right, so that receiving states should be left free to decide whether the benefits of 'recruiting' many talented individuals are worthy enough to accept the costs that might be

associated with their inclusion – which may concern an increase in cultural diversity.[43]

The last example I want to make draws on a right that has been mentioned in many other passages of this work: the right of exit. As we have seen, the existence of a right of exit is recognized by all theoretical approaches on the matter. Of course, there is disagreement on how exactly to interpret this right, supporters of sovereignty being more prone to read it as an entirely negative right – namely, entailing only the duty of states of origin not to obstruct exit, but no corresponding duty to let individuals in for other communities.

Now, the meaning of the right of exit, and its value, might be thought to be the object of an ongoing process of reconstruction which takes place in the transnational negotiation imagined, with this process having the potentiality to promote middle-way solutions capable of mitigating, on a substantive level, the claims of both sides of the debate. For example, the result of this public negotiation might end up in the proposal of interpreting the right of exit as entailing not open borders, but *porous* borders, in order to grant that every individual has at least some entry options available in other communities, even if not necessarily every entry option. What is meant by porous borders, in this case, would be the practice of alternating in a dynamic way the closure and openness of borders. This practice would permit, for instance, to conciliate the purpose of granting to states the right to a certain degree of discretion on entries, not by allowing them to decide whether to open or close borders, but at least to decide whom to let in and when. At the same time, the inclusion of would-be migrants in the negotiation would give way to allowing their participation in the decision-making process concerning who should include whom, how and when. Indeed, as is well-known, not all

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[43] Notice, however, that the negotiation imagined may also be more dynamic than this. Indeed, depending on the reason why the right to state sovereignty is defended, the practice of selecting by merit can be criticized by a communitarian-like supporter of sovereignty as a factor of corruption of the ideal of political membership based on common civic-cultural identity. And a libertarian-like supporter of open borders might approve the practice of favouring the entries of talented individuals as the just prize for those who are able to "help themselves".

destination countries are interchangeable for migrants. For clearly membership in different countries may be more or less compatible with the pursuit of their life plans. Therefore, starting from a renegotiation of the meaning of the right of exit, their inclusion in the negotiation of the distribution of entry opportunities in different countries might be accepted as in line with the recognition of their right to the authorship of their lives, without this stifling the sovereignty of receiving communities. In this way, the control of movement across borders would not disappear. But at least it would allow the possibility to become more negotiated, flexible, and multilateral.

These are just a few examples – among the many that might be given –of how the imagined public negotiation might work out, and of which issues it might be able to touch. A more detailed analysis of this point is left to future work. However, hopefully the examples provided suffice to explain in what sense the existence of this transnational negotiation might facilitate a dynamic and ongoing process of reconstruction of policies regulating border controls capable of offering to different theoretical positions – but also to different social perspectives – the opportunity to alternate each other as guidelines for the construction of what appear to be the migration policies more appropriate to the given circumstances. With the added hope that the presence of this transnational negotiation might prove capable, in the long run, to facilitate the acceptance of attitudes on border controls more prone to openness, without eliminating the capacity to exercise sovereignty for receiving communities. Given the state of the debate, this seems the best alternative we have, imperfect as it is.

Conclusion

In his essay, *The pursuit of the ideal*, Isaiah Berlin wrote: "These collisions of values are of the essence of what they are and what we are. If we are told that these contradictions will be solved in some perfect world in which all good things can be harmonised in principle, then we must answer, to those who say this, that the meanings they attach to the names which for us denote the conflicting values are not ours. We must say that the world in which what

we see as incompatible values are not in conflict is a world altogether beyond our ken; that principles which are harmonised in this other world are not the principles with which, in our daily lives, we are acquainted; if they are transformed, it is into conceptions not known to us on earth. But it is on earth that we live, and it is here that we must believe and act." (Berlin, 2013 [1947], pp. 13-14). This passage seems to fit well with the case of border controls, where, as I tried to argue in this final chapter, we find a contradiction between the principles composing the liberal-democratic system of values. Or better, a contradiction between the satisfaction of the same set of normative principles for different groups of subjects. On the one hand, the right of receiving communities and of their members in self-determination; on the other, the same right of would-be migrants.

Berlin seems to think that conflicts of values of this sort are necessarily destined to remain unsolved. I do not think this is the case, for the possibility to harmonize the conflicting interests in a consistent system of values seems not to be denied in principle. Nonetheless, if this system exists, still we have not found it yet. In line with Berlin's spirit, I think that this does not simply hinder us in finding perfectly practicable normatively coherent solutions to the issue of border controls to be applied in the world as it is, where the issue of border controls intersects with a number of other public questions, whose solution is complicated by the presence of previous injustices. Rather, I think that it also hinders us in seeing, from the point where we are, an ideal world – namely, a possible world – where the conflicts we are dealing with do not exist.

In my view, this compels us, until we have better alternatives, to try to find out intermediate normative solutions capable of mitigating the conflicts we deal with, without having the ambition to solve them. This is the approach I tried to apply to the case of border controls, where I argued that the exercise of sovereignty by receiving polities on the matter should be integrated with, and then limited by, a right of outsiders to contest sovereign decisions on it. Further, I tried to sketch some possible, viable options to understand how this normative perspective could be operationalized. And thus, the most appealing solution seems to be that of imagining the presence of courts of justice with contestatory powers having the task to protect the interests of outsiders,

integrated with the action of transnational social movements in the informal public sphere. Nonetheless, this has to be understood as a first approximation of a solution to a question that still remains open, and whose normative tenability and practical feasibility – even if not necessarily in the here and now – stand in need of further elaboration in order to be confirmed.

Usually middle-way solutions run the risk of leaving all the parties involved in the conflict discontented. This is a risk to which my normative proposal is not invulnerable. Indeed, supporters of border controls will argue that, in the construction of my position, I concede too much to outsiders, while supporters of more cosmopolitan views will claim the opposite. This seems to be a necessary defect of solutions of the sort I am proposing here. However, finding mediating solutions appears to me the best we can do in cases in which, given the presence of conflicting values, we have no independent criteria available to order the conflicting values in an uncontested scale of priorities, nor the possibility of making reference to perfectly neutral solutions, as I think this is the case in the question which has been the object of interest of this work.

Conclusion

In this work, I have tried to problematize the legitimacy of the practice of border controls. As we have seen, a large literature exists on the matter which is composed of many different alternative perspectives. Confronted with this variety of positions, I have tried to defend two points. The *first* purpose of my work has been to point out that different positions on the legitimacy of border controls do not exist in a vacuum. Rather, they are parts of bigger pictures which express systematic understandings of what is justice, what is political legitimacy, what is political membership. In this sense, border controls positions can often be reduced to views that to some may be called communitarian – where this communitarianism can be expressed alternatively in more nationalist or republican terms – according to which political membership is a value which mainly manifests itself in the particularity of the form of life associated with inclusion in specific groups, whose specificity, in turn, has to be considered instrumentally and/or inherently valuable. This view translates itself into the idea that borders do have a social significance that has to be preserved through the adoption of a set of practices among which exclusive border controls are included.

On the other hand, open borders perspectives are usually bound to the idea that the value of political membership has to be found in its relationship with the capacity of human beings to pursue a set of rights – that may be interpreted at once as individual and collective rights – that, in this view, are interpreted as universal – namely, equally possessed by every human being – and fundamental – namely, pursuing some sort of normative priority over other normative goals. This view, furthermore, is often associated the idea that, unless it is possible to prove that some relation, instrumental or conceptual, exists, between this goal and the existence of borders – a relation that supporters of open borders do not see – it must be concluded that borders are only an arbitrary fact of history posing an obstacle to the achievement of the idea of universal justice. This being related to the fact that borders clearly limit the individual freedom and capacity for agency of the would-be migrants and, in a context of global inequality, constitute a causal factor of crystallization of existing inequalities. The consequent attitude of this view

of borders coincides with the idea that the existence of borders should be made as least influential for the lives of individuals as possible, with this entailing the purpose of making borders as open as possible.

What I have tried to highlight is that the acceptance of each of the two perspectives on the legitimacy of border controls is bound to the acceptance of the general views sketched here which, often, remain in the background of the arguments offered against or in defence of border controls. In this sense, the possibility to address the debate depends on the capacity to problematize both views, bringing them from the background of the debate to the centre of our theoretical concerns as points to be explicitly addressed. That is why the way in which the question has been framed in this work led us to problematize, in the central chapters, the existence of borders per se, rather than simply their being sites of control of movement.

The *second* point I wanted to highlight is that, based on the analysis offered in this work, the theoretical perspectives which currently animate the debate do not seem able to offer conclusive answers to the question we are concerned with. Indeed, this work was opened with the claim that the traditional commitment of democratic liberalism to the values of openness and equality seems to suggest a natural liberal tendency to prefer inclusive migration policies over restrictive ones, and then a presumption in favour of open borders. To this point it has to be added that, if the arguments offered here are correct, the more adverse perspectives on open borders are weakened by their incapacity to fully justify the existence of territorial boundaries. Nonetheless, we have seen that the very same arguments grounding this conclusion suggest at the same time that the idea that borders – or their social relevance – should be suppressed is not a strict logical consequence of liberal-democratic principles. And this implies that even a conclusive argument in favour of open borders is missing.

Thus, what seems to emerge is the idea that despite the traditional association between liberalism and "openness" giving an advantage to open borders views, the debate has to be considered substantially open, and then closed borders objections are not completely overcome. By reason of these considerations, I tried to offer another perspective on the matter capable of respecting the openness that in my opinion characterizes the state of the

debate. I identified this solution in the idea of a democratization, though imperfect, of the existence of borders and of the practices related to their control.

The ratio lying at the base of this proposal is the idea that the democratization of boundaries gives way to the constitution of a discursive practice open to opposed substantive views for which an equal possibility to concur in a fair competition is recognized. For, in the absence of the possibility to fully determine which perspective, among the many possible, should be preferred on a theoretical level, recognizing in each of these perspectives an equal right of citizenship in a market of ideas which is created as a consequence of the constitution of the transnational discursive space we have imagined appears the best a rationalist political philosophy can do. This perspective, however, seems to allow at least the claim that even outsiders – namely, would-be migrants – should be included to some title in this discursive practice, as parties involved in the conflict the practice of border controls (but also the existence of borders in themselves) seems to create, and then as parties whose interests each of the possible perspectives on the matter aim to represent. This, in a way, suggests the possibility of politicizing the role of would-be migrants, that by reason of this discursive inclusion, are transformed from passive recipients of systems of rules – that may be or not be friendly to their interests – into political actors capable to some extent of speaking for themselves.

The number of issues this work leaves open is clearly superior to the number of questions it manages to answer. As I have specified in the previous chapter, indeed, the solution offered to the problem we have been considering remains so far underdeveloped. In this sense, as I mentioned in previous chapters, the considerations offered have to be considered as the proposal of some bases for the construction of an alternative theoretical perspective on the matter, rather than as the enunciation of a complete and fully-finished theoretical perspective. In order for the considerations offered here to be turned into a theoretical perspective, they will need to be integrated with further reflections, that will have to pertain both to the normative defensibility of the position and its practical feasibility. Thus, for instance, it will be necessary to verify whether, confronted with the substantial plurality of perspectives in the

debate, the one offered here is effectively capable of playing the role of an intermediate position or, rather, whether it runs the risk of slipping onto one side of the divide or the other depending on how it is interpreted. Secondly, it will be necessary to better clarify how the inclusion of the would-be migrants' perspective in the public negotiation of boundaries can be implemented. In the last chapter of this work, we saw that a possible solution is the involvement of transnational contestatory powers acting both in an imagined formal and informal transnational public sphere. The tenability of this proposal, nonetheless, will have to be further inquired into, as clarified in the last chapter. The space of a single dissertation, nonetheless, is not sufficient to solve these theoretical problems. Therefore, I set aside the consideration of these issues for future work.

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