Immigration as A Human Right

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Abstract

The study argues that implicit in the Universal Declaration of Human Rights, the principle of immigration as human rights is supported by principle of positive freedom, negative freedom, and equal autonomy. The study endorses a liberal egalitarian perspective by claiming that human right to immigrate promotes equal autonomy. The study also investigates why the principle of immigration as a human right has been dismissed by doctrines within Liberalism. It argues that a state lacks a legitimacy to employ a principle of national self-determination against the immigration issue. Instead, a state has a moral obligation to the protection of a human right to immigrate; it also has a duty to provide equal social rights to the immigrants in compared with those of the citizens.

Keywords: a human right to immigrate, Liberal Egalitarianism, Liberal Nationalism, Utilitarianism, Libertarianism, positive freedom, negative freedom, equal autonomy, national self-determination
Introduction

1. Background and source of problems

Migration, which includes the movements of leaving and entering the country, has been increasing in the globalisation era due to different reasons, e.g., political turmoil, environmental crisis, economical reasons, and family reunification. A Liberal state, whose constitution defends freedom of political expressions, and promotes the principle of equal opportunity for all and free markets, is very attractive to the immigrants, especially political asylum seekers and economical immigrants. A liberal society grants the human right to exit the country; however it does not grant the human right to enter the country and tries to keep away unwanted immigrants.

The liberal society justifies the exclusion of the rights to enter a country for foreigners from various reasons, which are claimed to be important or even fundamental to liberal values. This work is an attempt to evaluate the moral standpoint with regards to the immigration issue of four important doctrines of liberal traditions, that are, Liberal Egalitarianism, Liberal Nationalism, Utilitarianism and Libertarianism.

2. Analytical Questions

My work is an attempt to answer main questions as follow:

1. Why immigration should be considered as a human right? What is the moral basis of immigration as a human right?

2. What is the basis of a morally justified immigration policy of the liberal doctrines namely, Liberal Nationalism, Liberal Egalitarianism, Utilitarianism, and Libertarianism?
3. According to Libertarianism, does the state have a legitimate power to restrict immigration?

4. Who is obliged to protect the human right to immigrate?

5. Should the immigrants be entitled to equal social rights to the citizens?

6. Does patriotism make a moral obligation to protect a human right to immigrate untenable?

3. Methodology

The thesis starts from a philosophical analysis of the moral justification of immigration. The method of the thesis begins with an analytical interpretation of the Universal Declaration of Human Rights with regards to the relation of the concept of freedom and migration as written in the text.

This thesis is done in the field of applied ethics, and the methods of applied ethics that I choose is a “top-down model”, that is, to apply a moral rule to the case of immigration. According to the top-down model, immigration policy should be deduced from a moral principle with regards to immigration (cf. Beauchamp 2002: 1-16).

4. The Structure of the Thesis

In the first chapter, I present my analysis of The Universal Declaration of Human Rights about the migration issue. The human rights of emigration are explicitly proclaimed in the Universal Declaration of Human Rights. But it is taken for granted that the human right to immigrate is not being asserted in the text. In this chapter, I propose my interpretation that “Immigration as a Human Right” is the principle that is implicit in The Universal Declaration of Human Rights (1948), which purports to
protect the principle of “positive freedom”, and “negative freedom” and to promote the principle of “equal autonomy”.

In chapter two, I present a dispute over the question: how Liberalism thinks about the claims of humans’ rights to free movement and residence of the immigrants? Within the liberal approaches, this chapter presents both arguments for open and restrictive admissions of immigration are developed from Liberal Egalitarianism, National Liberalism, and Utilitarianism. Liberal egalitarian tradition stresses the equal human right irrespective of nationality, is interpreted in favour of a more open border for immigration. National Liberalism argues that an open border is a viable threat to the value of national culture and patriotic value within a liberal state. Utilitarianism takes all interests of the affected group into consideration, but does not account for value of patriotic sympathy per se.

In chapter three, I present my analytical reconstruction of Libertarianism position about immigration policy. Libertarianism emphasizes the individual freedom of possessing private property without interference from the state. But here is a dispute within Libertarianism concerning immigration policy: whether a restrictive immigration policy of nation-state can be conceived as a contract of a certain group, that is, individuals in a nation, to prohibit outsiders from entering to the land which belongs to a group of individuals? I also argue that Libertarianism should not conceive of undocumented worker immigrants as illegal persons because they have a right to make a contract according to the Libertarian principle; and Libertarianism should insist on the protection of political asylum seeker who might have levied on tax in the future even though Libertarianism is opposed to taxation.

The last chapter, chapter four, focuses on the question of the moral obligation to protect the human right to immigrate. My theoretical framework with regards to the protection of human rights of the immigrants is argued in line with Liberal Egalitarianism, which is implicit in the Universal Declaration of Human Rights (1948). In this chapter, I set out to answer that who is obliged to protect the human right to immigrate. At present, in a world that is divided into nation-states, each nation-state
assumes that it does not have any moral obligation to protect the human right to immigrate. This presumption arises even in a liberal state because of the two assumptions to which I object because: *firstly* a nation-state have exclusive right over national territory; and *secondly*, the paradoxes of liberal democracy, which on the one hand, justifies democracy on the ground that every human being has an equal moral worth, thus humans are equal to the law, and are also the author of the law; but on the other hand, members in a political community are legitimised to vote for the interest of themselves, without having to take the immigrants, or non member into consideration. I argue that both assumptions are weak and should be abandoned.

I propose that each nation-state is entitled to have a moral obligation to protect a human right to immigrate, and after the immigrant resides in a receiving country, he or she should be entitled to equal social rights in comparison with the citizens. But if the state requires that the “equal social rights” of the immigrants would be realized after a certain periods of first admission, then during the waiting process, the immigrant should be quarantined to equal satisfaction of needs.

At last, I attempt to defend that the moral obligation to protect a human right to immigrate is tenable. Patriotism tends to prioritise the interests of co-nationals as against foreigners. So I set out to answer: Does Patriotism make obligation to protect a human right to immigrate untenable? I argue that the patriotic feeling is not the absolute value of human, but patriotic feelings are shaped as a social cohesion by socialisation. So I think that there is a possibility to create a moral obligation to a foreigner.
Chapter 1: Immigration as a Human Right

This chapter discusses a human right to immigrate to any country at one’s own will by analysing the Universal Declaration of Human Rights. It declares freedom of emigration out of the domicile country as one of the human rights; however it is not clear whether the human right to emigrate also imply the right to immigrate to another country. My conclusion is that immigration is a basic right of human, as without it, human autonomy would be significantly devalued.

1.1 The Universal Declarations of Human Rights on Migration

The Universal Declaration of Human Rights (1948)\(^1\) assumes there are inalienable rights for all human being, so they proclaim the universal principles, which attribute to human being everywhere in the world. The Universal Declaration of Human Rights proclaims the universal rights from the presumption that there is an existence of independent countries, and everybody is a member of at least one.

*Article 13* focuses on movement that is pertinent to the state’s territory. Article 13.1 proclaims that: everyone has the right to freedom of movement and residence ship within the borders of each state, noted that the text states that “everyone”, not only a special kind of membership such as a citizenship or a permanent residence ship, is endowed with the rights to freedom of physical movement and residence ship within the border of a state. So it should mean that everyone, who is within the borders of a state, have the right to go to all public areas, and resides wherever they like.

*Article 13.2*: Everyone has the right to leave any country, including his own, and to return to his country. As it proclaims that everyone have the right to leave “any” country, even though they have a citizenship of that country, it guarantees the right to

emigrate without specifying any required conditions, while Article 13 talks about physical movements in and out of a country.

Article 15 focuses on nationality and it asserts three propositions:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of her/his nationality.
3. No one shall be denied the right to change nationality.

The propositions above show that autonomy of the person is crucial to nationality as (2) states that nationality of a person cannot be taken away arbitrarily, but if the person wants to change the nationality, then (3) their choice to change nationality shall not be denied.

The principle in the Universal Declaration of Human Rights focuses only on what the recipient should be treated as a human being, but it does not acknowledge who has the responsibility for sanctions, if the principle of human rights is not promoted. In this case, the Universal Declarations of Human Rights does not assert the demand that each nation has a moral obligation not to deny the rights of the “would be” immigrants to be granted a citizenship. Therefore, in real, the rights to change nationality are not guaranteed if the second country does not allow the person to immigrate. Therefore, I argue that since the people have a right to leave a country, and change nationality at their will, they should, accordingly, be entitled the right to immigrate as the right to leave is meaningless if there is no right to enter to another second country.

1.2 Classification of immigration in the Universal Declaration of Human Rights

This section is an attempt to clarify how the Universal Declaration classify and proclaim the rights of immigrants. The classifications are as followed: political asylum seeker, family reunification of immigration, worker immigrants, and undocumented worker immigrants.
1.2.1 Political Asylum Seeker

The Universal Declaration of Human Rights proclaims that political asylum seekers have a human right to immigrate to the country that has potentiality to accept and remedy them. However, the term of prosecution have to be defined by the United Nations, as the right to immigrate would not be invoked if the person’s act were contrary to the United Nations.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

**Article 14**

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

The Universal Declaration of Human Rights fully supports the immigration of political asylum seeker. However, there are practical problems concerning the admissions of political asylum seeker to another country because it adds economic burden for the host country, so the potential host country are not willing to accept them. The application process takes time, but it is dangerous to wait for a long decision process. When the immigrants are under protection in the host country, there is also the problem about how to measure the origin country’s being safe enough for the return of political asylum seekers.

1.2.2. Family - reunification Immigrants

The Universal Declaration of Human Rights does not state outright that immigrants based on family ties, such as spouses, children, are entitled to the human right to
immigrate, but the human right to immigrate based on family ties can be derived from Article 16 of the Universal Declaration of Human Rights which regards family as a basic unit of society, and proclaim the right to marry and found a family without limitation of race.

**Article 16**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

In general, although a country does not grant an automatic right of its citizens to bring in people with family- ties, but immigration based on family- ties has a weighty consideration of entrance even to a country that has a restrictive immigration policy. Normally, a migration board would settle an interview with the applicants in order to affirm that a family- reunification is a main reason for the immigration.

1.2.3. Worker Immigrants

Worker Immigrants are people who move to work in other countries. They might expect to return to the origin country when the work contract ends, or plan to settle down at the host country permanently. According to the Universal Declaration of Human Rights, everyone has right to a work, and most important individual is entitled to “free choice of employment”.

**Article 23**

(1) Everyone has the right to a work, to a free choice of employment, to just and favourable conditions of work and protection against unemployment.
(2) Everyone, without any discrimination, has the right to an equal pay for equal work.

The term “Free choice of employment” shall not be interpreted that it can be applied only within the country of origin. Even though to find a job in other country might be harder, but if a worker could find one, it should be interpreted that if they are denied to work, which they find in another country, their human right is thus violated.

1.2.4. Undocumented - Worker Immigrants

Illegal immigrant or undocumented immigrant is the term defining those who stay at a host country without permission from the receiving country. They might be tourists who over stay their tourist visa, workers without work permits, or criminals. The Universal Declaration of Human Rights does not mention about the undocumented Immigrants, these persons; however, undocumented immigrants, as human beings, can claim for human rights that are stated in the Universal Declaration of Human Rights, which also include Article 23.1. Thus, the receiving country should recognize the legal status of undocumented worker. Moreover, due to their unrecognised legal status, the human rights of undocumented immigrants are also violated in many other aspects, according to Article 23.2, Article 24 and Article 25.1.

**Article 23.2**

2) Everyone, without any discrimination, has the right to equal pay for equal work.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.1**

Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
The undocumented worker immigrants usually get less pay in proportion to minimum standard of wages in the receiving country. The minimum standard of income is implemented to guarantee that no one lives in destitute according to the living standard in the receiving country. The employer might also force them to work overtime, and without holiday; sometimes, they are abused physically by employers, but undocumented immigrants cannot report to the authorities of the receiving country, as authorities do not recognize their status; as they are illegal from the point of view of the state, they do not have access to the health care system of the receiving country.

Sometimes, some receiving countries announce amnesty for the undocumented immigrants. However, there is a restricted period that undocumented immigrants can register for amnesty. For instance, Thailand 1996 announced that the employer could register for work permit because there were undocumented immigrant workers; Spain announced amnesty for the employer to register undocumented workers in 2005.

In conclusion, the Universal Declaration of Human Rights grants the right to immigrate for political asylum seekers, family reunifications, and workers. This section proves that the right to immigrate is assigned to almost the majority of immigrants, and the task to analyse a moral justification of immigration as a human right, will be discussed in the next section.

1.3 Justification of Immigration as a Human Right

In previous section, I argue that The Universal Declaration of Human Rights proclaims the human right to freedom of migration, which includes the freedom to emigrate and the freedom to immigrate. In this section, I will present my analytical interpretation of the moral justification of the human right to freedom of migration. I argue that the principle of inalienable human rights as proclaimed in The Universal Declaration of Human Rights has a relation with the principle of freedom and justice as the first sentence in the preamble of The Universal Declaration of Human Rights states that “…
Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice…”

In my opinion, the principle of human rights is shaped by the concept of freedom and justice. The concepts of freedom and justice are also a foundation of the human rights of migration.

1.3.1 The Principle of Freedom: The Positive and Negative Freedom

The concept of freedom has been distinguished into positive freedom and negative freedom. The freedom in the positive sense is: the agents have the ability to do what the agent chooses. Positive freedom consists in self-determination, being in charge of the fulfilment of one’s own inspirations, while “negative freedom” is the freedom that is defined in a negative sense: the agent is free from interference of other people that would prevent the agent to do what he or she wants (Berlin 1969). The Universal Declaration of Human Rights employs the principle of the negative and positive freedom as its basis of human rights. For example, Article 4 proclaims the protection of negative freedom, that is, the rights to be free from physical torture, or slavery; Article 22 proclaims the protection of positive freedom in different terms, that is, a right to a social security, rights to a culture, rights to economy, which is indispensable of free development of his/her personality.

I argue that The Universal Declaration of Human Rights (1948) recognizes that migration (to exit and to enter a country) is fundamental to individual realization of freedom in both positive and negative sense as follow:

i) The Negative Freedom

The Universal Declaration of Human Rights proclaims the immigration rights which is justified by the protection of the negative freedom. For example, Article 9, proclaims that no one shall be subjected to arbitrary arrest, detention, or exile of which violates negative freedom of a person; and Article 14.1 proclaims the protection of negative freedom of a political
asylum seeker who faces prosecution; and Article 15.2 declares that: No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

ii) **The Positive Freedom:**

According to The Universal Declaration of Human Rights, the protection of a positive freedom aims at empowering “the free development of a person” as it states in Article 22.² The quarantine of positive freedom to immigrate can be seen from Article 15 which states that everyone has the right to a nationality, which also includes the right to change nationality. Thus, I conclude that The Universal Declaration of Human Rights proclaims the protection of positive freedom of the immigrants who want to attain self-development in another country.

The Universal Declaration of Human Rights protects negative freedom by proclaiming immigration rights of political asylum seeker, which make “immigration rights” *prima facie* be regarded not as a basic right, but just “a remedy” which would be implemented only when the human right to security is threatened. The proclamation of political asylum seekers’ right to immigrate is made explicit in the text because it is urgent, so the Universal Declaration of Human Rights wants to state explicitly that competent national tribunals have a moral obligation to financially support them to go to a safe country. I don’t think that immigration is just “a remedy”, as I argue that The Universal Declaration does not only proclaim the protection of “negative freedom” with regard to the immigration issue, but it also justifies the human right to immigrate by the principle of “positive freedom”. According to the Universal Declaration, individuals are entitled

² **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights **indispensable for his dignity and the free development of his personality.** (Italics mine)
to reside in the country in which they freely choose because it is crucial to their freedom in the positive sense, that is, the free development of a person. Besides justifying immigration rights by the principle of “positive freedom” and “negative freedom” as explained above, the promotion of equal autonomy among individuals, who has equal dignity, is also a foundation of immigration rights.

1.3.2 The Promotion of Equality of Autonomy

The Universal Declaration of Human Rights recognizes each individual as having equal moral worth. It does not seek to realize equality in terms of equality of resources, but it seeks to promote equal autonomy among individuals regardless of their birth origin, sex, race, and religion.

“Autonomy” is the capacity of ruling over one-self, or self-determination. The concept of autonomy also has various senses of meaning. Moral autonomy is often understood as the capacity to access one’s basic values, and to act upon the values that one endorses on a rational reflection. In other context, autonomy is understood as a right to act according to one’s judgement about matters that affect one’s life without interference by others (cf. Craig 2005: 75-76).

Autonomy seems to be related to the concept of freedom: the interference of freedom also intimidates a personal capacity to rule over one-self. But according to Dworkin, the concept of ‘autonomy’ is not identical to the concept of freedom. Dworkin argues by giving the example of a prisoner who was kept in a cell. He was told that all the doors were locked, but in fact one door is left unlocked. The prisoner is free to leave the cell, but the prisoner’s ability to do what he wish, that is, to get out from the cell, is limited because he was given incorrect information. Thus, the capacity to self-determination can be hindered in other ways than by interference with liberty. In this case, the capacity to self-information is limited because of misinformation (Dworkin 1988:1-20).

The Universal Declaration of Human Rights wants to promote the principle of autonomy in the broad sense, that is, the capacity to live, and develop one’s personality as one chooses, with the requirement that one also has other available choices informed
through media. The Universal Declaration of Human Rights recognizes that “informed choices” are important for being autonomous, for example, Article 18 proclaims the rights of freedom of thought and of religion, the rights to receive and impart information through media because it is crucial to the promotion of personal autonomy. Education is essential to acquire “informed choices” as it is a process that a person is taught about basic knowledge and how to gain information. According to The Universal Declaration of Human Rights, paternalism with respect to education is necessary for the promotion of equality of personal autonomy as Article 26 asserts that elementary education should be directed to the full development of the human personality, and it shall be compulsory, and free.

Besides regarding educational paternalism as a promotion equal autonomy, the right to “equal access to advantages” is also proclaimed in Article 27 where everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits. The Universal Declaration of Human Rights (1948) thus seek to render equal autonomy to everybody by proclaiming that everybody should be informed of cultural life and advantages existing in the world, and should also be entitled to have ‘equal rights to access to the advantages’.

Therefore, I argue that the justification of a human right to immigrate is based on the promotion of equal autonomy. Immigration renders equal autonomy among individuals because immigration provides “equal access to advantages” to individuals in order to attain the free development of a personality. Thus, The Universal Declaration of Human Rights (1948) proposes that all individuals should be firstly informed of cultural life and advantages existing in other countries, and should also be entitled to have equal rights to access the advantages available in other countries.

1.4 Rejections of “Immigration as a Human Right”

In this section, I would like to respond to the possible rejection of my interpretation that The Universal Declaration of Human Rights proclaims the human right of migration,
which includes not only the human right to emigrate, but also the human right to immigrate.

**Rejection 1: Immigration is a kind of freedom that cannot impose a moral obligation to others.**

David Miller also argues against a human right to immigrate to another country. Miller argues that freedom of movement is not a fundamental freedom that should be held as a human right. Miller classifies two kinds of freedom, the first one is *basic freedoms* that every human should have as a right, and the second one is *bare freedoms* that does not impose any kind of moral obligation for others to meet it, such as, the freedom to buy an *Aston Martin*, does not have any significant moral demand to impose on others. (Miller 2005)

I think that Miller underestimates the value of freedom of movement. I argue that freedom of movement is essential to human’s autonomy. That is one of the reasons why imprisonment is perceived as a kind of punishment in modern society, although torture is no longer administered at all.

The freedom of immigration to another country as guest workers or tourists can be defended without great difficulty. Within a society, people could not cross into a territory that belongs to another person, such as buildings, gardens, forests, or houses without permission of the owner because if other people can invade my territory without my permission, I would feel that my autonomy is violated. But the guests or the tourists are not allowed to invade private properties anyway, and there are public areas such as natural resources, museums, gardens, and forests within the boundary of the country that is not owned by individuals. So the nation should not deny the visit of a person who has the money enough to visit temporarily.

Furthermore, the freedom to choose to live and work at a certain place is not the same kind of a freedom to buy an *Aston Martin* or any other expensive things. The freedom to choose where to live and to work should be considered, as human basic freedom since
humans’ labours and skills is intrinsic value of living a human’s life because humans’ value is manifested in terms of work. If a person was denied a chance to promote her labours, skills, or talents, which she finds in another place, then she would also feel that her autonomy of choosing a way to work and live is violated, and would thus, feel unjustly treated. Restriction on labour immigration obstructs humans’ developments, and thus violates the human’s value as it is shown from what she develops and accomplish. Apart from desecrating the human’s worth, which is expressed in work, restriction on immigration also infringes on self-determination of a person, as she could not live her chosen life in other countries.

In conclusion, I argue against David Miller that immigration should be considered as a human right that imposes obligation to others to meet it. I will discuss about the duty to protect a human’s right to immigration at length in chapter 4.

Rejection 2: A person can be granted a “remedial right” to immigrate, but there is no such thing as human rights to immigration

If individuals should be entitled to work abroad because their origin country does not promise the prosperity of their professions, or their life is under persecution in the origin nation, David Miller maintains that the rights that they claim is a kind of “remedial rights”, not a basic human right. According to Miller immigrants can claim “remedial rights” to go to the country that can provide a secure protection or a free market for them; but that does not mean that prospective immigrants can choose to go to any country that they wish (Miller 2005).

I disagree with David Miller that immigration is merely a remedial right; although in some cases, immigration is a remedy for immigrants who does not want to leave the country, but they are forced to immigrate because their life is in danger, either by poverty or persecution. As I argue in 1.3 that the fundamental principles in the Universal Declaration of Human Rights are the principle of negative freedom, that is, the protection of individual security, and the principle of positive freedom. The freedom to immigrate is a basic freedom, not just remedial rights. Freedom of immigration might
be perceived as merely a remedy as usually a person does not have an incentive to go to a foreign country if their origin country provides abundant resources that the individuals needs to pursue in their life. However, people do have different goals in life. Although there are numbers of conservatives that want to live to preserve the national culture, and want to stay at the motherland only, but other people might also want to explore the new chances, try to work and live in a new atmosphere. Their freedom to choose to travel and immigrate should not be denied as it violates the basic liberty of human.

**Rejection 3: The human right of emigration is a “conditional right”, which does not entail the rights of immigration.**

David Miller also denies the interpretation that the freedom to emigrate proclaimed in *Article 15* of the Universal Declaration of Human Rights implies a human right to immigrate to any country at one’s own will, since it is a kind of right that is conditional upon the partner’s choice. He takes the right to marry as an example; *Article 16* proclaims the right to marriage, however if the person cannot find the second consent person to marry with, the failure to find a couple does not mean that the person's right to marry is violated. In marriage, the strategy to find a person to marry with, lies under the responsibility of the individual. Likewise, if the person cannot find another country that wants to admit him as an immigrant, it does not mean that the human’s right to leave a country are violated. (Miller 2005)

I think that the right to change nationality is not the same kind as the right to marriage as a person can be single by her own choice, or by the inability to find a partner without real harm to his or her existence in the society. However, primarily a person was born into a nation-state “without consent”, but consent to nationality holding is emphasized in the Universal Declaration of Human Rights as it proclaims that the right to change shall not be denied, and it also stresses that nationality cannot be expatriated without the consent of the person.

More important, a nationality is more crucial to a life than a marriage because it affects all fundamental goods and benefits that a person receives. A person without nationality
is not only deprived of all social rights, he or she cannot even make an official contract of marriage. But when a person is single, he or she is still entitled to social rights. Why is nationality so important to a human’s value that it is proclaimed as one of the human rights? Is nationality an objective value of a human being that shall be protected? I do not think that nationality that is ascribed to a human, as an inalienable right is an objective value. Before modern society, passport or the official document that states the nationality was not important at all. People just moved and resided in another place and learned how to adjust to the new environment. But, in modern society, nationality becomes a fundamental value of being a human because the modern world uses a nationality to identify people as a credential to receive “the goods” available in each nation-states such as education, healthcare, and social status etc. So the Universal Declaration of Human Rights declares nationality as a human right in order to ensure that at least there should be a moral agent, that is, the nation-state, who is obliged to protect “negative freedom” and “positive freedom” of a person.

I conclude that according to the Universal Declaration of Human Rights, the right to immigrate is not a conditional right and the right to emigrate does entail the right to immigrate because firstly, consent is crucial to nationality holding and secondly, the Universal Declaration of Human Rights recognizes that a nationality is an essential credentials for getting the protection of negative freedom and positive freedom to which the nation-state, as a basic moral agent in modernity, has a moral obligation.

Conclusion

In this chapter, I propose an analytical interpretation of the Universal Declaration of Human Rights that the principle of immigration as a basic human right is implicit in the text. Human rights of migration which includes the right to immigrate and the right to emigrate is justified by the principle of positive freedom, the protection of negative freedom, and the promotion of equal autonomy among individuals regardless of their nationality. The theoretical framework of the Universal Declaration of Human Rights is Liberal Egalitarianism.
I object to the argument that a right to immigration is merely “a remedial right”, which should be applied on the condition that the autonomy of a person has been damaged in the origin country, such as in the case of political asylum seekers. I defend that:

Primarily, an individual is entitled to a right to immigration based on the principle of positive freedom and promotion of equal autonomy, without the requirement to claim for the protection of negative freedom. When The Universal Declaration of Human Rights proclaims the protection of political asylum seekers, the right to immigrate of the political asylum seekers is supported by a principle of negative freedom. Immigration to other countries might not be a choice that the political asylum seekers freely choose, but they are forced to immigrate to another country because of the lack of both positive freedom to express political opinions freely, and negative freedom. I also argue against the conviction that immigration can be conceived as only a conditional right, which can be applied only if the receiving country is willing to admit the immigrants. I propose that immigration is a human right that imposes obligation to others to meet it.
Chapter 2: Liberals on Immigration Policy

This chapter is a discussion of three strands of liberal perspectives, namely, Liberal Egalitarianism and Liberal Nationalism, and Utilitarianism on the issue of immigration policy. The questions I will try to answer are:

i. What is their basis of a morally justified immigration policy?

ii. How do they justify a limitation of immigration?

I will take Joseph Carens position as an example proponent of Liberal Egalitarianism, and David Miller as a proponent of Liberal Nationalism, and Peter Singer as a proponent of Utilitarianism.

2.1 Liberal Egalitarianism

Liberal Egalitarianism emphasizes equality of humans beyond nation-states, and the importance of international institutions, which would actualise equality of humans. Joseph Carens is a liberal egalitarian who proposes that liberal society should have an open migration policy. Joseph Carens justifies freedom of migration from the principle of human liberty. In his opinion, freedom of immigration, like other kinds of liberty, is not unlimited, but he asserts that the limitations on immigration policy have to be justified in a way that: (1) It gives equal weight to the claims of all. (2) It promotes liberty and equality in the long run. (3) It is necessary to preserve a distinct culture and institutions, or a way of life. (Carens 1992)

Joseph Carens thinks that Liberal Egalitarianism, which asserts the importance of equal moral worth of individuals, should take the claim of free migration across nations seriously as the movements within and across countries are not different in their moral claims on liberty. The freedom of movement within nations is seen as moral imperatives, whilst the movement across nations is seen as merely a matter of political
discretion. The freedom of movement beyond nation-states is not recognized, even though the reasons of moving across nations are the same as moving within a nation, such as family ties, finding new jobs, etc.

2.1.1 Would liberal egalitarianism allow limitation on immigration policy?

According to Carens, freedom of movement within nations is not unlimited as one cannot move to the place that is owned by others, or cannot move a car when there is a red light in the traffic. Likewise, the freedom of movement across nations can be overridden. Joseph Carens tries to examine in what way the freedom of movement between nations could be overridden. He investigates that anti-free immigration policy that is proposed.

Problem 1: Open borders as a threat to national security

Since the principle of freedom of movement within nation does not entitle citizens to organize an army to challenge the authority of the state because they are a threat to national security. Similarly, Carens proposes that “a threat to national security” can be used to justify refusal of the prospective immigrants. Joseph Carens is aware that the interpretation of national security is expansive, so the principle of national security can be abused. But the task is to evaluate the reasonable and unreasonable uses of these arguments, not to dismiss the principle of security at all.

Kukathas discusses about the principle of national security with regards to immigration policy. Kukathas thinks that “tourism” should become the concern of national security more than immigration because large numbers of people move much more often in a short-term visit. Kukathas proposes that if people who are safe enough to get temporary visit for three to six months, then this fact also show that they are not a threat to national security (Kukathas 2005). I agree with Kukathas that it is illegitimate to employ principle of national security to reject prospective immigrants, who are considered to be safe enough to make a short-visit, and they have not done any harm in the receiving country. However, we need to differentiate between a war and a peaceful time; during a war, immigration could be more restrictive in order to ensure security, while it is
illegitimate to charge against the would-be immigrants as a threat to national security when the authority finds no evidence to support the charge against the would-be immigrants.

According to Carens, immigration cannot be regarded as a human right because it can be overridden by the principle of national security. I think the principle of national security should not be abandoned, but to conclude that immigration is not a human right because of the fact that it can be overridden by national security is unreasonable. Freedom of movement within a country is regarded as a human right, but the movement of residents within a country can also be limited because of security reasons, for example, when dangerous event happens, restriction of people’s movement, i.e., curfew could be announced.

Problem 2: People from non-liberal society would jeopardize liberal institutions that exist in a liberal society.

According to Carens, based from the liberal principle of respect and toleration, liberal society cannot legitimately refuse immigrants from non-liberal nations as long as they do not pose actual threat to the maintenance of liberal institutions. As the United States of America is committed to Multiculturalism, so to restrict people from non-liberal nations is not justified.

In my opinion, non-liberal immigrants might have, to some extent, affected a liberal institution, but to say that non-liberal immigrants would jeopardize liberal institution is an exaggeration. On the other hand, immigrants from other cultures contribute to liberal societies because they help raise the question of multiculturalism in a liberal society. A liberal society cannot just declare that it is doing a liberal way without learning about other cultures in the world. In a globalise world where the media is widespread, even though nobody immigrates at all, the action in one country could have impact in other countries, such as in the case of Mohammed caricature in Danish newspaper, which is protected by a liberal principle of the freedom of speech. But, the printing in Denmark become an international agenda as Muslims become outraged because they believe that
God cannot be represented in any form, not to mention the caricatures of God as a terrorist. Without the movement of people across countries, the conflict of cultures still occurred, namely freedom of speech and a faith in God. When the cultural conflicts became a world political agenda, all liberal societies in other countries have to decide if they should reproduce the caricatures in the news or not; when, from one point of view, not to reproduce them can be interpreted as ignoring the principle of freedom of speech, but the consequence of reproducing the caricatures, on the other hand, could invoke the serious problem of international relations, and also affecting international commerce. Therefore, I think that a liberal institution has to deliberate about the liberal principles in the globalise world anyway, so non-liberal immigrants should not be considered as threatening liberal institutions; on the contrary, immigrants who come from non-liberal countries could contribute to the deliberation of liberal principles in a globalisation era.

Although, according to Joseph Carens, a liberal society should not use “cultural preservation” to block non-liberal immigrants because a liberal society commits to Multiculturalism, but he thinks that a non-liberal society which aims at preserving its distinctive culture, is entitled to have legitimacy in setting a restrictive immigration policy for keeping out immigrants who comes from other cultural backgrounds. He emphasizes that the culture in the receiving country have to be compatible with respect of equal moral worth of human which is the principle of Liberal Egalitarianism.

Carens proposes a non-liberal society which has homogeneous culture is permitted to restrict immigrants, but Carens stresses that the restrictions of non-liberal societies will be valid on the condition that: firstly, the culture has to be compatible with liberal principle of respect to all human beings as equal moral worth of the individuals, and secondly, the restriction should not involve any kind of domination, or racism. I think that Liberal Egalitarianism is, in essence, incompatible with the attitude of non-tolerations of other values in the first place. The principle of respect of equal moral worth of human, which is the fundamental value of Liberal Egalitarianism, inevitably entails

toleration; we respect the belief and value of others which might be different from us, because we believe that every person has equal moral worth.

Carens takes Japan as an example of restrictive immigration policy that is non-dominating as he argues that Japan has a restriction policy for all non-Japanese, so he concludes that Japan’s immigration policy is universal, and thus we cannot say that it links with domination and imperialism. I think that Carens’ evaluation of Japan trying to keep the culture by denying new entrants from other cultural backgrounds, which means all non-Japanese, as devoid of domination, is unreasonable. It is doubtful if Japan’s exclusion is without any link to domination, racism, or imperialism at all. In Japan, although it is hard to get in there, but there are also undocumented immigrants living there without the hope of amnesty, or birth rights of citizenship for their children because of the claim of distinctive culture of Japanese society. The exclusion of undocumented immigrants allows the exploitation of labours and the violation of human rights as undocumented immigrants does not have access to social welfare. Thus, the exclusion of immigrants from other cultural backgrounds in Japan does inevitably involve domination and exploitation of other races. The discrimination of race is emphasised especially when Japan’s immigration policy allows Japanese descendants who were born elsewhere access to citizenship.

**Problem 3: A Lifeboat Ethics: Public Disorders as a result of open immigration policy.**

It is argued that open immigration policy would bring in irregular massive immigrants, and thus endangers public order of the receiving country. The breakdown of public order would make everybody worse-off like the boat, which contains exceeded number of passengers, would sink, and everybody will be drowned. According to Carens, this argument can be justified, because it does not violate the principle of equal moral worth of individual. However, Carens insists that as the boat has a duty to receive the passenger up to its limitation. Likewise, a nation-state also has a moral obligation to admit the immigrants up to the point that does not endanger public orders, national security, and liberal institutions.
In my opinion, to compare the capacity to receive passengers of a boat with the capacity of a nation to maintain a security for the people is inaccurate. It could be estimated that a public order would have become jeopardized because of the crowded as a result of an open immigration policy. But I do not think that an open immigration policy would lead to such a public disorder because I believe that a balance the number of inhabitants is conditioned upon the demands of available jobs in a country. In my opinion, the immigrants would immigrate to a country in which they could find a job to make a living, and when the vacancies of jobs is not left anymore, then the would-be immigrants have to move to live and work elsewhere. If there is a high demand of jobs, then there is always a supply of workers to fulfil the vacancies, but if there is a low demand of jobs, then few people would choose to immigrate in that country. Let me use an internal movement within a nation to elucidate the point. People tend to move from a rural region to an urbanized city, because there are more jobs provided in urbanized city. As a result, urbanized city is more crowded in contrast with many rural regions putting altogether, but a public transportation and higher buildings are also designed in order to sustain a public order at the same time. Thus, a public disorder as a result of an open immigration policy is not likely to happen because there is a balance between the vacancies of jobs and the number of inhabitants, together with an appropriate architectural design in a high populated region.

In conclusion, Carens believes that immigration policy should be free because it promotes freedom of individuals. However, he proposes that the three principles above: national security, preserving non-liberal culture in a non-liberal country, and exceeded number of people, are justified reasons to restrict immigration. Carens’ most concern regarding the problem of free immigration policy is the security of a nation because without security in the first place, positive freedom is untenable. Carens’ concern for a lifeboat ethics argument, or the exceeded number of people in the nation, is based on the concerns for all lives in a nation, i.e., both for the immigrants and the citizens.

Carens’ argument for more open borders is based on the principle of the freedom of individuals like my interpretation of the Universal Declaration of Human Rights, which
is also based on a Liberal Egalitarian perspective. But unlike my interpretation of the Universal Declaration of Human Rights, Carens doesn’t recognize immigration as a basic right because he assumes that: if some principle (free immigration policy) could be overridden by a principle of national security, then that principle is not a basic right.

### 2.2 Liberal Nationalism

According to David Miller, the moral justification of a nation is its culture and historical background. A nation is consisted of a group of people, with a shared common culture and historical background, who want to determine its group’s destination. Thus, he insists that a nation should be entitled to have “self-determination” to choose its economic and political policy, including immigration policy.

#### 2.2.1 The Principle of National Self-Determination

According to Miller, a nation is club-like. People in a nation can choose new members as a club. David Miller does not think that there are human rights of immigration that can pose moral responsibility towards any nation, except in the case of political asylum seekers. The people in each country should be able to decide which criteria they want to choose as potential immigrants, and how many immigrants they want to admit, or if they want to welcome immigrants at all. Contrary to Carens’ opinion, a nation does not have a moral responsibility to accept immigrants up to its upper limit that does not endanger the public order; it can simply deny new entrants because it dislikes population density (Miller 2005).

According to Miller, nation is a cultural community of which **national self-determination** is an intrinsic and self-evident value, and national self-determination is as much important as self-determination of individuals. He argues that the value of the group’s autonomy is self-evident by taking the tennis club as an example; it is accepted without controversial that the members in a tennis club have self-determination to decide how many members the club wants, and how the club should be organized and so forth. Accordingly, a nation, as a moral community, is also entitled to the principle of
self-determination as self-evident in order to decide their national destiny. The cultural community is entitled to live according to their own particular values. The choices that each community made are not only trivial like how to choose the national flag and national anthem, but they concerns basic questions, for instance, the choice of economic system, such as, socialism or capitalism, the nature and extent of welfare, the rate of population growth, whether religious codes of behaviour should be enforced by law, and how to use the natural resource, including decisions whether to allow immigrants or tourist to enter the country or not. Miller believes that, in a pluralistic world, there is no reason for all national communities to choose to live in the same way, so he concludes that the existence of boundary of national territory and national self-determination is valid (Miller 2000).

David Miller uses a club as a foundation of national self-determination. He admits that people are born into the nation not by choice unlike when he chooses to join a club. But he insists that a person’s inability to choose a place of birth is an irrelevant fact, what is crucial is that now people sufficiently share an identity and a set of values and should be entitled to the group’s self-determination. A nation, a club-like, have self-determination concerning how to choose new memberships. In my opinion, to compare a nation with a club is inaccurate. Firstly, the person can join another club if they are denied access to the first club. Secondly, the membership in a club is not the same as the membership in a nation because the person was born into the nation without consent, but they are consent to go to the club. Then, I think that the inability to choose a nationality freely is not an irrelevant fact with regards to the principle of self-determination.

According to Miller, only political asylum seekers have a right to immigrate to the nearby country temporarily, and they should return to their original country as soon as the threat in their origin country disappears. But, he also insists that a nation should be entitled to self-determination regarding to the selection of the political asylum seekers. Thus, in his theory there is a conflict of the principle of refugees’ right to immigrate in order to protect their life, and the principle of national self-determination, which is club-like. The country might prefer refugees with similar beliefs, or want to take immigrants
with whom they have special historical relations; thus it does not guarantee that all political refugees can be protected. Miller wishes that the conflict would be solved in an informal mechanism way, so that every refugee has some special relation to some country that wants to receive him or her (Miller 2005). Even though the individual’s life is in a dangerous situation, and the receiving country are competent to help them, Miller still thinks that each country has exclusive self-determination concerning how to choose the refugees. If the receiving country does not want to receive them, they need to go elsewhere, and hopefully some country decides to receive them. Miller defines that a group’s self-determination is as much important as an individual self-determination, but with regards to the political asylum seeker, it shows that Miller prioritises a group’s autonomy over a human right to be free from persecution. He evaluates a duty to protect human rights of the political asylum seekers as merely a supererogatory, which shows that he fails to recognize the importance of individual autonomy.

2.2.2 Cultural Preservation as against Open Immigration Policy

Miller proceeds to use the national self-determination argument to justify a “culture preservation” claim against open immigration policy. According to Miller, the wish to maintain culture is an important part of national self-determination. Too many immigrants who hold other values, and speak other languages can make changes in national culture. David Miller admits that change in itself might not be a bad thing, and cultural changes might be irresistible, however if the member of a nation wishes that their culture should not be changed, according to the principle of national self-determination, they have a moral justification to limit the immigrants, or to choose immigrants who hold similar values. So, according to Miller, although the wish to preserve cultural heritage can be untenable as there are other causes that can change national culture, but merely the wish to preserve cultural heritage is enough to justify the limitation on immigration (Miller 2005).

Until now Miller uses the freedom-based argument to support the wish to preserve a national culture, as legitimate to refuse immigrants’ application to a liberal society. But hasn’t a liberal society a character of multiculturalism as Carens argues? Miller argues that even though many liberal societies have a character of multicultural society, but it
paradoxically needs a unifying value or belief to unite people. That is the reason why culture is important. Note that Miller changes from using freedom based argument as a support to the claim of cultural preservation, to use the utility-based argument, which is the function of culture as a social cohesion.

He also notes that languages are an important part of cultural heritage, which can be easily changed, if not destroyed, if there are too many people speaking other languages. In my opinion, every language has changed gradually, except for dead languages, which no one uses like Latin, because language is a representation of human confrontation with outer world and expressions of emotions. When the circumstances in the world changes, people would feel that there is no vocabulary that exactly represents their situation; thus it would lead to the invention of new vocabulary. Thus native speakers also modify their own language. In Thailand, where there are many dialects, the people who speak the dialects do not change the formal language. But it is the people who use the formal language, especially the young generation, that are inventing new words and modify the language. So, immigrants are not the only people who gradually change the national language, or national culture. I think that both culture and language are dynamic because they have to response to emerging new situations. The argument of cultural preservation restricts the freedom of individuals; it does not only violate the freedom to immigrate, but the social character of conservation also restrains the freedom of a person who is already a member in a society.

2.2.3 Open immigration policy as threatening Global Distributive Justice

Miller is against the idea of global justice because he believes that each culture has different ideas of what justice is. (Miller 2000) In addition, he also argues that open policy of immigration would not create economic justice between nations, but jeopardizing it because free immigration policy of a developed country would eventually create a brain-drain problem, and make the management of world-population malfunction.

2.2.3.1 Brain-Drain Problem
If people can move to another country freely, Miller speculates that only the well-off, who are well educated, skilled, and comparatively rich in poor countries can immigrate, because the worse-off does not have enough resource to move abroad. As a result, the poor country will be worse-off because of the brain-drain problem.

In my opinion, people want to move to a place where they can develop their skills because some professions might be more prosperous, and get more respect in the country other than an origin country in which a person was born, therefore it is important that people can migrate freely since people would have more possibilities to develop their skills and talents elsewhere. For example, a scientist in one country might not get enough support for his/her project, while other countries are more likely to invest money in scientific projects.

But the emigrants can also contribute to their origin country in other ways. To elucidate the point, I think that we should compare the so-called international brain-drain problem with the internal brain-drain problem. A large number of people in rural areas also immigrate to a big city, but both regions still benefit from the development of professions because there is a redistribution scheme such as taxation. Likewise, if global redistribution would be established so poor countries would not have to concern about brain-drain problems, as the brains everywhere would eventually contribute to the world. As global distributive justice involves the management of world resources, so I propose that a country with abundant natural resources and a relatively small number of people have obligation to share the resource by some means, such as receiving more immigrants if other countries face problems with over-population and scarce resources, or to give aids to other country etc.

As opposed to Miller’s opinion that “a brain-drain problem” would be a consequence of promoting an open immigration policy, I argue that if global distributive justice were also established in parallel, then the “brain-drain problem” would become an irrelevant issue because everybody would benefit from the movement of the talents. By arguing that “a brain-drain problem” would become an irrelevant issue, I do not mean that the talents choose not to emigrate out of their origin country; but I want to stress that if
“global distributive justice” is also implemented, the free migration of the talents would eventually benefit everybody regardless of his or her nationality. I want to stress that my thesis of “a human right to immigrate” is justified by the thesis of global distributive justice *per se*, because I argue that basically a morality of an open immigration policy is based on the principle of freedom (both in the positive and the negative sense), and the promotion of equal autonomy among individuals. But, I also want to argue that “a human right to immigrate” does not necessarily lead to the disadvantage that will result from “a brain-drain problem”.

### 2.2.3.2 The Overpopulated World Problem

As natural resources are limited and can be depleted, such as water resources, and oil, then the world population has to be controlled in order to guarantee that everybody would get enough resources to survive. And each country has the responsibility to control its national population. Miller argues that if borders become unrestricted, then each country would lack incentive to control its own population as each country would assume that it can export its citizens to another country. I think that Miller’s use of argument is similar to Locke’s example of “tragedy of the common”, where everybody is worse-off by over fishing in an un-owned sea because each nation can only see their own interests, and is scared that other nations are able to fish more. Locke proposes that if the sea is owned, then each nation will take care of it and make sure that the resource will not diminish; but if the sea is un-owned, the fish, and the natural resources, will be depleted, thus everybody will be worse-off. Both Locke and Miller thinks that each nation has only short-sighted own interests, and forgets that each nation can make an agreement about how to fish, or how to solve the problem of the world’s overpopulation. Miller disagrees with the international institutions, which can enforce international laws as it is against the principle of national self-determination.

In my opinion, many factors have created the problem of the world’s overpopulation because the overpopulation problem is also related to other issues, such as the quantity and quality of natural resources, people’s lifespan getting longer, and the rapid growth of birth rates. However, in order to propose the solution to it, we cannot take for granted
the principle of human rights. For example, one of the reasons why people live longer nowadays is because of advanced medical technology, but it is morally wrong to propose that a doctor should stop healing old people who live up to a certain age, say 80 years old, with an advanced medical technology in order to solve the world’s overpopulation problem because this proposal violates a basic human right to live. Likewise, to argue that an open immigration policy should not be implemented because of the conjecture that it would cause the world’s overpopulation problem is also wrong because immigration is also a basic liberty as same as a right to life.

I also disagree with Miller’s opinion that an open immigration policy would make each country lose a motivation to control its population growth because each country might anticipate that it can send out their people somewhere else. I argue that each country cannot assume that it can legitimately expel the people without consent from them. The people might not want to move elsewhere, as they are not willing to adapt to an unfamiliar culture, or because of whatever reasons, but it is morally wrong to deprive people from their homeland. So, each country still has the responsibility to control the population growth.

I propose that in order to solve the overpopulated world problem, and its related problem of management of natural resources, it is more effective to make an international agreement than letting each country face these problems alone. For example, a country with a less population growth could receive immigrants from a country that has bigger population growth; both countries do not have to wait for decades until the populations become balanced.

2.2.3 Miller’s ethical ground for restrictive immigration policy

David Miller maintains that, a political refugee aside, a nation does not have moral obligations to accept new entrants. However, David Miller thinks that a nation owes the prospective immigrants an explanation of why they are denied; liberal society cannot just announce that immigrants are not welcomed without clarifying any reason for denying them. And Miller stipulates that the ground of denying should not be based on sexes, sexuality, religion, and race as it is against liberal ideals. But I think it is
inconsistent with Miller’s argument that adduces self-determination of a club to justify the right to national self-determination. If a nation were club-like, it would be legitimate to decide any criteria for choosing new members; thus, an immigration policy is legitimate to prefer one sex ahead of the other, or to prefer one race ahead of the other.

In addition, to argue that people are rejected not because of their race *per se*, but because of “cultural differences”, is unreasonable because each individual was born and raised within a racial group with prevailing cultural background. As it is hard to separate “race” from “culture” in practice, then “cultural differences” could be used as a pretext for rejecting prospective immigrants, while in fact the real reason is racial discrimination. Therefore, in my opinion, I agree with Miller that we should not use race, sex, sexuality or religion as a ground for rejecting immigrants because it unfairly discriminates individuals; but following the same logic, to use “cultural differences” as a ground to reject prospective immigrants is also illegitimate.

### 2.3 Utilitarianism

In this section, I will address the arguments from utilitarianism regarding Immigration issues. Utilitarianism is a kind of moral consequentialism, which takes the claim of all human being into consideration, and calculates the utility maximization. However, the term ‘utility’ can be defined into many different meanings such as hedonism, preference satisfaction, or informed preferences, and these differing meanings also lead to different moral evaluations of actions (cf. Kymlicka 2002: 13-18).

#### 2.3.1 Equal consideration and the precedence of fundamental interests

Peter Singer is an advocate of preference utilitarianism. According to preference utilitarianism, preferences satisfaction is intrinsically good, and should be maximized. From Peter Singer’s utilitarian point of view, “Where the interests of different parties conflict, we should be giving equal consideration to all interests, which would mean that
more pressing or more fundamental interests take precedence over less fundamental interests” (Singer 1993: 256).

According to Singer, the method of applying the principle of equal consideration is to find whose interests are being infected. Regarding the immigration policy, Singer thinks that the first obvious group is refugees with its fundamental and pressing interests. The next directly affected group is the residents of the recipient nation which each groups of residents might get different impact from the implemented immigration policy, for example, the less well-off resident might find immigrants competitive, while the economic sector find open immigration policy positive for increasing a profit. While the interest of the forced immigrants like political refugees is definite and absolute, the interest for the residents is speculative because it involved the numbers of immigrants, the social integration, and the present economic situation of the receiving country etc. There is also another possible speculative consequence of open immigration policy, that is, the sending country would lack an incentive to control their population growth as they suppose that they can send some of their citizens to another country, thus fill the world with their overpopulation. Singer emphasizes that when interests of different groups’ conflicts, fundamental interests of any group without discrimination should take precedence over the less fundamental interests. So Utilitarianism does not concern for special obligation among patriots. Even if some residents might find the immigration policy unfavourable because of different reasons, such as, less area for recreational activities, but as long as their interests are less fundamental compared to the interest of the refugees, the decision has to take side on the pressing interests of the refugees.

2.3.2 **Consideration of distributional effect of an open immigration policy**

Peter Singer’s utilitarian position points towards an open immigration policy because he focuses on the distributional effect of an open immigration policy. He also encourages the rich country to give financial aid to the poor country by using the metaphor that a poor country is like drowning children, with urgent needs to be secured. A rich man needs to help the drowning child, even though he is not comfortable with that fact that his clothes would become dirty and wet.
In the article, “Famine, Affluence, and Morality” Singer talks about the duty of an affluent society to assist poor people far away, through aids and every other means, as utilitarian is the moral point of view does not account for the distance of the suffering person.

“...If it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it. By “without sacrificing anything of comparable moral importance” I mean without causing anything else comparably bad to happen, or doing something that is wrong in itself, or failing to promote some moral good, comparable in significance to the bad thing that we can prevent” (Singer 1972: 231).

From my interpretation, “comparable bad” with regard to immigration policy is: if immigration policy makes the receiving country as poor as the sending country. Like the limitation on aids, the person should stop donate when it reaches the point her family situation is as desperate as the poor. It can be interpreted that "comparable bad" is the breakdown of social security of the receiving country.

A Moral basis of Utilitarianism with regards to immigration policy is to take all interests into considerations, and prioritise the most fundamental interests. It also evaluates the immigration policy from a distributional effect on a global level. What Singer stresses is that it is a duty, not just supererogatory, of an affluent country to alleviate the poor country by sharing their resources, either by giving financial aid, or receiving immigrants from a less developed country. In my opinion, although its project aims towards international egalitarianism, it does not value the importance of the right to immigrate. A duty to assist would go on only when there is a poor county. But if all countries have comparable equal economy, Singer’s position loses persuasion, as Singer does not evaluate immigration as a human right.
Conclusion

Both Joseph Carens and David Miller recognize the importance of the national culture. David Miller thinks that liberal societies have distinctive liberal values and institutions that non-liberal immigrants might distort or change. While Joseph Carens thinks that a liberal society is advocate of multiculturalism because of its liberal principle of toleration, so it is illegitimate for a liberal society to deny immigrants from another culture. I agree with Carens that a liberal society cannot use a claim of cultural preservation to reject applications of immigrants.

In my opinion, the most influence of other cultures can come through other media besides immigration of humans, such as film, music, academic books, and Internet. For example, Japanese lifestyle becomes westernised; acceptance of pornography, the coloured hair; on the other hand, Japanese cartoons, and Japanese cuisine are also popular in many other countries. So, the claim to preserve culture would be justified and become effective on the radical ground that their culture also does not receive media from another culture, and their ways of life would be literally destroyed by new entrants who does not hold the same values. Such characters of culture, which does not have contact with others, might be abundant before modernity. But after modernity, every culture have connection and have influence one another on some ways; the closed culture is rare but there are some such as the way of life of an Indian might require to keep new entrants limited since these wants to do other things in the forest territory which will threaten their way of life.

While Joseph Carens’ case for immigration limitation for a liberal society can be traced back to the principle of national security. I think Miller’s argument of preserving national culture is not his real argument; it actually makes reference to national self-determination as he envisages that national culture might be altered by other means besides immigrants. He takes the principle of national self-determination as the most important principle which justifies every other case; on the other hand, the problems which he estimates that will arise from open immigration policy, such as brain-drain
problems, and the world’s overpopulation, also becomes tenable because Miller thinks in terms of absolute national self-determination, without the possibility of international agreements.

While Utilitarianism states that the interests of all parties involved should be taken into consideration without taking side, and the interests that is more fundamental should have more weight. Although Utilitarianism does not designate the immigration policy in any direction between restrictive or open immigration policies, it recognizes equal moral worth of individuals, as it doesn't disenfranchise the right of the immigrants to be considered as qualified immigrants in the first place, while Liberal Nationalism, which take national self-determination as the first principle, is inclined to ignore arguments of the immigrants if it is against the wish of the state to preserve its national culture.
Chapter 3: An Analytical Reconstruction of Libertarianism on Immigration Issue

3.1 Dispute of Libertarians over immigration issues

Libertarianism is the doctrine that believes in the principle of self-ownership, and uses it to justify individual appropriation of private property of which limits the power of the state, especially in taxation matters. The main question is: According to libertarianism, the state has a legitimate power in regards to immigration control? In other words, should Libertarianism support free immigration policy, that is, immigration policy without regulation by the state?

Developed capitalist countries are encouraging other countries to establish “free trade” between nations, as against tariffs, and subsidized scheme that each state provides for their internal business; however developed capitalist countries still restrict immigration. Robert E. Goodin proposes that there should be a symmetry relation between movement of money, or financial capital, and movement of humans considered as human capital. For the sake of consistency, however free or constrained such movement is to be decided, it needs to be symmetry (Goodin 1992: 6-22). While, in “The Case for Free Trade and Restricted Immigration”, Hann-Hermann Hoppe responds that promoting free trade does not lead to accepting free immigration policy. The person has free will to move around, but movement of goods is possible only when there are the senders and the receivers. International free trade implies that there are contracts going on between people in different countries, but free immigration, without invitation by individual households and firms is simply “unwanted invasion” to which Libertarianism objects. Restricted Immigration means the protection of private households and firms from “unwanted invasion” and “forced integration” (Hoppe 1998: 221-233).
Hoppe assumes that the state is entitled to have legitimate right to regulate immigration to the territory as he calls immigrants, who have not harm private households, as invaders. To answer the question pertaining the legitimating of immigration regulation by the state, I set out first to tackle smaller questions that are:

(i) Does principle of self-ownership entails exclusive entitlement of national boundary?

(ii) Should state’s restriction on immigration be considered as contractually incurred?

I set out to answer these questions in section 3.2 and 3.3 accordingly.

Other questions would centre on Libertarian view about two specific types of immigration, which are, undocumented immigrants and political asylum seekers. I attempt to answer how Libertarian accounts for the residence of the undocumented worker immigrants who enter a country without permission from the state’s authority, but they have contracts to work in the receiving country in 3.4. The question is whether Libertarians should consider passing national boundary without the state's permission as morally wrong because undocumented immigrants violate the principle of private property. While Libertarianism is well known for denying taxation, the political asylum seeker, who tries to flee from persecution, inevitably levies on tax burden of the receiving country, then, in section 3.5, I set out to reconstruct Libertarian account with regards to a political asylum seeker who comes to a receiving country with an foreseeable future that requires subsidies from a receiving county.

3.2 **Does a principle of self-ownership entail exclusive entitlement to national boundary?**

I would set out to explain how the principle of self-ownership is used to justify the ownership of private property, especially land property. After that I would try to answer the question if the principle of self-ownership can also be a justification of the ownership of national territory.
3.2.1.1 The Self-Ownership Principle

Self-ownership is the principle that each individual, and no one else, owns themselves, that is, her labours, her talents, her intellects, and her ability. Libertarianism uses the principle of “self-ownership” to argue for the rights of private property of individual, or a group of individuals. When I assert that I have self-ownership, it means that I alone, and nobody else, have the right to own myself, which includes a body, and other qualities, such as, a talent and a labour; I also own the object that was produced from my labour and my intellect, and my ability. I want to propose my interpretation that the object, which a person produced, belongs to the person because the person extends one’s own qualities into the object.

When people claim that they own something, they usually entail that they have “exclusive rights” over the thing. I define “exclusive rights” as the owner’s right to do anything with the private property ($X$) as the owner wishes, even if the owner wants to harm the thing ($X$) that the person owns, or to exclude non-owner from involving with the private property; even if the non-owner claims that he or she could develop the private property better than the owner, or even if the non-owner does not physically harm the thing ($X$) at all.

3.2.1.2 Private Ownership of Land

Unlike other kinds of private properties that are invented by human, e.g. television, and cars, land was not a result of human’s invention; it is a limited natural resource. So the justification of an appropriation of land requires more reasons than other products that are invented by human. For example, John Locke justifies the initial acquisition of land by arguing that as my labour is put into the land, so I also own the land. The justification of an acquisition of the land in a state of nature is an ad-hoc argument, because Locke acknowledges a common right to the land by arguing that God gives the Earth to all mankind. Hence, I think that Locke has to tackle ‘a common right to the land’ in order to provide an ad-hoc argument for a private ownership of the land. Locke,
thereby, tries to argue that a private ownership of land is better than “The tragedy of the commons” whereas the common land will be deteriorated because nobody cares to put the effort to improve it, as people are not sure if they can get profit from their own efforts. Thus, Locke stresses that the appropriation of land is justified because a person mixed her own labour into the land, and it is acceptable on the condition that there is enough and as good for others as well, or if it leaves people well-off overall (Locke 1970: 305-309; cf. Kymlicka 2002:113-116).

I think that to use a human’s labour to justify an acquisition of land is weak because when a human’s labour can just be drained out into the thing (cf. Nozick 1974:174-175). For example, when I do labour to blow smoke away, my labour is mixed with the smoke, and the air, but that action does not grant an acquisition for the air to me. In the same way, my labour could just be lost to the land. Hence, the argument that labours, which belongs to a person, gives a justification to an initial acquisition of land to that person, is not convincing. So I want to reconstruct an account of a private-ownership of land, which is also derived from the principle of a self-ownership, but is not justified by referring to labour.

The entitlement of a private land accrues with the ‘exclusive right’ to the owner, that is, the right to exclude a non-harm doing person to get into a private land. I think that the ‘exclusive right’ over a private land is justifiable because a private land is ‘an immediate extension’ of my physical body that belongs to me. The quality of my physical body needs some space to occupy and to do activities, so a territory such as a house, or a land is also an extension of my physical body. I argue that since each person has an exclusive right over his or her physical body in a way that no one could slightly touch his or her body without permission, so it entails that each person should also be entitled to an exclusive right to get rid of an uninvited guest because a land, and a household is an ‘immediate extension of self-ownership’, that is, my physical body. Thus an individual has an exclusive right to keep out any uninvited guests that want to come into his or her private areas, even though the uninvited guests claim that he or she wants to contribute to the land, and does not intend to do any harm at all.
My reconstruction of an argument supporting an appropriation of land gives an exclusive entitlement to a private land in a way that the land owner is able to exclude a non-harming person. As the justification of exclusive entitlements to a land is based on the quality of a physical body of human, then everybody has an equal right to claim to own the land. Therefore, the owner of land is also morally obliged either to see that others get enough and as good land, or to compensate for those who are worse-off because they do not own a private land.

3.2.1.3 The Ownership of National Territory

National territory is the sum of private and national public lands such as forests and other lands. Unlike private areas, national public areas are not an immediate extension of the physical body. A private owner of land could petition that he or she is harmed just because a stranger comes into the land without his or her permission as the private land is an immediate extension of the body of the owner. But as national public areas are not especially an immediate extension of a person, then to argue that a stranger who passes through a national public area is a trespasser is unreasonable. However, if someone actually makes “a physical harm” to public areas, such as, burning a public park, then we can say that the person causes harm to the public area. The person should compensate for what is destroyed, but he or she should not be seen as a trespasser.

In conclusion, I have reconstructed the justification of owning a private land according to libertarian principals. The land is an immediate extension of the individual physical body, so it is legitimate to exclude others, even if the others do not purport to damage a private land at all. On the opposite, the state’s duty here is to be a caretaker of the national public areas, so its duty is to punish the person who makes “a physical harm” to these areas, such as burning national public land, but that doesn’t mean that the state has an exclusive entitlement to national public areas in the way that can justly exclude a person who has not done any physical harm.
3.3 Should state’s restriction on immigration be considered as contractually incurred?

So far, I deny that according to the Libertarian principle, state has exclusive entitlement to national territory. In this section, I would investigate that if state rejects immigrants by claiming that it has a veto power that is contractually incurred.

3.3.1 A joint ownership and the contractual power

A group of people could own private property together, such as villagers share ownership of public areas in a village. The villagers can make contracts that they do not want non-villagers, except for invited guests, to use the village’s common property such as the road to the village, the swimming pool and the fitness centre. So the uninvited non-residents who pass, but do no harm to the village road are an invader. The villagers also make a contract that if each member wants to sell a house to someone else; other villagers have to approve the buyers first. Thus, the whole village possesses a veto power to prohibit house selling for strangers. According to Libertarianism, the contractual power is justifiable in the village case, but what about “public areas” in national territory? Should state’s restriction on immigration be considered as contractually incurred?

According to Steiner, Libertarianism is disinclined to see legislated restriction on immigration as contractually incurred, unlike what people may jointly and individually do with their property or their collective property because Libertarianism is against the authority of the state to restrictive immigration policy based on protection of value of property, or cultural values because they are beyond the state’s authority. The restrictive immigration policy of the state is neither conceived as defending the principle of contractual agreements nor property rights. So, the state should not claim that it has contractual power to restrict immigration (Steiner 1992; cf. Steiner1996).
3.3.2 The Non-Aggression Axiom: A framework for jurisdiction of the state

Steiner identifies Libertarianism as a political philosophy with its justification of the just use of violence of the state. The legitimated use of force, or restriction, is defensible only when it aims at repelling an invasion in order to protect the person and her property. Block quotes Murray N. Rothbard’s idea of “non aggression principle” as a libertarian axiom, which is equivalent to the self-ownership principle.

The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the “non-aggression axiom”. “Aggression” is defined as the initiation of the use or threat of physical violence against the person or property of anyone else. Aggression is therefore synonymous with invasion. If no man may aggress against another; if, in short, everyone has the absolute right to be “free” from aggression, then this at once implies that the libertarian stands foursquare for what are generally known as “civil liberties”: the freedom to speak, publish, assemble, and to engage in such “victimless crimes...” (Rothbard 1978: 23; cf Block 1992: 168)

Block thus connotes that in order to define the action as aggression; one has to identify the victim whose private property is aggressed upon. Block interprets that immigration belongs to the category of “victimless crime” as it does not violate the non-aggression axiom. He thinks that immigration across national boundaries should be analysed in identical manner as immigration within a country. As long as the immigrant make contract with the owner of a piece of private property who is willing to take him in, there cannot be a prohibition towards the transaction. But if it occurs such a rare case where all private property owners are not willing to accept newcomers, even at the very highest price that the immigrants are willing to offer, Block concedes that even in this case those who adheres to Libertarianism should not enforce a law that prohibits immigration per se, but it should refer to the law which bans the trespassing of private property rights in general.
Even though Block proposes that the state should not control immigration, Block insists that it does not entail freedom of movement of the person in itself. The movement of people is always conditional upon the willingness of the owner of the property in the host nation to accept immigrants into their land. According to Block, the restriction on immigration does not violate the human right to immigrate, but the right of the owner to the property to sell or rent his or her private property to the immigrants (Block 1998).

3.4 Should immigrant, who enters the national territory without permission of the state, be considered as an invader?

I argue that immigrants, who enters the receiving country without permission of the state but does not make physical harm to private property, should not be considered as invaders because: Firstly, As I have argued against the conviction that regards national territory as a kind of a joint private property in 3.2. Then I conclude that according to a libertarian principle, while it is legitimate for a state to enforce a law to protect a private territory of the owners from non-owners who does not harm the private property, but a state a lacks a legitimate power to exclude a non-harming immigrants to enter to national public areas territory because national public land should not be considered as a kind of private property. So undocumented-worker immigrants, who do not cause a physical harm to national public areas, and private property, should not be considered as invaders because no victim can be identified. But the victim can be identified when undocumented immigrants transgress a private property, such as, invading a private house, or burning a building. Then, the undocumented immigrants have to be punished according to the law in the receiving country that regards everybody as equal before the law.

Secondly, Libertarianism argues for a work contract from two consent parties as legitimate without interference by the state. As undocumented worker immigrants also have working contracts within a receiving country, therefore they should not be treated like invaders. In addition, I think that Libertarianism should not see immigrants as
invaders because the undocumented immigrants, who are considered as illegal immigrants, have to cross the borders because the state illegitimately restricts the freedom of making contracts in the first place.

3.5 A Libertarian position towards political asylum seekers

Because Libertarians are well known in its position of objecting to taxation, they are not viewed as advocates for a refugee whose status needs a support from tax. Actually, Libertarianism denies redistribution of a welfare state, as it regards the welfare state as a tyranny that unjustly gets money from people by force of unjust jurisdiction and punishment. Libertarianism is the theory of governance which demands that what force the state can justly implement, or even if a society can survive without the necessity to have the state as the authority, or the monopoly, to enforce law, and to punish people. Thus, I argue that Libertarianism should not be misunderstood as a doctrine that regards objection to taxation as its first principle. Denying taxation is just a derivative from the fundamental principle of self-ownership, or “non aggression principle” according to the new reconstruction of Libertarianism as paying tax is seen as equivalent to a person being robbed or aggressed by others. In my opinion, the fundamental principle of Libertarianism i.e., principle of self-ownership, and axioms of non-aggression, proclaims that individuals should not be harmed and threatened by others. Thus, Libertarianism asserts that every human being has a basic right not to be threatened or harmed by others.

For Libertarianisms, a justification of the state’s authority lies mainly on its commitment to its protection of negative, which includes the human right to security. Therefore, Libertarianism should be consistent, and maintain that the political asylum seeker should be protected with the rights to not to be harmed by others. Even though Libertarianism does not agree with taxation, but when a derivative principle and the most fundamental principle conflicts, I argue that the most fundamental principle should be chosen because if Libertarians do not keep the most fundamental principle, the
derivative principle, namely, non-taxation, also loses its legitimacy as the justification of refusing taxation refers to the fundamental principle.

**Conclusion**

Libertarianism defends the individual rights to immigrate in the negative sense, that is, non-interference by the state authority. But Libertarianism does not argue that the right to immigrate would, eventually, contribute towards the best outcome for humanity, nor the highest self-development of individual, nor global economic justice. Libertarianism believes that state should not control immigration simply because immigration restriction prohibits the rights to make contract of individuals.

Libertarians that I discuss above does not state outright that illegal immigrants have legitimate rights to work in the receiving country, and some Libertarians like Han-Hoppe conceives of illegal immigrants as being an invader who invade national territory, which is assumed to be a private property. I argue that the assumption that national territory is a kind of private property is wrong. So it is illegitimate to regard undocumented worker-immigrants as being invaders because the state does not have a legitimacy to object to the right to work for worker-immigrants in the first place. I also reconstruct the position of Libertarianism towards refugees because Libertarianism does not discuss specifically whether they should support refugees financially, and I argue that Libertarianism is obliged to protect the negative rights of the refugees. But Libertarianism is not obliged to protect the positive freedom of the immigrants.
Chapter 4: The Obligation of Protection a Human Right to Immigrate

I have thus so far defended immigration as a human right as an implicit principle in The Universal Declarations of Human Rights; and I have explored the position of liberal doctrines towards an immigration issues. The last chapter will focus on a moral obligation to protect the human right to immigration. In the first section (4.1), I attempt to find the reason why the human right to immigrate is not acknowledged in a present world, especially in a liberal nation. After that, I will discuss the following question:

(i) Who is obliged to protect the human right to immigrate? And what are their duties?

(ii) Is it tenable to protect the human right to immigrate?

4.1 Two Obstacles to a Realization of ‘Immigration as a Human Right’

I shall proceed by addressing the question why the duty to protect a human right to immigration is not recognized in a present world situation. The nation-state, which is the basic unit of politics in the present world situation, grants only the right to emigrate, but it does not acknowledge immigration as a human right. Therefore, the state denies any moral obligation to fulfil the human right to immigration. I argue that its negation is a result of the following convictions:

(i) Nation-state has exclusive entitlement to national territory:
This conviction leads to the conviction that each state is authorized to absolute legal rights over the territory in the same extent that the owners of a house who has legal right to deny or welcome any guest.

(ii) The Paradox of Democratic sovereignty:
The principle of Democracy commits to the conviction that people are the source and the author of law because humans have equal moral worth. It is taken for granted that people are legitimate to vote for law of restriction on immigration in its own states.

In 4.1.1 and 4.1.2, I will argue that the convictions of (i) and (ii), which are also the main obstacles for protection of immigration, is illegitimate and should be abandoned.

4.1.1 A state has exclusive entitlement to national territory

It is widely agreed that each state has a legal right to its territory, and therefore is given a qualified right to control or limit immigration. Worldwide movements of secessionism also express the belief that the power over the national territory is essential to autonomy of the nation-state. I want to challenge this conviction by asking the question: As it is acknowledged that national boundaries are arbitrary, what are the moral justifications for each state for claiming that exclusive entitlements to certain territory on the earth?

Argument of efficiency is used to argue for an exclusive entitlement for national territory. For example, Rawls also argues that without exclusive ownership, national resources tend to deteriorate. “As I see it the point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate. In this case, the asset is the people’s territory and its capacity to support them in perpetuity.” (Rawls 1999:39) Underlying this assumption is “tragedy of the commons” which assumes that public property is undesirable because each person does not want the others to share a benefit that he or she invest in the public property, so each person would lack an incentive to improve what is owned by the commons, thus the problems of resource management becomes precarious. I think that even if the argument of “tragedy of the commons” is true, it does not entail the principle of exclusive entitlement to national territory. If the assumption underlying “tragedy of the commons” is true, then terms of agreements between agents and law enforcements should be established.

Thus, I conclude that a nation-state is not entitled to exclusive right over its territory, even though it is in charge of its territory. As immigration is a human right, then the
state lacks a legitimate power to deny the entrance of prospective immigrants. The duty of the state is to be in charge of public order.

4.1.2 The paradox of popular sovereignty in a modern democratic nation

The claim that a nation is entitled to self-determination is relied on the principle of popular sovereignty, which holds that the state is created by and subject to the will of people who is the source of political power. Selya Benhabib represents the paradox of democracy in her article “Transformations of Citizenship: The Case of Contemporary Europe” that, on the other hand, democracy is justified on the belief that every human being has equal moral worth, as opposed to the unequal relation of slave and lord in feudalism, so that people can vote equally. Modern democracy undertakes to bind itself in accordance with universal human rights, which is believed to precede and antedate the state. The principle of human rights that is invoked by a democratic constitution transcends the context, and has cosmopolitan character (Benhabib 2002).

Nowadays, the challenge of the paradox of democratic sovereignty is posed by international migration. The people in a given country are the author of laws, including immigration laws; and those who are excluded can never decide upon the immigration rules of exclusion and inclusion. I object that democracy itself has a paradox in a theoretical level; I think that the paradox persists because of lack of reflection of the principle of democracy and the persistence of patriotism. Moral obligation to foreigners will be invoked only in extreme case that creates shock among patriots, such as, when refugees try to flee from bloody persecution. In the next section 4.2, I attempt to answer to the questions: (i) Who should be obliged to protect a human right to immigrate? (ii) What are their duties?

4.2 Moral Obligation to protect human rights of the immigrants

The question that is obliged to protect human rights to immigrate will be considered in this section. I divide the protection of human rights of immigrants into two sectors: First
sector is the protection of the human right to immigrate to a desired destination. Second sector is the protection of the social rights of the immigrants in a receiving country, for example, health service.

### 4.2.1 The duty to protect the human right to immigrate

There is not yet any organization that is established to protect a human right to immigrate, besides political asylum seekers, because immigration is not considered as a human right even in theory. So, the first thing to do is to convince “immigration as a human right”. The recognition of “a human right to immigrate” will create a moral obligation and a duty to protect it.

I propose that in the first place, a nation-state should be morally obliged not to intervene or prohibit with the employment of foreigners, nor family reunification in its own country. The policy of non-intervention, thus, enhances the positive freedom of individuals. Parallel to the obligation of the state not to intervene with admission of the worker immigrants, international commission should be established to help to cooperate between nations. To be effective, each commission should deal with a specific type of immigrants because the causes and problems of each type of immigration are different. At present, UNHCR is established to monitor protection of refugees who need the protection of negative freedom. The international commission for worker immigrants should also be established to monitor social rights of the immigrant workers. A global solidarity to protect the human right to immigrate needs to be created, step-by-step. At present, urgent issues like worker-immigrants and political asylum seekers should be negotiated for more open borders. I also argue that when human rights are being protected internationally, the irregular massive immigration would be lessened.

### 4.2.2 The duty to protect equal social rights of the immigrants

There are many aspects of human rights that the immigrants needs to be protected in a receiving country, such as the right to healthcare services, the right to education, the
right to free expression and the right to participate in a religious ceremony. But when the immigrants have been admitted into the receiving country, there is often a lack of equal social rights, which are entitled to the citizens. I argue that social rights are in fact human rights that have content in the context of nation-state, so the immigrants should be entitled to social rights that are equal to the citizens. Equal social rights would also promote equal autonomy among individuals.

One of the important rights is the “political rights", or the right to fully participate in the politics in a receiving country. The political rights also entail full membership in the receiving society. According to Michael Walzer who insists that there cannot be a group of “half-membership” people in a nation because it is the evidence of tyranny of one group, that is, citizens, who rules over other subordinated groups. Hence, if the nation is thinking about admitting foreigners, it must prepare to give full membership to the immigrants by naturalization. Walzer objects to the guest worker program, and a permanent resident visa, which he calls permanent alienation that does not provide the immigrants a possibility to be entitled to political rights (Walzer 1984: 52-55).

In my opinion, Walzer’s criticism of permanent residents as permanent alienation is convincing. I think that all residents, including immigrants and citizens, in each country should have equal social rights in order to promote “equal autonomy” among individuals. If the political autonomy of individuals is unequal, then it conveys the oppression of one group over others because one group could determine the fate of a society, which also includes the fate of the immigrants. I think the state should provide the immigrants with equal social rights to its citizens because: firstly, social rights is a human right with contents in the context of the state; secondly, “equal social rights” promote the principle of “equal autonomy”; and thirdly, equal social rights would rule out the oppression of one group over others in a society.

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4 Michael Walzer is a communitarian scholar who also argues for a restricted immigration policy. He argues that the closeness of a nation is essential to a nation. (Walzer 1984: 31-63) However I shall not take his argument for restricted immigration policy in my work because my framework focuses on doctrines in Liberalism. However, I want to draws his criticism of the status of “permanent residents” into attention.
However, a naturalization process that would grant full social rights for immigrants, might take time to accomplish, so I would like to propose that if the naturalization process needs a waiting period, the state should take into consideration the principle of “measures of equal satisfaction of needs” when it wants to implement differentiated social rights for the immigrants. By “measures of equal satisfaction of needs”, I mean that differentiated social rights of a group of people are acceptable only when the needs of the group of people who is assigned a differentiated social right, are measured in the same way as other groups. The measures of equal satisfaction of needs should be encoded in a social policy.

The concept of “measures of equal satisfaction of needs” aims at promoting equal autonomy among individuals. For example, while a family of political asylum seekers is protected in the receiving country, the children should either be entitled to have “an equal social right” to go to the same school with children of origin citizens, or, according to the principle of “measures of equal satisfaction of needs”, they should get education in other forms so that the needs of the individual to be educated is fulfilled. It is illegitimate to argue that children are not qualified for going to school until they have residence permit which would accordingly grant the social rights to get education.

Or, when the immigrant workers are denied social rights, such as, healthcare insurance, unemployed insurance, and pension, while the citizens are quarantined from the social rights mentioned above, then the differentiated social rights between the immigrants and the citizens would be legitimated only if the state also takes an account of “measures of equal satisfaction of needs”, then the state should assign a lower taxation rate for immigrants parallel so that the immigrants are able to buy their own healthcare insurance, unemployed insurance, and pension from a private company instead. Neglect to take into consideration the principle of “measures of equal satisfaction of needs” with regards to the implementation of social policy implies that the nation-state does not treat people as having equal moral worth, and discriminate people due to their place of birth.

When the moral obligation to protect a human right to immigrate is fulfilled on a global level, in collaboration with the protection of other principles of human rights as stated in
The Universal Declarations of Human Rights (1984), such as, a human right to free speech, a human right to get enough pay to make a decent living, a human right to education, etc., thus it would also lessen the irregular massive migration of people because a great number of people choose to leave their origin country because their these human rights were not protected in the first place. However, there is a worry that a moral obligation to foreigners is untenable because of the sentiment of patriotism, so I would tackle the problem of Patriotism as against a moral obligation to protect a human right to immigrate, which is a kind of global moral obligation, in the next section (4.3)

4.3 Patriotism makes a Moral Obligation to protect a Human Right to Immigrate Untenable?

Patriotic obligation can be seen as an obstacle to confer an equal moral concern for immigrant who is entitled to a human right to immigrate. Liberal tradition agrees that patriotism is justified as long as it does not harm the foreigners. However, patriotism tends to be prioritised among the patriots when the issue about immigrants is at stake. I argue that in the age of globalisation, all people in the world have to face many problems, such as, environmental issues, economic issues, and so the solidarity among humans regardless of nations needs to be created.

There is still a worry that without patriotism, social cohesion would be lost. Will Kymlicka concedes that nation building was a way of “artificially” extending people to restrict sympathies to include all co-citizens, who might have different ethnic backgrounds, religious beliefs, or a way of life. He thinks that if we want to create a global moral obligation, it cannot be achieved by destroying patriotic obligation among co-citizens. The attempt to destroy patriotism would lead to the restricted sympathy to family and kinship, instead of extending sympathy to foreigners (Kymlicka 2002: 270).

Patriotism is not an objective and absolute value; it changes according to the type of society. A Modern form of patriotism emphasizes the civic virtues, the respect for other patriots as equal, while the pre-modern society accentuates the royalty and obedience to Monarchy or Aristocracy. The modern form of patriotism among the co-citizens does
not build upon the mutual agreements of the now so-called “co-citizens”, but it is a resolution of struggles of the dominated class in society. Patriotic sympathy is a result of political ideology that unites people who live in “the same territory” together. Through social input, patriotism sympathy becomes an important part of the feeling, but patriotism is not a natural factor of human psychology. There is also a possibility to create a new ideology in the human mind, that is, a moral obligation to foreigners, if we wish to create it, or indeed need to create it as a resolution for the evolving conflicts of globalisation.

I want to give an example of The European Union agreement to promote open borders among the member nations. The European Union also attempts to create a social cohesion between the members of EU nations by many means at the same time, for example, launching European News Channel, supporting student exchange programs, promoting the European Song Contests etc. Hence, I think that the creation of a global moral obligation to protect human rights to immigrate is also tenable.

Conclusion

I have argued that Liberal Egalitarianism is the theoretical foundation of The Universal Declaration of Human Rights in Chapter One, and it is also used as a theoretical framework of an argumentation of this Chapter. In Chapter 4, I begin by analyzing that immigration has not been recognized as a human right because of two fallacies, namely, the state’s exclusive entitlement to national territory, and the paradoxes of democracy. I assert that a nation does not have a legitimate exclusive entitlement to national boundary because national boundary is arbitrary, and efficiency argument is not strong enough to support the exclusive entitlement of national territory. And I also object to the paradox of democracy that: On the one hand, the justification of democracy is based on the principle of equality of human beings, but on the other hand, democracy is used to exclude immigrant’s political rights. I argue that the principle of popular sovereignty

cannot be used to disenfranchise immigrants because that is contradictory to a
democratic basic principle which considers every human as having equal moral worth.

The obligation to protect a human right to immigrate should be assigned to each state,
with the assistance of international commission that assists to cooperate between states
and monitor for immigration policy of each state. Moreover, I also argue that after the
immigrants get into the receiving state, the immigrants should be entitled to have social
rights that are equal to the social rights of citizens. But, if the state wants to differentiate
the formal social rights between the immigrants and its citizens, I argue that the formal
social rights of the immigrants should be encoded with the principle of “equal
satisfaction of needs”, which allows unequal social rights on the condition that unequal
rights would bring in equality of needs and satisfaction among individuals.

At last, I answer to a worry that the obligation to protect human rights of the immigrants
is untenable because of the prevailing sentiment of patriotism. I propose that the
protection of the human rights of immigrants is tenable because I think that Patriotism is
not a natural factor of the human mind, but its character is shaped according to the type
of society. I propose that it is possible to create a moral obligation to foreigners as we
are now in the age of globalisation. However, a moral obligation to foreigners has to be
created step by step. The first task is to recognize immigration as a human right which is
the purpose of this study. The recognition of a human right to immigrate would thus
create a moral obligation to protect it.
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