



New Ways for Migration Control

The possibilities and need for sustainable migration policies

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Preface

Like everyone I would not have been able to finish this master in Human Geography if it was not for the help of others. First of all I would like to thank all my friends, who were there when I was at my wits end and served as an outlet for every frustration I encountered throughout this time and provided me with needed practical advice. This thesis is the final product of the master program and turned out to be more of a challenge than expected. Therefore, I want to thank my supervisor Prof. Dr. Huib Ernste for taking over supervision of this thesis half way in the process and taking the time to provide feedback where possible. Special thanks goes out to all the wonderful people at THP who gave me the much needed angle and perspective I needed to give this thesis a clear direction. Thanks to Nava and Joyce for giving me the boost in confidence to complete this product and sharing their knowledge about migration and so much more.

Maar bovenal dank ik mijn moeder en vader die altijd geloofden in mijn keuzes. Ook, en vooral, toen ik dat zelf niet meer deed.

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List of Abbreviations

CBS	Statistics Netherlands
CEAS	Common European Asylum System
CSR	Corporate Social Responsibility
EU	European Union
GDP	Gross Domestic Product
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organisation
IMISCOE	International Migration, Integration and Social Cohesion Network
IND	Integration and Naturalisation Service
IOM	International Organisation for Migration
MMPA	Modern Migration Policy Act
MVV	Temporary Entry-Visum
OECD	Organisation for Economic Cooperation and Development
PPP	Private-Public Partnership
RWI	Council for Work and Income
TEV	Admission and Residence Procedure
TWV	Temporary Work Permit
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UWV	Employee Insurances Implementing Agency
VVR	Temporary Residence Permit

Executive Summary

Refugee movements and migration are nothing new. They have historical roots. The demand for skills and labour and the search for jobs and opportunities has resulted in a flow of people across many parts of the world. In order to implement more orderly and just migration regimes, a shift towards more planned and transparent policies is needed.

In the literature we find that there is tension between different principles on which migration policies should be based and can be justified. While well-managed migration may foster progress and welfare in origin- as well as destination countries, its mismanagement may put social cohesion, security and sovereignty at risk. Using both moral and practical arguments we find, on the one hand that it is said that migration hurts the political, cultural and economic stability of a society and migration policies therefore should be restrictive. On the other hand we find statements that these arguments are not valid enough to put restrictive policies in place and that they are even false, since controlled migration can attribute to cultural and economic growth. Given the increasing reports about demographic imbalances and skill shortages in Dutch society I wanted to contribute to this debate, by first providing an overview of what is already known on this subject and secondly provide a constructive evidence-based addition to the debate about the restrictiveness of migration policies in a mutually beneficial way. In an ideal system for migration management all interests are taken into account and moral and practical considerations are weighed. Morally, migration should be restricted if there are valid concerns about the most vulnerable in society. Practically, it should be seeking to be beneficial for all agents in the field of migration.

The case study shows that the demographic and economic need for migration is pressing and that current migration policies are not effective enough to address these problems. This is mainly because there is too much focus on protecting the receiving society for any possible negative effect of migration. Societal security and welfare migration are the biggest concern and an emphasis is visible in migration policies in addressing these concerns. At the same time people fear a decline in welfare because of economic downturn and a greying population. There is a discrepancy about what society wants and what society needs. We see that immigration policy is not just about making commitments about society but also about making commitments for society. A start towards a more inviting migration policy is made in The Netherlands by the introduction of the Modern Migration Policy Act. We see that migration that is market-driven rather than politic-driven can be beneficial for all actors in the field of migration and there is a tendency to move in this direction.

I conclude that we are seeing a shift in migration policy. The motive of migration is becoming more important than origin. Freedom of movement is an important part of migration policy, but only for the economic viable. Decentralising (parts of) the migration policy is possibly the best way to face

future societal issues. This is because the business sector can make a strong case for migration, and would benefit from even more unrestricted migration. A private-public partnership seems to be a viable option for The Netherlands to establish a migration policy with more attention for the freedom of movement without arousing the society's fear about security or welfare migration. The foundation is already laid down in the MMPA. At the same time the private sector needs the public sector to implement more flexible migration procedures and give them more responsibilities in the process, giving them more freedom to pick and choose when it comes to employers.

1. Introduction

The movement of people can be seen as an integral part of the human life. In human history people have searched for undiscovered lands, moved to settle somewhere with more resources or searched for other people to trade with. The moving of people also seems to be connected with the fruits the land provide, and people tend to move to the places where the most fruits are.

In today's globalized world the places with the most opportunities are in reach of almost every human being. But in today's world travelling, or migrating, means crossing borders of one or more countries. Migration is now a reality every state in the world has to deal with be it as a sending country, a receiving country or even as a transit country or a combination of these three. The borders of these states seem to be very selective in terms of what they open up for. There are no barriers created to hold out capital and goods, a free trade and free movement of capital is encouraged by most states. But when it comes to people the borders seems to have many barriers. Migrants are being faced with more and more restrictive measures for entering another state and have to deal with ethnocentric attitudes and migration policies.

Either politically motivated, economically motivated or because of other reasons, migration will remain a part of reality and migrants will continue to exist. Because the drivers behind migration are not disappearing, restrictive measures on the entry of a state has given an impulse to explore the illegal channels of migration and has led to the criminalization of a part of the migrant population. The legal channels of entering a country are selective and restrictive, making the illegal channels a profitable industry for many people who want to gain from them and creating an industry of human trafficking, making casualties frequently among woman for the sex industry (Sassen, 2003).

All of the statements above have led to a debate among scholars about the nature of these restrictive measures and the justification of restricting an individual's free movement. Worldwide people are suffering under the consequences of violence, extreme poverty and famine and other unacceptable life conditions. It would seem logical to give these people the right to migrate in order to establish a basic needs minimum if their country of resident does not have the conditions to fulfil these needs. In order to combat a global inequality, to some degree, there is given special attention to the principal of freedom of movement by scholars like Joseph Carens, Veit Bader, Michael Walzer and Phillip Cole. They do so mainly because a lot of global inequalities are the product of morally questionable inequalities. It is seen as unjust that a person's life is decided by something as random as birth-place, scholars are pleading for a global principal of freedom of movement so that the 'lottery of birth' does not determine someone's options in life. Is seems just that restrictions on spatial movement are abolished if they affect someone's life outcome.

The critique on this stand is that in today's world states are seen as political communities that are based on trust and solidarity and that this does not exist on a global scale, or as Miller states "[F]or a just system of welfare to be democratically supported, it must be backed up by a popular consensus about the distributive principle in question, and this requires a common identity" (Miller, 1989 p. 497). This social trust has led in most (liberal) democracies that a welfare state has developed in which people care for each other and provide a social minimum. It is said that migration undermines this trust and thus is not compatible with a welfare state. That is why besides looking at the scope of justification in international migration it is important to consider that if the privileged are forced to give up their privileges' without consent, it does not do justice to them. That is why the question is asked; *to what extent can the freedom of movement be improved without undermining domestic social justice?*

1.1 The Definition of the Problem and Research Question

International migration can be seen an outcome of global inequalities and as a part of the solution to address these inequalities (Isbister,1996). The latter has given rise to an increasing attention in philosophical and political science about the normative and ethical justification of restrictive measures on immigration. According to John Isbister migration should be grounded in the understanding of income inequalities and social differences. Immigration controls maintain a state of inequality between the haves and have-nots (Ibid.). Following Isbisters' reasoning the debate is about distributive justice as much as it is about the openness of borders. It can be seen as a tool to fight inequalities brought about by globalization, and it is this principle of humanity that scholars refer to when defending this stance. General considerations of international distributive justice also play a role. Therefore, the normative reasoning about immigration should be viewed from a global justice perspective (Ypi, 2008).

This is where the debate falls short, since it does not go on about how to limit the inequalities that are the product of border control, or even the lack of border control. Lea Ypi acknowledged this shortcoming and pleas for a justice approach towards migration. To move beyond the debate Ypi claims that whatever actions are taken control migration, they have to be justified to the residents in the receiving and sending countries (Ibid.). *"The general principle of justice in migration prescribes the following: if restrictions on freedom of movement could ever be justified, such restrictions ought to take equal account of justice in immigration and justice in emigration"* (p.391. In order to come to a comprehensive approach towards migration one has to look at all agents in the field of international movement and all interests should be taken into account (state, migrant, receiving country and sending country). Ypi also shows that there is asymmetry in the egalitarian approach towards a global theory of justice in migration. Since it doesn't allow for any

restrictions on the freedom of movement and this does not do justice to the people that stay-behind. As Ypi describes it; *“Fellow-citizens are owed a fair return for what they contribute to one another: education, investments in healthcare and so on. It would be unfair to leave the state without repaying for the advantages enjoyed”* (p. 412). Eventually, a global theory of just migration based on egalitarian principles leads to a paradox. So immigration policy can be fair depending on the justification. If a state only has to justify for its own inhabitants a policy can be fair while being exclusive.

Liberal democracy is based on social trust and immigration may undermine the social trust as is empirically portrayed by the political scientist Putnam (2007) and normative by Goodhart (2004). Putnam shows that ethnic diversity leads to less trust between ethnicities and even within one’s own ethnicity. It should be noted that this is only the case in the United States (Gesthuizen et al., 2009). It is alleged that social trust is a necessity for the welfare state, because without social trust people are not willing to care, and thus pay, for each other’s well-being and that this trust requires a single national culture. As a response, the state is creating more and more policies concerned with controlling the movement of bodies. De Haas showed us that the state’s major concern is the permanent settlement of migrants in the society. There is fear that with settlement new ethnic enclaves will arise and ethnic and diversity is increased to such an extent that it may become a threat to the state itself (De Haas, 2005). To prevent this from happening and to control the movement of individual that are coming into the society there are different policies that are turned to; deflection policies, integration policies and official development aid. With deflection policies states can develop criteria who are allowed in and who are not, mostly based on the contribution they provide to a society. With integration policies, migrants who are granted permission to stay are culturally incorporated into the host-society through assimilation. With development aid countries hope to tackle one of the root-causes of migration, namely financial inequality.

Since the selection to gain residency status is getting more strict, the possibility of gaining a legal status is decreasing for a lot of migrants. The only possibility left for people who are searching for a better life elsewhere is to take the path of undocumented, irregular, migration. It seems that controlling regular migration in a restrictive way, gives an impulse to irregular migration, which states are trying to fight at the same time (Ibid.). De Haas summarized the negative effects of border control as followed; *“[R]estrictive immigration policies tend to have diverse harmful, ‘perverse’ effects. These include lower visibility of and control over migration because of an increase in undocumented migration and people smuggling, and the exploitative, cruel or degrading treatment of migrants this involves; the use of asylum procedures by non-refugees; the labeling and stereotyping of immigrants as ‘economic refugees’ and ‘illegals’; and the overall criminalization of migration”* (Ibid. p.1280-1281).

In order to combat this irregular migration institutions are build and funds are reserved to put up physical and administrative barriers, obstructions to keep the unwanted out. All of these measures are based on the notion that states have the right of self-determination and can unilaterally close their borders to migrants and based on the fear that multiculturalism is a threat to the states identity and sovereignty. This idea is firmly grounded in the recognition that the nation-state should be responsible for the control of its territory and the safety of the people living on that territory. Controlling the movement of people in and out of its territory is a major part of how the state is governing cultural and political diversity. With the restriction of migration from countries with a different culture and by assimilation policies states attempt to preserve the homogeneity of the demos.

The aim of this thesis is to not just describe the ethics of virtue regarding immigration but to examine the migration policy in terms of international agreements and national politics. Secondly, in order to specify the scope of the study an examination is made of the possibilities of alternative immigration policies for liberal democracies, using The Netherlands as an example.

In a practical way an assessment is made, and sought, if immigration can be integrated into a broad-based democratic welfare state and theoretically an answer is sought if a cosmopolitan notion of human equity can co-exist with the instinct to favour one's own community. Problems are that this is a very normative debate and the question remains if it is empirically possible to combine migration into a nationalistic welfare regime. It is therefore a challenge to search possible, practical measurements of indicators without undermining the theory behind them. *I aim to contribute to the already existing literature on this field by, on the one hand providing an overview of what is already known on this subject and on the other hand provide a constructive evidence-based addition to the debate about the restrictiveness of migration policies.*

1.2 Methodology

In order to answer the research question, qualitative methods of research will be used so that a comprehensive analysis of the topic can be provided. Because of a qualitative approach of the chosen topic, multiple methods and strategies within the qualitative approach can be used. The upside is that it can adapt while the study develops (Bryman, 1999). The topic of this research, namely the immigration policy of liberal democracies, is best studied with qualitative methodology since it allows for a more holistic and constructive approach that I think is needed in order to understand a socially constructed research topic. Because of the fact that migration policies are the work of people, interpretation is a very important part of the analysis (Ibid.; p36) A qualitative analysis allows for this interpretation and gives the best tools to get closest to the topic being

researched and maybe most importantly; *“This stance [exploring a limited range of variables] affords the qualitative researcher a much greater opportunity to study process in social life”* (Ibid.; p43).

For the most part this thesis relies on desk research, finding relevant literature to provide an overview of what is already known on the subjects and concepts discussed.

1.2.1 Research Design

With the choice of the research design, you choose the way data is collected and analyzed. The first design that is used in this thesis is literature review. It has been described as a systematic search of published work to find out what is already known of the intended research topic. It involves sharpening a theoretical framework, build on previous insights, identify variables important to the chosen topic and discover or identify gaps in knowledge. The bulk part of this thesis consists of literature review. So I used existing material and had no direct contact with the research object itself. Everything in this thesis relies on information that is collected by other scholars and data gathered by scholars or institutions.

Next to the literature review, the design of case study is used in this thesis. Case study is best applied to research topics where the relation between processes is of significant importance. A case study takes into account context and is explorative in its nature and looks for patterns rather than statistical or causal relationships (David, 2006). The choice of case study has been criticized with the argument that it only investigates specific cases and is cannot be generalized to a larger population. The generalisability, or external validity, is often seen as the scientific relevance and scientific contribution made by a certain research (Flyvbjerg, 2006). A case study however, can lead to generalizations from the theoretical advancement it can make and the propositions it may produce (Ibid.). The three main concepts that are of interest in the debate about migration are (1) the state (government) (2) the migrants and (3) migration policies. Whereas the migrants acts mostly as an individual, the actions of a government are seen as the collective action of a society. This brings about a difference in accountability. A state creates a policy differentiating between migrants rights and citizens rights. These rights are the extent in which a person is a part of a societies redistribution system since the state institutionalizes redistribution through policies and organizations (Pierson, 1996). Considering the aim of this study is to constructively develop a new form of policy this design seems the logical choice. Case studies are also used because they can provide in-depth insights into social processes and to develop rich contextual data from which generalization to theory becomes possible (Bryman, 1999). It is not among the primary aims of this thesis to provide generalized findings for other migration policies. More important is to highlight a single case and provide an deep understanding of the specific migration policy.

A case study can be done using different methodologies. Some case-studies chose interviews as research population while others use content analysis. I will be examining national migration policies within a global context of migration. The holistic focus of the case study seems to be the appropriate one in this context.

I discovered there is a lot of distinction made between migration, mostly on the basis of purpose and that this affects the opportunities and rights a migrant has. This also entails the freedom of movement. I aim to look at the freedom of movement regarding migrants and domestic social justice. To measure these concepts I used different variables. As a measurement for freedom of movement I looked at the restrictions on and requirements for residence permits. In the content analysis I cross-referenced the different migrant categories with freedom and mobility to get insights in the weight given to this concept.

For domestic justice I looked at the security aspect of migration and the risk of welfare migration. First I looked at the literature on societal security and migration and data about the risk of welfare migration. As with the freedom of movement, I cross-referenced different variables in the content analysis namely security, integration and development with the different categories of migrants. Again, to get insight at the weight given to this concept in the policy documents.

1.2.2 Data Collection

The data that will be used in this research or of multiple sources as is easy and most viable within a case-study. Quantitative data will be used together with qualitative data to support the major claims in this thesis. The quantitative data that will be used are official statistics from the relevant organizations in the field of acting and/or developing migration policies, next to secondary data collected by other researchers. Best sources for data were government and intergovernmental databases. The first source was a document from the Organization for Economic Co-operation and Development (OECD) which gave an overview of the demographic developments in the Dutch society. Statistics Netherlands (CBS) together with statistical data from the United Nations provided reliable insights in the demographic context which was vital for the argument made in the thesis and gave me the opportunity to made own adaptations using the original data. The advantage of using secondary data is that the collection is done by often experienced researchers in the relevant field. Especially when discussing the economic and labour market argument in this thesis this was of much help since these data is not publically available, but through data used in reports from relevant institutions and gathered by other researchers it was still possible to do quantitative analysis on this subject. These Reports and data were provided by the Employed Person's Insurance Administration Agency (UWV) and the Council for Employment and Income (RWI). Together this gave me the needed

data to get an overview of economic reasons for labour-migration and in-depth explanations for current developments and predictions.

To justify the arguments posed in this research, a review of existing relevant literature is used in the form of books, scientific articles and policy papers in addition to the scientific literature. The qualitative data was gathered primarily from the relevant actors in the field of migration policy, more specifically this were documents of the Dutch government about migration and the IND (the Dutch integration and naturalization service), official EU documents in the form of treaties and UN treaties on migrants rights. Since policies regarding migration are an outcome of national politics this is the most relevant documents to analyse. A member state of the European Union, such as The Netherlands, also complied itself to treaties and guidelines on a European and intergovernmental level. For that reason the agreements made on a supranational level are also analysed. Although the European Union has an easy accessible database of all the relevant documents concerning law- and policymaking, in the form of EU-Lex (<http://eur-lex.europa.eu>), it is a frustrating process to find the relevant decisions made regarding a specific topic. As a handhold to find the relevant documents regarding migration policy in European law and treaties I used the “Guide to Selected EU Legal and Policy Instruments on Migration” from the International Organization for Migration (IOM). This guide already identified the key documents used in the European context concerning migration policies and migration law. This guide is not an exhaustive one since it last update was in 2008 after the Treaty of Lisbon was ratified. Relevant documents after 2008 were identified by looking at which texts referred to documents in the guide from the IOM. For the alternative ways of migration management I looked at policy document and research from the International Center for Migration Policy Development (ICMPD) and the Immigration, Integration and Social Cohesion network (IMISCOE). The “Innovative concepts for alternative migration policies” report and the book “European Immigrations: Trends, Structures and Policy Implications” were especially useful. I made the choice to use only the approaches that had similarities with the Dutch context, as ultimately that is the scope of this thesis and where I will try to apply alternative approaches. I ended up using two (People Flow and PPP) as they were already visible in the Dutch policies and were reviewed by more than one scholar (Marchetti, 2003; Düvell, 2005; Pécoud& De Guchteneire, 2006; Bloomfeld, 2006).

1.2.3 Analysis of Data

For the analysis of the official documents, communication and reports the method of quantitative content analysis will be applied. Content analysis functions as a tool for searching the intention and implicit meaning incorporated in the texts. It gives insight into the conclusions , often highly

interpretative, posed in a text and makes it possible to read between the lines (George, 1959 In; Scott, J. (2006)).

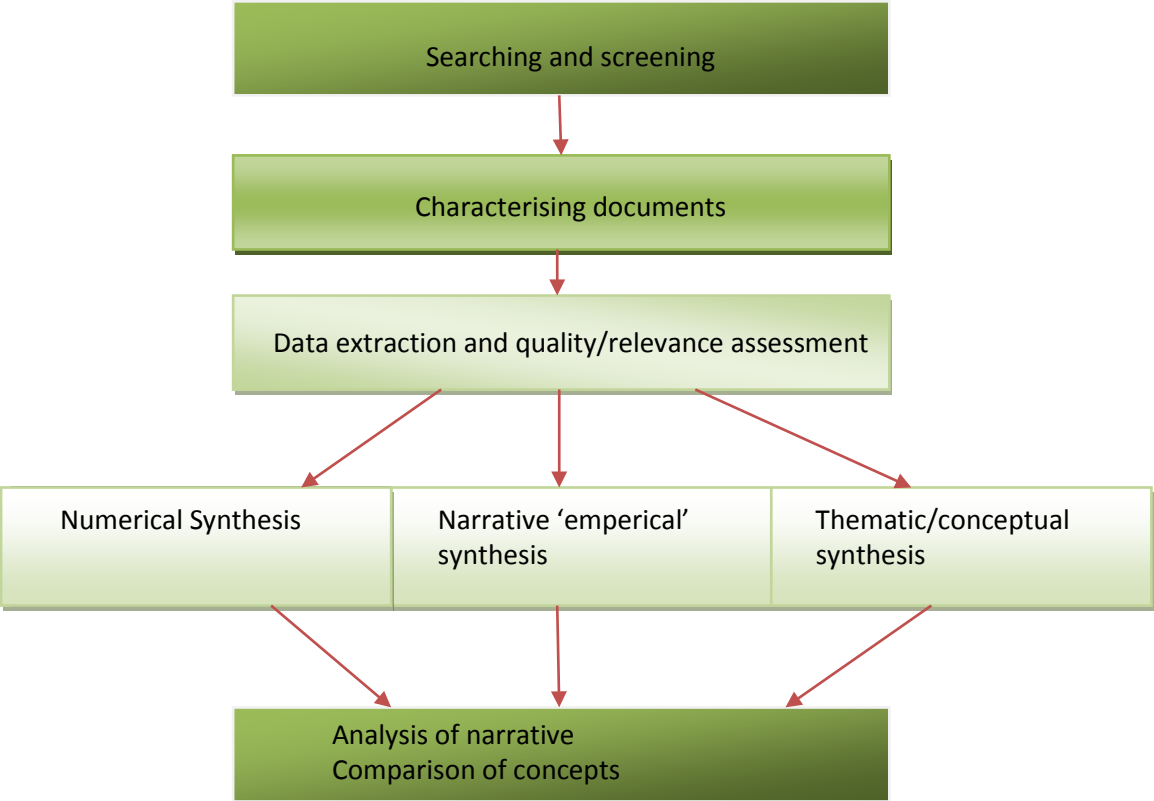
Looking through official documents can be a time consuming and frustrating process. To make it comprehensible and feasible to skim through the relevant documents, a qualitative data analysis was used to select relevant documents. Using an editorial program (AtlasTi) a quantitative content analysis will be applied to analyze the data. A major advantage of computer assisted content analysis is that the computer provides perfect coder reliability when applying coding to text (Weber, 1985). It therefore *“..frees the investigator to concentrate on other aspects of inquiry, such as validity, interpretation and explanation”* (Ibid. p.40) The analysis itself is not performed by this program. It makes the analysis of the qualitative data easier since it provides a way of analyzing unorganized and disorderly material in a systematic way

The problem with quantifying qualitative analysis is that it only examines observable characteristics, quantitative content analysis is not a reliable way of making statements about the context. It does count the amount of words but not the context in which it is used. Secondly, it does not take into account coding irrelevant content or changes in the speakers' strategy or latent meanings of the text (George, 1959 In; Scott, J. (2006)). Too much attention for the quantitative leaves little room for the interpretation of qualitative aspects. On the upside, it is easier to guarantee the validity and reliability of the results.

Another critique is that a subject can be addressed and discussed in a document without using the exact word you are looking for. That is why the quantitative word count served as a guideline to further analyse the document and get a more in-depth view on the relevant subjects. Most of the texts used for the analysis are document texts and secondary data, interpretation is need to come achieve results. The general principles in handling documents are no different from any other area of social research, but there are however different techniques required considering the specific features of the documents (Scott, 1990).

As stated in the part about data collection, the documents I selected for the analysis were picked non-random. I made a selection out of “Guide to Selected EU Legal and Policy Instruments on Migration” from the International Organization for Migration. This guide is a document developed for the project “Establishment of EU compatible legal, regulatory and institutional frameworks in the fields of Asylum, Migration and Visa matters” (CARDS AMV) funded by the European Commission. This guide already identified the key documents used in the European context concerning migration policies and migration law. Out of this document I chose the documents relevant for this thesis. This entails I used the documents concerning agreements on entry and admission, stay and residence, and irregular migration and not included documents about expulsion, voluntary return & readmission, trafficking or migration statistics and data protection. Since multiple topics are

addressed in every document there is a lot of overlap. Next, I looked at the content of the documents in every theme and evaluated their relevance. Since some documents were concerned with no relevant aspects for this thesis, i.e. non-discrimination, these documents were also discarded. In short, the following research model was used when selecting documents and performing the analysis.



After selecting the documents , a scheme was made with words or pairs of words that was looked for in the document and counted how many time these appeared in the text and in how many documents certain words and themes were used. This gave me not only an indication of the content but also the importance of the subject discussed.

As said earlier, I mainly focused on freedom of movement and domestic justice of the nation-state, and compared the two to find out which was given more weight in the reports, documents and corresponding policies. Since different requirements are relevant for different kind of migrants, I compared different categories of migrants to get an indication for whom freedom of movement is guaranteed and whom face restrictions. The same applies for the concept of security, I compared to what extent indicators of security are associated with different categories of migrants. The categories of migrants used are; migrant workers/labour migrants, third country nationals, irregular migrants and migrants (no further specification given).I cross referenced them with the subjects already discussed for the measurement of freedom of movement and domestic justice, namely the concepts

freedom, mobility, security, integration and development. In the appendix an example of codes used and the relation between codes and quotations can be found. Cross referencing the codes, I was able to compare the mentions of the same subject in the text over the development of European migration policy. Over the period over 1985 (the establishment of the Schengen Area) until 2008 I could analyse to what extent that was attention for the freedom of movement regarding migration and domestic security. I looked if there are changes in the weight given to the one or the other and eventually it pointed me in the direction where I could look at the context in which they were used.

1.3 Review of the Literature

As I have said in the above, this thesis relies for a large part on literature review. To offer some transparency on the choices made when choosing and using specific literature and how I found it, both the theoretical and empirical literature will be discussed briefly.

1.3.1 Theoretical Literature

The vast amount of articles used in the thesis has led to a large amount of theoretical angles that were considered helpful in order to build the theoretical framework. For the general strand on the debate about the openness of border the articles of Joseph Carens and David Miller were a very helpful tool. The insights from John Isbister and Lea Ypi made it possible to extend the scope of the debate and incorporate it in the larger debate about global and social justice. The normative case and argument posed in this thesis is developed mostly using Carens and Kukathas arguments that freedom of movement can be of such an importance for a person's live that closing borders is immoral from the standpoint of the equality of opportunity. Next to that, Abizadeh and his view on restrictive borders from the democratic theory gave the insight that borders are indeed a very arbitrary way of exclusion and is not defensible from a democratic point of view. Therefore the restrictions on a person's freedom of movement (in the form of a state border) should be justified to non-citizens as well is adopted in this thesis.

The distributive citizenship argument by Walzer and Dummet's argument of protection the most vulnerable in society helped to see the impossibility of completely unrestricted migration and led to a more milder and practical argument on which this thesis builds. The detailed analysis and broader discussion will be provided in chapter two.

1.3.2 Empirical Literature

Empirical literature on the European asylum system Boswell and Geddes' 'Migration and mobility in the European Union' was a very helpful book to understand the development of migration

management, and the corresponding relevant policies, in the European Union. It gave a starting point to look for the original documents and helped indentifying relevant terms and concepts in a vast amount of literature. Balzacq and Carrera gave a critical reflection on the development of the European migration system and showed how security has become the main driver behind this process and that the framing of migration as a security problem has become dominant. The approaches and analysis offered by Boswell and Geddes, and by Balzacq and Carrera are the foundation on which the themes and key words used for the content analysis is based on.

The research report by Tholen was very supportive because, next to providing insight into the motivation of an European asylum policy, it stresses that different categories of migrant have different rights and it therefore important to look at admission policies.

Reports and research conducted by international organizations such as the Organisation for Economic Co-operation and Development and the United Nations showed that labour migration will become a necessity in the near future for states in the North-West of Europe. These reports were therefore vital for the arguments made in this thesis and their quantitative research gave me the tools to support the argument statistically. For the specific developments of the Dutch labour market electronic reports from government or semi-government organizations were used to have the full picture and to make the argument more solid.

2. Open versus Closed Borders: Theoretical Framework

“For several years I have been saying that migration can be summed up by a series of D words: Demographics, Disasters, Demand, Disparities and Dreams. This year I am adding a new D: Desperation.

The world watched in horror in October when some 360 African migrants lost their lives within sight of land while attempting to reach the Italian island of Lampedusa. Untold hundreds have perished on the journey from Indonesia to Australia, or off the coast of Thailand. Migrants from Central America are raped, robbed, beaten and killed as they try to enter the USA from Mexico. African migrants die of thirst in the vast desert reaches – their bones the only testimony to their failed journey.”

- William Lacy Swing, Director General, International Organization for Migration, 2013

In this first part the task is to discuss the current debate about open versus closed borders and define the problem that arises from it. By discussing both the arguments in favour of and the arguments against open borders I will show that there is a gap in the problems addressed by this debate so far. Before the arguments are mentioned and discussed it is helpful to take notice that scholars arguing against open borders are not pleading for a total ban on immigration just like the scholars in favour of open borders are not pleading for the abolishment of borders. The former defend a state’s right to exclude immigrants on their own terms, while the latter critically questions the current excluding practices of migration policies. By doing so, they focus mainly on the rights possessed by states and rights of migrants and debating which right outweighs the other right. The stand one takes in the debate about migration and borders derives from the freedom they see as more important; being freedom of association or freedom of movement. Showing both sides in the debate and discussing the arguments I will provide an answer to the question to what extent migration policies should be justified to non-citizens.

Global migration raises important ethical issues. One of the most significant is the question of whether liberal democratic societies have strong moral obligations to admit immigrants (Wilcox, 2009). Most philosophers have argued that liberal states are morally free to exclude whomever they want. A side note that is needed in this view is that it involves voluntary (economic) migration. On the protection of refugees they do not allow for restrictions. Recently, however, liberal egalitarians have begun to challenge this conventional view regarding economic migration. The debate on open borders focuses mainly on the right to immigration. Do individuals have a (moral) right to immigrate and can this right be limited by states? The questions that are central in this debate are; is there a

global right to international movement, and to what extent is it the exclusive right of states to deny access to possible migrants?

2.1 Remarks on globalization and migration

Before I continue with sketching the situation with regard to immigration and border controls, I feel some remarks on the process of globalization have to be made. Worldwide people are suffering under the consequences of violence, extreme poverty and famine and other unacceptable life conditions. Many of the living conditions are the outcome of global politics. Castles and Miller show that globalization can also be approached as a political and social process (Castles & Miller, 2009). They characterize it as *“the widening, deepening and speeding up of worldwide interconnectedness in all aspects of contemporary ‘social life’ with as key indicator a rapid increase in cross-border flows of all sorts”* (Ibid. p.51). There is no end goal in globalization and it will never be finished or ended. It is an ongoing process (Coe and Young, 2001). Castles and Miller have described globalization as, *“an ideology of how the world should be reshaped”* (Castles & Miller, 2009. p. 53). It also led to an increase in economic inequality which in itself is a driving force behind international migration. (Masson, 2001). The emergence of a first, second and third world order is perhaps the most tangible outcome of globalization. This unevenness has a different impact for different sectors and different countries. People in the countries that are on the wrong side of the inequality will than migrate to a country that profits more from the process of globalization (Coe & Young, 2001). Therefore, in a way globalization forces and facilitates migration. It would seem logical to give these people the right to migrate in order to establish a basic needs minimum if their country of resident does not have the conditions to fulfil these needs. In order to combat a global inequality, to some degree, there is given special attention to the principal of freedom of movement by scholars like Joseph Carens, Veit Bader, Michael Walzer and Phillip Cole. They do so mainly because a lot of global inequalities are the product of morally questionable inequalities. It is seen as unjust that a person’s life is decided by something as random as birth-place, scholars are pleading for a global principal of freedom of movement so that the ‘lottery of birth’ does not determine someone’s options in life. Is seems just that restrictions on spatial movement are abolished if they affect someone’s life outcome. In this thesis I will not deal with the process of globalization directly, but, firstly, I want to make the link between international migration and globalization since it is a major driver behind migration movements. Secondly, I will argue in this thesis that migration management can be seen as a tool to fight global inequalities that are the product of the process of globalization (as stated above).

2.2 The Debate: Conflicting Principles

Debates about migration concentrate mostly on the burden migrants put on the receiving society. They need to be integrated and are said to be overrepresented in the social welfare system. This is said to be most true about low skilled migrants. High-skilled migrants, who have the skills and knowledge to generate exceptional value in various markets, also have the chance to shop around the world and be 'shopped for' and are rarely seen as a problem. Those without special skills and knowledge are perceived in a mixed way, experiencing exclusion from many aspects of society (Castells, 2000). Only migrants that have something to offer, and thus the receiving society can gain from, are welcomed with enthusiasm. The reasoning is done from the point of view of the receiving society, only looking at what is best for society and creating policies that maximize the profit of migration. In doing so, immigration controls maintain a state of inequality between the haves and have-nots (Isbister, 1996). Following Isbisters' reasoning the debate is about distributive justice as much as it is about the openness of borders. It can be seen as a tool to fight inequalities brought about by globalization, and it is this principle of humanity that scholars refer to when defending this stance. General considerations of international distributive justice also play a role. Therefore, the normative reasoning about immigration should be viewed from a global justice perspective (Ypi, 2008).

In the debate two kinds of arguments are provided by both sides. There are moral-based arguments and there are practical arguments. The moral arguments focus on the principles that are rooted in the liberal moral theory, one of universal and unconditional equality of moral worth of human beings falling within the scope of morality (Friday, 2004). The practical arguments focus on the impact and consequences of closed or open borders. The arguments for closed and open borders are based in the liberal-egalitarian tradition. The debate seems to focus on the state's right of autonomy and self-determination versus the individuals' right of autonomy and self-determination, the principle of free movement against the principle of freedom of association. Both are morally defensible and untenable. Freedom of association is defensible considering that this principle alongside with self-determination is the value that is the pillar of states sovereignty. With the right to association comes the right not to associate. Meaning that an individual has the right to form an association with other individuals to pursue their common interest and they have the right to not form an association with another individual. In the case of migration this means that people have the right to form their own political association (a state) and that they have the right not to associate and thus deny people into their political community.

Freedom of movement is defensible since it can be seen as a condition for other forms of freedom (Carens, 1992). Carens argues that freedom of movement is a moral right of individuals in itself, since movement could be necessary for one life-plan. Secondly, freedom of movement is a

necessary condition for equal opportunity since different places bring about different restrictions and advantages.

In a few words, scholars that defend the *closed* borders argument state that the principle of free association is consistent with liberal egalitarian values and therefore are justifiable within the liberal moral theory. A second way this standpoint is defended is that immigration puts a burden on society and the state. Immigrants may harm the cultural, political and most important, economical stability and prosperity of the state. Scholars that defend the *open* borders argument state that the principal of free movement is a basic liberal-egalitarian value that presupposes other important principles such as the principle of equal opportunity. Building on this argument, Carens pleads that there should not be a distinction between cultural, economical or personal reasons when it comes to migration. They are all part of the personal freedom to make the decision to design one's life and there should be no restrictions on this right (Ibid.). From a practical view, defenders of open borders claim free migration is an effective way to level global inequalities and reduce world poverty. At the end, the debate seems to focus on the state's right of autonomy and self-determination versus the individuals' right of autonomy and self-determination.

2.2.1 Principle of Freedom of Movement

The principle that is used to argue for open border and unrestricted migration is the principle of freedom of movement. Here the arguments regarding freedom of movement and their contribution to the debate are discussed. As an ambassador of the scholars that argue for open borders, Joseph Carens uses the interpretation of liberal justice in order to object to any form of restriction on immigration (Carens, 2003). Unrestricted migration is a valid claim using the principle of freedom of movement, since it can be seen as a condition for other forms of freedom (Carens, 1992). Carens argues that freedom of movement is a moral right of individuals in itself, since movement could be necessary for one life-plan. Secondly, freedom of movement is a necessary condition for equal opportunity since different places bring about different restrictions and advantages. Carens claims that from a liberal standpoint inequalities that arise from morally questionable categories (e.g. ethnicity, gender, race, age) are unjustifiable, since liberalism is about the liberty and equality of people. Any state that differentiates between people on arbitrary grounds is therefore acting in conflict with the liberal principles it is build on according to Carens. Carens puts citizenship next to other forms of questionable classifications, since it is just as sex and race something you do not have a choice in and is determined at birth. Defending his stance, Carens makes the comparison of today's world of states with the feudal regime in medieval Europe, wherein privileges are inherited and life enhances life chances. Citizenship can be seen as a modern form of feudal privilege, as it can greatly enhance or diminish ones prospects in life (Carens, 1987). Denying one access based on citizenship is

therefore unacceptable because it makes a distinction between people based on ancestry. Any form of communitarianism, in this case, is impermissible as it is based on an unfair privilege that is inherited rather than earned and should not prevent any person from building a life in another place than the one they were born in.

Following Carens' line of reasoning, political scientist Chandran Kukathas also rejects restrictions on migration (Kukathas, 2005). Closing borders are problematic for numerous reasons as is argued by Kukathas. Firstly, it can be a restriction to leave one's own country and consequently escape failing and repressive regimes creating a risk for a person's safety. Secondly, spatial relocation is often seen as the most logical method to escape poverty and denying people to settle elsewhere is denying them the chance to improve their living conditions (Ibid.). Concerns about consequences it may have on the economy and security are not enough to deprive others of their freedom of movement according to Kukathas. Kukathas claims a very strong case has to be made in order to limit this freedom and argues that no argument strong enough has been given so far. Although Kukathas believes that the burden of proof to restrict migration lies with the accuser i.e. the state, he keeps a realistic view and notes that *"it should be admitted that the prospect of states opening their borders completely is a remote one"* (Ibid. p.210).

Abizadeh uses a different approach than Carens and Kukathas to illustrate why restrictions on immigration are impermissible, namely the democratic theory (Abizadeh, 2008). He argues that unilateral border control and a restriction on the freedom of movement is not legitimate until the question is answered to whom migration controls should be justified. His answer is that the border controls should be justified to foreigners as well as to citizens based on the democratic theory of popular sovereignty. This is because *"the demos (population) of democratic theory is in principle unbounded, and the regime of boundary control must consequently be democratically justified to foreigners as well as to citizens"* (Ibid; p. 38). The argumentation behind this stance is that in democratic theory people are seen as free and equal, regardless of citizenship, and so every restriction on the person's freedom should be justified to them. If a state forcefully keeps people out of their country justification is owed to those who are kept out. Abizadeh states that before justifying border controls to non-members, even the drawing of the boundaries should be justified to non-members, as boundaries are not democratically justified (Ibid.). According to Abizadeh drawing a border means that one already knows who he wants to include and exclude and thus who has the democratic right to participate in the process. This is considered impossible by Abizadeh and he rejects the idea of a bounded 'demos' within democratic theory since a political entity cannot be defined democratically.

Abizadeh goes a step further and shows why the most important democratic argument, the self-determination argument, to defend the states unilateral right to border control fails. He covers

five plausible arguments based on self-determination and freedom of association and explains why they do not hold up with democratic, liberal, principles. The first argument is that a pluralistic political and bordered world is necessary to safeguard diversity and heterogeneity of ways of living. Abizadeh is quick to discard this argument on grounds that unilateral control on borders protects the homogeneity within the borders and does not do right to diversity. The second argument entails that bounded political entities are an insurance against tyranny since concentrated power has the potential to breed tyranny. Dispersing political power in different political entities then makes a world tyranny impossible. Abizadeh counters this argument saying that the only way people can benefit from the different political entities and their role in countering tyranny is if people are free to cross borders and enter a different political community. Third argument is that individuals have preferences on who they want to associate and live with collectively and that these preferences should be respected. If people prefer to live in a bounded polity this should be respected according to this argument. The problem with this argument, according to Abizadeh, is that the preference of some people to live a bounded polity excludes others without them having a say in it. Next to that, some people prefer to enter another bounded entity and this is in conflict with the people trying to keep them out. Fourth argument covers the problem of scale: that the larger the polity, the less meaningful the individual's political participation. The idea behind this argument is that the individual should have the most saying in factors that affects her life as possible, and that this voice is best granted on a small, 'local' scale. This again leads to the preferences some people have to live with others, and that the preferences one individual has may conflict with the other's preferences. The fifth and final argument Abizadeh covers is that of the protection of minorities within a polity. Within democracies the opinion of the majority are more likely to be institutionalized than those of minorities. Individuals of a minority group thus may have more trouble to ascribe to the laws they live under. Multiple polities can be seen as a safety net against political domination by a single majority and borders are an inextricably part of the multitude of political communities. This is the only argument that Abizadeh thinks is not incompatible with the self-determination argument. If a minority has a risk of being overwhelmed by immigrants and being dominated politically then it would be justified to unilateral close the border to some extent because it may be necessary to guarantee the political participation of a minority. The main point Abizadeh makes is that a bounded demos or polity cannot be justified by democratic means and therefore is difficult to legitimize.

Another contribution made from the perspective of distributive justice is from Eric Cavallero. He illustrates the importance of freedom of movement by stating that countries are subject to migration pressure (Cavallero, 2006). This entails that some countries have more people that want to leave than there are people that want to settle there and vice versa. When the wish to emigrate exceeds the wish to immigrate this is called negative immigration pressure and the opposite is called

positive immigration pressure. From a global distributive justice perspective Cavallero argues that countries that have a negative migration pressure are entitled to help and that countries with a positive migration pressure should allow for immigration or otherwise help the would-be migrants to stay in their country of residency through aid-programs (Ibid.). The rationale behind this idea is that this migration pressure exists because of inequalities between countries and that “(...)borders concentrate opportunities in some countries while limiting them in others” (ibid. p.98). Migration could be a way to equalize this inequality in opportunity if the border would be open. Because this is not the case Cavallero pleads for an obligation to development assistance if countries are hesitant to allow migrants.

Carens and Kukathas both have made some strong arguments for the freedom of movement. However, they pay little attention to the negative consequences on the freedom of other that can be accompanied by a universal right to freedom of movement. Although freedom of movement is an important individual right and should be protected, I agree with Abizadeh and Cavallero that there are some situations in which a restriction on this freedom is allowed. In order to protect ‘worst-off’ within a community it can be necessary to restrict immigration as Abizadeh illustrates. Cavallero showed that borders create an inequality of opportunity and that if it is decided to restrict immigration, the state should improve the conditions of life where the would-be migrant lives.

2.2.2 Principle of Freedom of Association

The principle that is used to argue for unilateral border control as well as for unrestricted migration is the principle of freedom of association. Here the arguments regarding freedom of association and their contribution to the debate are discussed. Although the right to freedom of association is mostly identified with communitarian scholars, it should be noted that in some cases cosmopolitan scholars used the right to freedom of association to explain why border controls are amoral. Defenders of unilateral border control often refer to the right to freedom of association, saying that if people have the right to associate with certain people it comes along with a right *not* to associate with certain people (Miller, 2008). This line of argument provides a basis for exclusion. Scholars arguing for unrestricted migration claim that with restrictions on migration people lose the choice to sell their goods and labor to whomever they want, restricting the freedom of association.

Carens claimed that from a liberal standpoint inequalities that arise from morally questionable categories are unjustifiable. Michael Blake acknowledges this problem with citizenship and the moral questionable distinction it makes (Blake, 2001). However, Blake differentiates between the moral relevance and the moral arbitrariness of citizenship. According to Blake, citizenship is indeed morally arbitrary since it is inherited, as Carens claims, meaning it is difficult to legitimize exclusion on this basis. He also acknowledges that citizenship, which acts as membership

of a political community, is however morally relevant. Blake comparisons state membership with being the member of a family, it is a membership that comes with birth as well. Seen from the liberal justice point of view it is arbitrary to favor your family members over non-members as well, but no one questions the moral relevance of family members (Ibid.). The moral relevance of fellow-members means, according to Blake, members have an obligation towards each other, in other words; charity begins at home. In this line of reasoning, in order to protect your fellow members immigration can be restricted if it hurts the interests of those members.

A more communitarian view is provided by Michael Walzer. Walzer sees membership, and citizenship, as a good that is distributed among people. People can grant each other membership by including and acknowledging each other as members of their community (Walzer, 1981). This makes membership the first primary good within a community, since it presupposes the distribution of other goods among members. Walzer's assumption is that cultural and political values are the bricks upon which a community is built. According to Walzer a community requires some form of homogeneity in culture. On this premise states should have the right to exclude whomever they want from their community and thus apply a unilateral border control. Border control is seen as a tool to defend the common interest of the community and their way of life by Walzer, so it is up to the community to decide who can become a member and who does not (Ibid.). Protecting the common interest and way of life can be interpreted in a variety of ways; they can entail concerns about economic prosperity, political stability and security in general. According to Walzer the most important argument is the concern about the character of the state as a polity (Ibid.). Walzer thinks of states as a collection of exclusive clubs that have criteria for membership, they are allowed to set their own criteria and can exclude anyone who doesn't meet the chosen criteria. This statement is not as absolute as it first appears; Walzer acknowledges that states are morally obliged to take in refugees since it is not possible to improve their lives by development aid. The only way to improve their lives is by taking them in. For all the other cases Walzer's argument is best summed up by; *"What is at stake here is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life"* (Ibid. p.174).

The political theorist David Miller also subscribes to the notion that a state, and community, is built upon a common culture. Miller's assumption is that states need a shared culture for a shared identity and as support for democratic governance. Migrants come, mostly, from a different culture and have different values and views on politics. Because of the interaction between the citizens and the migrants the public culture will be changed by the new values and on this premise restrictions on

migration are justified (Miller, 2005). Miller does not mean that every change in public culture is a bad thing and that culture should be defended and preserved the way it is, he means that in order to have control on the way and speed of change in public culture restrictions on migration are necessary. This raises the question if the abstract notion of culture is a legitimate criterion for restricting and regulating migration. Of course, a culture is worth to be preserved and measures should be taken to prevent cultures from being overwhelmed, but Miller wants to preserve the shared culture. In the arguments of Miller the shared culture is the national culture. It is however hard to say when one shares this culture. It seems to be an empty notion to refer to. Does it mean that as a Dutch citizen you should cheer for the national football team? Or go outside to sell your merchandise on Queen's day? If a migrant meets these criteria should he be allowed in and become a Dutch citizen, since he shares the culture. And can we exclude a person already living here because he doesn't share this culture? It seems false to imply that a national culture is shared more by citizens with co-citizens than with non-citizens. The diversity within cultures I think is too big to make this a valid argument for restrictions on migration. It is not just national culture that connects people and creates trust, proven by the international community's that exist on a shared religion, political ideology or interest in a certain sport.

Michael Dummet takes a more cosmopolitan stance in the debate and is in favor of open borders but he does allow for some form of border control referring to the freedom of association. Acknowledging the importance for a community to have control over their culture and values Dummet, following Walzer and Miller, accepts that borders can be closed and people be excluded to preserve a countries culture (Dummet, 2004). On the other hand Dummet is a lot more critical in which situations people can be denied access into a community. Dummet focuses his argument more on vulnerable cultures e.g. minority cultures. A culture that is in position where it can be easily overrun by the admittance of a large group of immigrants with different values should in this case be protected by restricting immigration (Ibid.). According to Dummet, then, the freedom of association can be exercised to exclude if minority groups will be threatened without the exclusion. In this case, preserving culture as an argument to restrict migration is valid. Dummet takes the interests of the most vulnerable in society as the relevant position and restrictions can only be justified to protect most vulnerable. The shared culture is not important in his argument. Dummet feels every culture should be preserved and is equal which makes it not, or less, discriminatory.

Christopher Wellman follows the reasoning of Walzer, Miller and Dummet and argues that states have a right to political self-determination. Just like most scholars arguing for restrictive migration, Wellman sees the freedom of association as a prerequisite for self-determination (Wellman, 2008). Wellman also subscribes to the notion that with the freedom to association comes the right to deny membership to others, since the members of the association unilateral decide what

the criteria for admittance are. A state must have the right to decide who it allows as a member in order to have control over the composition of the group: “a significant component of group self-determination is having control over the group which in turn gets to be self-determining” (p.115). Wellman differs from Walzer, Miller and Dummet in his argument when it comes to the distinctiveness of shared culture. Wellman does not emphasize a shared culture of a political community but argues for a right to freedom of association for all groups. The right to exclude does not just apply to ethnic, cultural or national groups, but groups based on any form of group-identity. Just as Blake compared state membership with being part of a family (Blake, 2001), Wellman compares the right of the state to choose its members with the right of an individual to choose its partner. Wellman makes a strong case stating that a person cannot unilaterally decide to marry someone against their will, but that this doesn't entail that their freedom of association is violated. When looking at migration Wellman says that a unilateral decision of a state to deny access to an immigrant does not mean that their freedom of movement is violated (Ibid.).

Different features on the freedom of association are given to legitimize the restriction on migration. Different accents are provided on the interpretation on the freedom of association. For instance, Walzer focuses on the common life and common interest members of a community share and needs to be protected by the freedom of association. Miller, on the other hand emphasizes the shared culture of a community and Dummet follows this argument, but only if it applies to vulnerable cultures. Wellman refers to the freedom of association as a universal right and not just to protect a specific identity or culture, but that every group should be entitled to self-determination. As a concluding remark it should be noted that although the state's right to self-determination is defended using the freedom of association, it does leave room for the acceptance of immigrants. It is argued and defended that states have the right to unilateral border control, but they also have the right to accept whomever they want.

2.3 The Problem

Having discussed the debate, the arguments in favor and against open borders it becomes clear that the focus lies too much on which values is outweighed by which. Both principles are defensible from a liberal-egalitarian approach and therefore this approach fails to move the debate forward. Governments may argue ‘we have a right, the sovereignty and the approval of our voters to control and limit those trying to enter our national territory’. In contrast, migrants may argue ‘we should have a right to come and go as we please’.

Focussing too much on the freedom of association goes beyond the fact that one's political community is not entirely voluntary and that it is, in most cases, not a choice. In theory, every individual has the right to leave its political association and become part of a new one, but then the

person is subjected to the willingness of other states to let it become a member. In today's world, not belonging to a political community is not an option, so leaving one must be followed by entering another. Otherwise it would not do justice to the person who wishes to disassociate from a particular community.

Focussing too much on the freedom of movement may leave the poorest of the poor worst-off. Considering the principle of free movement is a tool towards equal opportunity, it can have some negative side-effects if this principle is fully lived up to. Veit Bader stresses that the world poorest do not have the means to migrate even if they wanted to and were not restricted (Bader, 2005). Opening all borders and the subsequent migration from poorer countries may leave the people left behind worse-off. This risk of human capital flight (or brain drain) does not do justice to the people from the sending countries. Whichever value or principle one holds dear, defends or prefers, it will not do justice to every individual concerned with international migration. In my opinion, the discussion about open borders should be understood as arguing about social differences and how to deal with them. There seems to be an intuitive tension between protecting what is seen as one's own and more cosmopolitan feelings about social justice. The debate is about moral considerations and obligations we have or don't have towards other people and where the borders of those obligations are laid down.

Both principles discussed here are part of human freedom and human security, so we should be careful to place one above the other. However, I argue that, scholars who focus too *much* on the freedom of association pay too *little* attention to the moral arbitrariness of birth ground and the imbalances this entails in today's world. Defenders claim that the freedom of association subscribes the notion that one has the freedom to leave one's association, in this case the state, but it doesn't entail the right to enter anywhere else; this asymmetry would not be problematic if a person had the option to not be a member of any association. This option is not realistic since not having a passport and not being subject of any state is an abnormality and leaves the person without any rights. Secondly, I argue that the freedom of movement is a tool for the principle of equal opportunity and therefore should have a pivotal place in any migration policy. I do not claim that a state does not have a right to have some form of admission policy, but that does not say anything about the considerations that are made about who is allowed to enter and who is not. Since I consider the debate to be as much about distributive justice as about the openness of borders, and therefore special attention should be given to the freedom of movement of individuals.¹

2.4 Conclusion

¹ Here I follow John Isbister's (1996) line of reasoning.

Carens and Kukathas have shown that freedom of movement can be of such an importance for a person's life that closing borders is immoral from the standpoint of the equality of opportunity. Abizadeh showed that it is in contrast with liberal democracies to have a unilateral coercion of the border without democratic justification. Citizens and would-be migrants should be the addressees of democratic justification of any migration policy, leaving room for a more liberal migration policy. Walzer, Dummet, Miller and Wellman all put emphasis on the self-determination of the state which, according to them, is the corner stone of a states sovereignty. This means that a state can unilateral close their border in order to protect their culture, minorities or community as a whole. The idea being that if you can keep people with an different culture outside of your borders, their ideas and visions will stay there as well. I have shown that this argument is not valid since the notion of a shared-culture is too vague to have a clear distinction between citizens and non-citizens. The argument can be valid however, to protect vulnerable cultures that and not just to preserve the homogeneity of the dominant culture.

The other argument for closed borders is the functioning society argument, which focuses on arguments regarding economy and security. Regarding the economy of a society, the argument holds, since there should be a minimal economic level to fulfill the states duty of providing services to its citizens equally. Wellman is a strong defender of this argument, and if it is true that a large influx of migrants would diminish the economic level, restrictions are justified based on this argument. Dummet, Wellman and Carens argue that immigration can be restricted if they form a considerable threat to the security of a state. This argument is a strong defense for justifying restrictions because when the security of a state is threatened the freedom of its citizens is in danger and the democracy as a whole can be undermined. If immigration really is a considerable threat to the functioning of liberal democracies, which is not verifiable at this moment, this argument would allow for temporarily restricting migration. With open borders the risk is that large numbers of immigrants come into a society and may hold such different values than current citizens that the new immigrant population poses a threat too already fragile minority groups. In this case restrictions can and may be necessary.

I have started this examination presuming every individual is morally equal. This assumption has consequences for the scope of justification of any policy and measure taken for, or against, individuals. I have shown that there are circumstances and conditions under which the (temporarily) closing of borders can be justified, even to non-citizens. Considering liberal democracies also have a duty of protecting the persecuted and vulnerable they can justify restrictions on migration if it would otherwise make this duty impossible. I argue that freedom of movement is a perquisite for the principle of equal opportunity in the contemporary world and is therefore an important perquisite for any form of global justice. But, as Veit Bader showed us, opening all borders may leave some poor

countries and their citizens worse off than is the case now. Based on this notion, one should take the interests of the immigrants and the people of the emigration countries into account as well. On the other hand, there is little doubt that migration is beneficial to the global economy. Sending countries receive financial resources in the form of remittances, which in turn help reducing poverty and developing communities. Host countries, on the other hand, have immigrants to supplement their labour force and contribute to the host economy (World Bank, 2012). This would mean that there is no economic reason for restricting entrance for migrants. Following Abizadeh, Carens and Bader, I argue any policy regarding migration should be justified to all individuals affected by that policy. Although a 'one-size-fits-all' solution is not attainable, I aim to shed some new light on a complex matter and provide new ideas to move forward. Since the debate is going on for decades and providing moral arguments leads to the deadlock of conflicting principles I will focus on the practical arguments to argue for a more liberal migration policy.

3. The Dutch Contextual and Policy Framework

The difficulty that needs to be overcome is that concepts such as social justice, freedom of movement and equal opportunity are hard to measure and choosing indicators may pose a problem. The openness of borders can be measured by looking at how one can gain, legal, access in the country. Social justice can be seen as protection; protection from threats coming within and outside the state. The Dutch society has all kinds of social policies in place that protect citizens from diverse threats such as unemployment, health issues and economical downturn. For social justice I will look at the labour market and social expenditures to see that migration can be an asset to citizens as well as migrants, and does not have to undermine social justice. It can even help maintaining the current living standards.

Regarding progress, welfare, societal cohesion and security, migrants are considered to be an asset or a threat (or both). On a world scale, however, there is little doubt that migration is beneficial to the global economy (World Bank, 2012). Sending countries receive financial resources in the form of remittances, which in turn help reducing poverty and developing communities. Host countries, on the other hand, have immigrants to supplement their labour force and contribute to the host economy.

The EU is host to one third of the international migrants at the moment. This number is expected to increase, as soon as the financial and employment crisis is over, to reaffirm Europe's competitive position in the global economy. Secondly, migrants are of interest for European countries to address their demographic imbalances (United Nations, 2008). Immigration is discussed as a viable mean for restoring the demographic imbalance and promoting economic growth considering the aging population of Europe. In 2008 there were 4 persons in working age for each person over 65 years (Boswell and Geddes, 2011). The expectations by 2060 are that the ratio will be 2:1. As this generation migrants also ages, this process will continue and call for a new influx of migrants (OECD, 2012). This is a very hot topic for European politicians. Therefore, it is not surprising that policies on immigration and integration of migrants are a hot topic in European decision making today and will be for the foreseeable future. It is exactly this need for migration in most European countries, and the more institutionalized way in which Europe tries to facilitate migration, that creates tension. The EU's growing policy involvement in the fields of international migration, integration, discrimination, and racism, and the overall and efforts to develop a European 'social dimension' means that national welfare states have to open up to non full-citizens. Here I will discuss the need for more (labour) migration to keep a sustainable level of welfare within Dutch society.

3.1 The Need for Labour Migration

Moral arguments are not strong, but economic arguments are (Engelen, 2011). Therefore I first will approach this issue from the economic reasons for reasoning about more liberal migration policies.

In the latest economic survey from the OECD several factors regarding the Dutch labour market are named regarding the availability of labour (OECD, 2012). To understand where the predictions are based on these factors will be named briefly. Because of demographic developments, the Dutch population as a whole is growing, but the size of the group of people that is available for the labour market is shrinking.² The main reason for this development is that the post-war babyboom-generation is reaching the age for state-pension entitlement, and is insufficiently compensated by an influx of young people into the labour market. Although this is true for the entire north and west of Europe (Guerzoni and Zulleg, 2011), I focus my analysis on the Netherlands instead of the entire European Union to be able to give a detailed view. Not only is the population as a whole aging, the labour market itself is aging and older worker participate less than average on the labour market. This means the aging population effects the available labour force negatively in two ways. So there are two reasons why more and unrestricted labour market will benefit the Dutch economy, namely demographic reasons and economic reasons. It could even be said that it is necessary to increase the import of labour. We now turn to the statistic to see why this is the case.

The demographic an economic reasons are intertwined in the sense that a changing demography leads to different demands on the labour market, but will be addressed separately in the rest of the chapter.

3.1.1 Demographic reasons

When we look at Table 1, we can see that in 1980 there were 9.291 million people in the labour force to cover the pensions for the 1.612 million people at the age for state-pension entitlement. At the end of 2013 there were 11.046 million people in the labour force to cover 2.850 million people at pension entitlement age. Out of those 11.046 million, 1.074 are going with retirement in the next five years. In 2050 this is expected to be 9.688 million for 4.595 million at pension entitlement age. Where in 2013 there were 3.9 people in the labour force for every pension-entitled citizen in 2050 this ratio is expected to 2.1 for every pension-entitled citizen (see Table 2). The people who are going to be care-dependant is going to increase while the people in the labour force is going to decrease. The biggest decrease is between 2013 and 2030 with a ratio declining from 3.9 to 2.4. This means that in the next two decades the effects of a graying population are going to hit home. An even

² The definition used by Dutch Statistics (CBS) is that, the labor force are all people between the age of 15 and 65 that are working at least twelve hours a week, or declare to be willing, able and searching to work at least 12 hours a week.

stronger case for more migration is made when we look at the total population that is care-dependant.

Table 1. Composition of Dutch society by age-groups (numbers x1000).

Age	1980	2013	2030	2050
Total	14 087	16 759	17 269	16 919
0-14	3 183	2 864	2 743	2 636
15-59	8 709	9 972	9 057	8 714
60-64	582	1 074	1 219	974
65-69	540	962	1 178	919
70-74	444	662	1 014	854
75-79	320	518	833	925
80-84	190	374	696	859
85-89	88	222	345	616
90-94	26	92	141	306
95-99	4	18	38	97
100+	0	2	6	19

Source: UN Department of Economic and Social Affairs

Table 2. Dependency ratio Dutch society

Old-Age support ratio (per older persons)				
1980	2013	2030	2050	
5,8	3,9	2,4	2,1	

Source: UN Department of Economic and Social Affairs

When looking at the number of people that are going to be care dependent it becomes clear that for every person active in the labour market there are three people care-dependant. The number of children born has declined since the 1980's but is predicted to stay more-or-less the same in the next decades as we can see in Table 3. Together with a growing number of people of old-age this means there are more and more people getting dependant on care relative to the number of people in the labour force. This puts a strain on the amount of money that can be spent on every care-dependant person.

Table 3. Dependency ratio per hundred working persons.

	1980	2013	2030	2050
Child	34,3	25,9	26,7	27,2
Old-age	17,4	25,8	41,4	47,4
Total	50,6	51,7	68	74,6

Source: UN Department of Economic and Social Affairs

But an older workforce and a growing numbers of people with a pension, is not a problem in itself. The problem is that social benefits (such as unemployment pay and sickness benefits) are related labour market participation and years worked. Today, one-fourth of the people in the Dutch labour force are people with a temporary contract or self-employed. Most of these people are among the young and low-skilled workers. In contrast, older high-skilled workers typically have high social protection (Muysken et al.,2007). An older workforce therefore means a greater burden on the social expenditures. With a dedication to a high quality of care for everyone, the most logical solution in a tax-financed redistributive welfare state would be to have more people working so that the quality of care can remain the same.

Table 4. Composition of the Dutch labour force age-groups (numbers x1000).

Age	2013
Total	6121
15-20	532
20-25	757
25-30	843
30-35	843
35-40	852
40-45	1021
45-50	1052
50-55	991
55-60	808
60-65	495

Source: Statistics Netherlands; Statline

Besides the problem of a aging work force, the aging of the population as a whole is a burden on the social expenditures. The Netherlands have a relative high average pension (public and private) and consists of 74% of the average wage (OECD, 2012). In a 2009 an European Commission rapport on ageing in the member states, The Netherlands is compared with the wider EU area regarding public expenditures on age related welfare (Table 5). In this rapport the costs from 2007 are shown and the predicted costs in 2060. It becomes clear that the biggest burden on the public expenditures related to old-age come from the costs for long-term care. Public pensions are relatively not that expensive, though the costs are likely to increase more than the European average (+3,9%). The increasing costs, a gain of 9,6% of the GDP is among Europe’s highest (European Commission, 2009). With public spending increasing with almost 10% of GDP up to 2060, the need for a balanced workers-to-pensioners ratio becomes even more clear. Europe as a whole faces the problems of a graying population, but because of the dedication of high level care and a generous state-pension the effects could be worse for The Netherlands than the rest of the EU member states.

Table 5. Public age-related spending as % of GDP.

	Netherlands			EU-27 Average		
	2007	2060	2007-2060 increase	2007	2060	2007-2060 increase
Public pensions	6.6	10.5	3.9	11.0	13.8	2.8
Health care	4.8	5.8	1.0	6.7	8.1	1.4
Long term care	3.4	8.1	4.7	1.3	2.7	1.4
Total public spending	14.8	24.4	9.6	19.0	24.6	5.6

Source: European Commission (2009), "2009 Ageing Report: Economic and budgetary projections for the EU-27 Members States (2008-2060)".

3.1.2 Economic Reasons

Intertwined with the demographic reasons are the economic reasons for labour migration. Although we already touched upon the economic need that arises with a aging population in the above, it is useful to go into further detail about the economic context because it may reinforce and intensify this effect.

Next to a graying population the recession has to be considered as a development that affects the availability of labour and skills in general. Firstly, students overall have decided to stay enrolled in school longer since the beginning of the recession declining the influx of new workers on the labour-market. Secondly, the participation of older people seem to increase rapidly. Whereas older people used to start working less, this trend has reversed. Insecurity about the future and the amount of pension are given as explanations for this trend (UWV, 2013a). A third development is that the grow in labour migration has stopped in 2012 and the emigration of labour has increased. Nevertheless, according to CBS data there is still a net gain of labour through migration of 13.000 employees nationwide.³ As said in the previous part, the people who are going to be care-dependant is going to increase while the amount of people in the labour force is going to decrease, leading to shortages in the labour market. So together with keeping the labour-force in balance when it comes to age, it can also help as a mean to cope with skill shortages in the labour market.

However, the forecast may be less critical in the short- or middle-long term. The growth in employment has declined in the past ten years due to two periods of economic downturn. For the period 2003-2012, average growth in jobs was 25.000 (0,3%) per year. As comparison, at the end of the 1990's this number was tenfold of the current growth (UWV, 2013a). Therefore, the expectation on the short-term is that there will be few new vacancies.

The size of the potential labour force decreases as is shown in the previous section, but the labour force is growing nevertheless, because the average participation on the labour market increases. More women are active on the labour-market and people decide to stay active on the

³ See Appendix

labour market more years than previous generations. But this growth is limited since both groups are reaching their maximum participation and further growth is going to be confined (Ibid.). An initial growth in the labour force also means a positive influence on the number of jobseekers. At the moment the supply is bigger than the demand (see Table 6), and will be for the short-term. But in the same Table we can see that the number of vacancies is predicted to outgrow the number of people looking for employment by 2018. A more detailed picture is provided in Table 7, where the growth in vacancies is divided by labour market sector.

Table 6. Supply and demand labour market.

Year	2013	2014	2018
Growth GDP (%)	-0,5	1	1,25
Number of jobs available (x1000)	9,139	9,125	9,232
Number of vacancies (x1000)	641	738	886
Labourforce(x1000)	7,931	7,949	8,015
Number of jobseekers (x1000)	696	739	724

Source: UWV

We can see that the economy is going to recover in the short term and that this is leading to an increase in the number of vacancies. As is shown, this is partial replacement of older workers who are going with retirement and some vacancies due to business growth that coincides with economic growth.

Table 7. (Average) number of vacancies per year (x1000) by sector until 2018

Year	2013	2014	2018
Retail	121	130	151
Healthcare	94	99	108
Industry, Energy, Water, Environment and Agriculture	48	61	75
Business services	51	60	61
Catering	52	54	60
Wholesale	43	50	54
Construction	18	28	46
Education	30	35	40
Transport	26	35	36
IT	30	33	33
Financial institutions	19	25	27
Public administration and social services	15	14	20
Other services	16	17	20
Total	563	641	731

Source: UWV

We can see that most vacancies will be in the retail, healthcare and industry sector in The Netherlands. Arguing from an economic perspective, it would be most beneficial to attract migrants

that can work and are skilled in the sectors that have the highest replacement rate and unfulfilled vacancies. The retail sector has a relative high number of students' employment, mainly because students combine study with a part-time job in this sector. Compared to other sectors people employed in the retail sector keep working in this sector and there is little inflow from workers from other sectors. Although there has been a slight decrease in jobs available in this sector the perspective for a job is positive. The explanation given for this phenomenon is that no-prior work experience is needed for most jobs in this sector. Most demand in this sector will be thus be for starters (UWV, 2013b). Looking at the second largest growth-sector, the requirements for future health personnel is increasing due to technological developments and changing demands from governments and citizens regarding healthcare. Higher qualified personnel are therefore needed. The shortages are predicted to arise among nurses, caregivers and on personnel with a Higher Vocational Training (HBO plus) and University level (AZW, 2012). Regarding the industry sector a shortage of technical skilled workers is predicted to arise, mostly because older technical workers are retiring and there are not enough young technical skilled workers to replace them on all skill levels (RWI, 2011).

The overall picture that arises from the literature and data is that there are no significant shortages in the labor-market at the moment and these are not likely to appear in the short-term. A demand for higher educated personnel with a technical degree is expected to increase, especially in the healthcare sector and Industry. Although there is a current problem with unemployment, the problem of labour shortages is not far away. Migration is already being suggested as a way to cope with this problem.

In 2008, just before the start of the recession, Commission Bakker commissioned by the minister of Social Affairs came with an advice for labour participation and chances to cope with the coming problems (Commissie Arbeidsparticipatie, 2008). They predicted that till 2040 the labour force will shrink with about one million employees and for the first time in history there will be a structural deficit in people that are able to work than that there are jobs (Ibid.). The research agency SEO calculated a structural deficit of 16% on the labour demand by 2050 (Berkhout And van den Berg, 2010). Both documents do acknowledge that migration alone will not solve these problems, but it is a possibility to ease the effects. This will only be a temporary solution since an ageing population is a global phenomenon, but for now it is a valid reason and argument for increased labour migration. Not only, for the high-skilled migrants but there is also (or especially) need for low-skilled migrants in growing industries that rely on casual work as we have seen in the data. Muysken et al. show did show in their research that the higher educated the migrant is, the higher his contribution to the economy. At the same time they argue that a need for low-skilled labour is just as present and that education should be of second importance as long as they are employed and are a contributor to social welfare rather than beneficiaries (Muysken et al., 2007).

Concluding, we can say that the Dutch society and the labour force are aging and that it is putting a strain on public expenditures, especially regarding health care. Next to that there are visible skill shortages in certain economic sectors that are expected to increase when the economy will recover and begin to grow. For some parts of the economy migration is the only way for them to grow. Migration is already pointed out as a possibility to cope with both these issues, by the UN and the European Commission. *“The estimation of the net migration necessary to keep the ratio of working-age population-to-total population constant at their 2008 level indicates that the EU as a whole would need significant net immigration – over 25 million additional inflows over the period 2008 to 2020, which would bring the total immigration flows, including the inflows which are already incorporated in the population projection, to nearly 44 million or 9% of the population in 2008 (European Commission, 2009; p.46).”* As the public opinion is inclined to view migration as a burden on Dutch society that brings more costs than benefits, demographic and economic developments point in the opposite direction.

3.2 Overview and Development of Migration Policy

Here I will give an overview of the migration policy, regarding the development and legal framework. First thing to consider is that, although The Netherlands has an independent migration policy, the framework is based on regulations of the United Nations and conventions of the European Union. Europe knows a free internal market that guarantees the free movement of goods, services, capital and labor. But for people without a European citizenship there is a limited and restrictive admission policy. I will deal with the admission policy and how it developed over the last two decades. For now, the distinction is made between admission policy and integration policy. Admission policies do not just grant the permission to stay or not, it gives you permission to stay for a certain reason (Tholen, 2004). The reason why you are admitted determines the integration possibilities you have, this is the reason I primarily focus on admission policy for now and the selection criteria it is based upon (Ibid.). I will do so to see how migration is discussed in key European Union decision making documents and how this has led to the development of migration policies and the selection criteria chosen by states to include or exclude migrants. Accordingly, online database of EU was used extensively, just as the Dutch immigration and naturalisation service (IND) documents and website. To make a first selection of relevant documents treaties I used the “Guide to Selected EU Legal and Policy Instruments on Migration” from the International Organization for Migration (IOM), as mentioned in the introduction.

In total 25 European commission documents, regulations, directives, decision, recommendation, and resolutions downloaded and scanned for migration related themes. Each

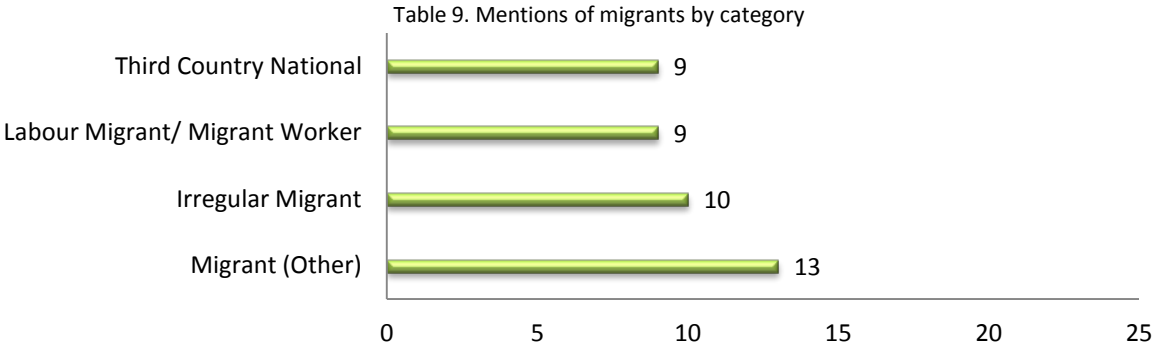
document has different consequences for the Member States. Some documents are binding while others are not and some require implementation into national legislation. Since this is a relevant distinction to make considering the focus of this thesis lies on one Member State, in Table 8 an overview is given of the hierarchy of EU documents.

Table 8. Hierarchy of EU Documents

Hierarchy of EU Documents	Consequences Member States
Regulations	Binding in all EU Member States without implementing national legislation
Directives	Directives are to be implemented in national legislation. Give a binding timeframe for Member States to achieve certain objectives but have the liberty of how to implement the directive.
Decisions	Binding in all their aspects for those to whom they are addressed. Decisions do not require national implementing legislation
Recommendations and Opinions	Non binding document that provide input and suggestions into the policies of Member States
Conclusions and Resolutions	Agree upon EU policy but are not binding. Do not require implementation

Using these documents an overview is given of relevant legislation and policies regarding migration in the European framework. The binding documents show to what extent a national government are limited in developing new migration policies. The non-binding documents give an insight in the rationale and underlying principles for policy measures and developments. Using an editorial program these documents are scanned for relevant migration mentions and related themes.

Out of the 25 documents, 18 of them name migrants directly. Different categories of migrants was searched for, namely migrant workers/labour migrants, third country nationals, irregular migrants and migrants (no further specification given). Table 9 shows the number of analyzed documents which mention different categories⁴.



Now we know what type of migrant groups are mentioned, we can delve deeper into the data and look at into how policy documents address these types of migrants. Addressing themes were

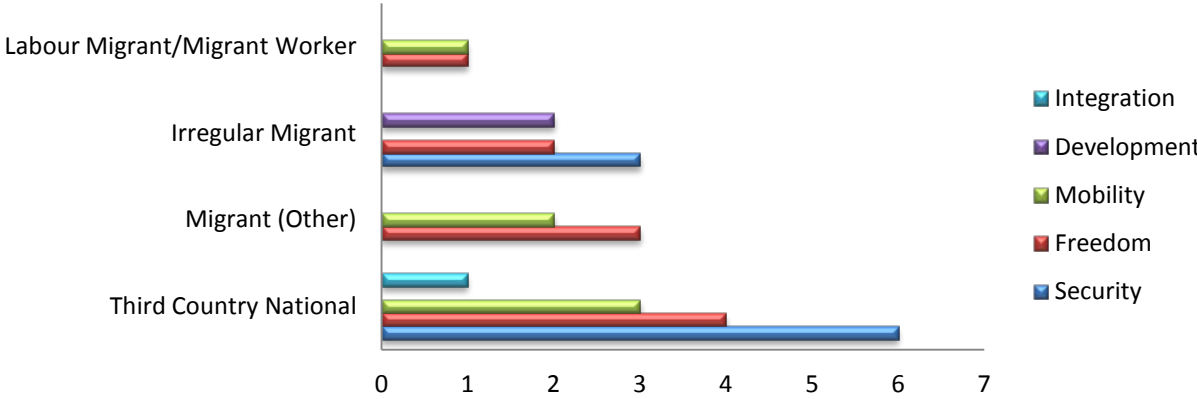
⁴ Policies may mention more than one category

preselected, but some themes were added at a later stage as well. The selected supporting themes are: security, freedom, integration, development and mobility. The following tables 10 and 11 give figures on how these support themes are linked to migrant groups.

Table 10. Number of cross references migration groups and addressing themes

Addressed Themes	Within Total of Documents (N=25)	Within Documents Mentioning Migrants(N=18)
Security	12 (48%)	8 (32%)
Freedom	18 (72%)	9 (50%)
Integration	3 (12%)	1 (5,6%)
Development	4 (16%)	2 (11,1%)
Mobility	8(32%)	6 (33,3%)

Table 11. Cross references by theme



Integration is used only in combination with third country nationals and is only mentioned together in one document. This is in the council directive about family reunification and addresses the integration of third country nationals in the member state, which serves to promote economic and social cohesion. Family reunification is a human right under the UN protocol on migration and refugees which makes it logical to have an active policy on the integration of these migrants since this implies permanent migration.

Development is mentioned only in combination with irregular migrants. This happens in two different documents analyzed. In both development is addressed as a way to eliminate a cause of irregular migration to the EU. Using development as a tool in third countries to take away the push factor, it is expected that the flow of irregular migration into the EU will decrease since they are less inclined to leave their own country.

Mobility is addressed with all forms of migrants except for irregular migrants. Mobility in combination with third country national occurs most. This is because in three documents the intention is mentioned to improve the mobility and admission of students and scientist from outside

the European Union. The combination of migrants in general and mobility is used in documents that promote an unification of the visa scheme within Europe.

Freedom and migration follows the same pattern as mobility and migration. It is mostly used regarding third country nationals when addressing students and scientist performing research in the EU. To stress the urge of an unified visa scheme migrants in general is used together with the theme freedom.

Security is used in combination with irregular migrants and third country nationals. When it comes to irregular migrants the theme security is addressed in respect to combating illegal migration. This would be a threat to the security within the European area of freedom, security and justice. Illegal migration is seen as a security problem, but as a development issue as well as we see in the same Table. Regarding third country national, security is mentioned as a reason to deny access to migrants from third countries. Secondly it is mentioned as a reason to provoke or not extend the residence permit of a third country national.

Using the first content analysis, a brief view is provided about the content of the EU documents regarding migration policy. I gave some insights in the subjects that seem to be most important and in combination with which topics migrants are addressed. The analysis itself is not performed by the computer. So far, it has made the analysis of the qualitative data easier since it provides a way of analyzing unorganized and disorderly material in a systematic way. The analysis itself still has to be done by writing and reflection. Since we now only know how many times certain topics, and combination of topics, are addressed this does not give much insight on the underlying reasons and principles. Therefore, using the content analysis a further detailed analysis of the relevant documents is provided.

3.2.1 International Agreements

In the wake of the Second World War the United Nations established the UN refugee agency to help the people that forcefully had to leave their homes due to violence. The United Nations High Commissioner for Refugees (UNHCR) was established in 1950, a year later the first convention on refugees was adopted and a legal basis for the rights and protection of refugees was a fact (UNHCR, 2011). A refugee is considered a person who *“(...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”* (Ibid. p.14). States that ratified this convention bound themselves to the protection of the persecuted and guaranteeing not to send them back to countries where there safety is not

guaranteed. This is enclosed in the non-refoulement principle that is described in Article 33 stating that “[N]o Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (Ibid. p.30). Since the mandate of this convention applied only to events occurring before 1 January 1951, a protocol was added in 1967 so that the temporary character of the convention would be removed and the principles still apply today. States that ratified thus committed itself internationally to the protection of refugees and should on this basis provide a safe haven for those persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. All the member states of the European Union are connected to this protection of refugees through the UN. Next to this international agreement on the admittance of refugees the EU set out to create an own asylum protection system and are building a Common European Asylum System (CEAS). Protecting the weak and poor is among the reasons and goals of this common system, the wish to control irregular migration through such a mechanism is just as present. It should be noted I focus on the ‘milestones’ and most important regulations of the EU regarding migration and my overview and discussion is not an exhaustive one. Migration and asylum policy is seen as a sovereign states right, since it is a way of controlling its own territory. This makes it a foremost national practice and makes it hard to discuss in an international context. Despite this sensitive and political topic, the EU has for some time been trying to raise the issue of migration management to an intergovernmental level.

3.2.2 Schengen and European Treaties

The Schengen Agreement made it possible in the early 1980’s for people to move unhindered between countries within the Schengen-Area. This development made it easier for citizens to move within the borders of the Schengen-Area and work, trade and travel more easily (European Council, 2008). At the same time a communal external control of the European borders is established and the first steps to counter irregular migration are taken (Boswell, 2003). The first step that was taken towards a communal approach towards migration started in 1990 when the Schengen countries came to an agreement that settled which country is responsible for handling which request for asylum, the so called Dublin convention. With this convention, asylum came in the range of topics that are practiced in cooperation between the Schengen countries. With the Maastricht Treaty in 1993, asylum *and* migration were put under the so-called ‘third pillar’, meaning that every issue discussed and decision made regarding migration has to be done by the Council of the European Union. This meant that the member states were restricted in formulating their own migration policy, but since decision had to be made by the Council by unanimous decision no hard agreements were made. In 1997, with the Treaty of Amsterdam, the migration issue was incorporated in the first pillar

of the EU, making it possible for member states to make decisions based on a majority that was binding to all. With growing concern about migration flows coming to Europe, the main objective of this policy was to establish a uniform conception of who is an asylum seeker and to establish a similar, fair and equal treatment of asylum seekers within the member states of the EU. Just two years after the Treaty of Amsterdam, in Tampere Finland, the principles for this common asylum system were laid down based on the foundations set in the Treaty of Amsterdam. The need was expressed to harmonize the asylum procedure because of the increasing migration towards EU member states and the grounds and practices for admittance differ between the member states. The reaction of member states was to discourage non-citizens to enter, as a consequence of the Dublin convention, because the state with the harshest asylum policy gets the least requests (Noll, 2002).

The Tampere Summit had as aim to streamline the asylum procedures and create a common system so that the challenges faced by migration could be faced together. The most important conclusion from the Tampere Summit regarding migration can be taken from the presidency conclusions; *"It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes"* (European Council, 1999. p.2). It concludes that asylum requests should be treated according to the Geneva Convention and respecting the non-refoulement principle. The official document says; *"The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity"* (Ibid. p.2). It seems that in Tampere a moral agenda is set and humanitarian principles are the guideline regarding the admittance of asylum-seekers. At the same time, it is committed to combat illegal migration and control the influx of people. In the Tampere conclusions we can read that; *"[T]he European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings"* (Ibid. p.5). It seems as the principles on which the migration and asylum policy are based regard individuals rights and protection of the most vulnerable, and with a focus on the migrant rather than the Union.

After Tampere another summit was held in 2002 for the implementation of a communal approach towards asylum and migration in Seville. At this summit the main focus was a common security agenda since the 'new' threat of terrorism was high on the European agenda. The consequences for legal migration were that the Council wants to speed up the asylum procedure and

be more selective in order to prevent abuse. In the concluding document it is stated that; *“the legitimate aspiration to a better life must to be reconcilable with the reception capacity of the Union and its Member States and immigration must pass through the legal channels provided for it* (European Council, 2002. p.9), and that *“in accordance with the 1951 Geneva Convention, it is important to afford refugees swift, effective protection, while making arrangements to prevent abuse of the system and ensuring that those whose asylum applications have been rejected are returned to their countries of origin more quickly”* (ibid. p.9). The tendency towards a more communitarian approach towards migration is already present, since it says that migrants are entitled to search for a better life as long as they use the gateway provided by the EU and the reception capacity allows it. How big this reception capacity is, is not specified which in my opinion makes it a vague argument and leaves a door open to restrict immigration at will referring to reception capacity.

In 2004, a new program was set called ‘The Hague Programme’ (Balzacq and Carrera, 2006). In The Hague Programme the shift towards security over freedom is becoming more visible. In the Tampere Summit Conclusions it is stated that a main challenge is *“to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all”* (European Council, 1999). It even mentions that this freedom should be enjoyed by as many people as possible, including non-EU citizens. In The Hague Programme it is said in the introduction that; *“[T]he security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organized crime, as well as the prevention thereof”* (European Council, 2005. p.1). The point of departure for the new program seems to be that of securitizing the EU in order to guarantee the freedoms set out in earlier programs and treaties. This program resulted into ten priorities of policy implementations that should be reached within the next five years, with four of them mentioning migration. The strengthening of a CEAS is emphasized with the goal of maximizing the positive impact of migration on society and the economy and developing an integrated management of external borders for a safer Union (Ibid.).

To further streamline and improve the coherence of the European policy new agreements were made in the Treaty of Lisbon. *“The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties”* (Treaty on

the Functioning of The European Union, 2008. p.76). Regarding regular migration the Treaty repeats the wish to efficiently manage migration coming into the EU at all stages. The fair treatment of third-country nationals already living, legally, within the EU is endorsed together with the wish for further prevention and combating illegal migration. Regarding the communal aspect of the migration policy the Treaty concludes that *“[T]he policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle”* (Ibid; p.78). Here we can see that a freedom of movement is guaranteed within the borders of the EU, but in order to get within these borders one needs to have a ‘positive impact’. With increasing the freedoms of the space within the EU borders, there seems to be an increase in the selectivity who is allowed into that space.

In 2009 the European Council agreed on the Stockholm Program, which indicates the EU’s policy developments regarding Justice and Home Affairs, including migration, for the next five years. In this latest program the wish is expressed to match the need of member states with migration, making it possible to change the admission criteria to the needs of the member states. The Stockholm Program states that; *“[T]he European Council recognizes that labor immigration can contribute to increased competitiveness and economic vitality. In this sense, the European Council is of the opinion that the Union should encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence”* (European Council, 2010. p.29).

The friction between the freedom of movement and freedom of association is present in the development of the migration policy as well, it seems. Liberal democracies are committed to take in refugees and provide a safe haven for the persecuted, but at the same time are restrictive and selective when it comes to other, voluntary, immigrants. Taking in migrants is seen as a way to stay competitive and economically vital. The freedom of association is pivotal in the migration policy as is shown above and you can enter *if* you are an addition to the society.

3.2.3 The Dutch existing migration system

What is shown so far is that asylum and migration issues have become more and more institutionalized into a European framework. Next to the framework I tried to give an overview of the principles that the asylum and migration policy is grounded in and the development of this policy. There are however different reasons why people from non-EU countries (also known as third-country

nationals) migrate and for different reasons of migration there are different criteria for entering. The three most common reasons are; political reasons, economic reasons and family reunification.

We now have a clear overview of the European context in which migration policies are fitted. We will now turn to the Netherlands and look at the specific regulation in place for regulating legal migration. In The Netherlands the criteria for admitting refugees are mostly overlapping with article one of the UN conventions on refugees and the non-refoulement agreement (Website IND)⁵. The request can be denied if one already applied for asylum in another EU country or arrived in another EU country before entering the Netherlands, in accordance with the Dublin convention.

Immigrants that come for primarily economic reasons are subjected to another set of criteria. For a migrant to stay longer than three months in the country, he or she needs to apply for a residency permit. Before a residency permit is given, they first need to apply for an authorization for temporary stay while the IND examines if the migrant meets the criteria for a residency permit (Ibid.). A valid passport is needed and one has to have medical insurance. Second, the person applying may not be a danger to public order and safety in any of the Schengen countries. If a migrant wants to work in The Netherlands their employer needs to have a license to hire migrants. There is a list with exceptions for migrants that need not to apply for a temporary visa. For example, if you are a citizen of another EU country or have a family member in an EU country, you don't have to proof sufficient income or a health insurance. Victims or witnesses of human trafficking can be given a residence permit under specific conditions, just as persons who want to undergo a medical treatment in the Netherlands. A last exception is made with the so-called 'not-guilty' clause, meaning that migrants who cannot return to their country of origin because of reasons beyond their control can get a residence permit.

June 1st 2013, the Modern Migration Policy Act (Wet Modern Migratiebeleid) entered into force in The Netherlands. The Modern Migration Policy Act (MMPA) concerns regular migration and does not include asylum procedures, naturalization or short stay visas meaning that migrants staying three months or less in the Netherlands are, thus, not affected by the MMPA (Website IND)⁶. Seasonal migrants are thus not affected by this new implication.

With the implementation of MMPA the Dutch legislation aims for a selective admission policy. This entails that The Netherlands want to be appealing for migrants for whom is economic or cultural need, but restrictive for others (inviting when possible, restrictive where necessary). Keywords in the MMPA are; efficient and simple (IND, 2013). To achieve this goal the admission procedures have to be quicker and simpler. This law affects the admission procedures but not the

⁵Retrieved from; IND customer service:

http://kdw.ind.nl/KnowledgeSessie.aspx?knowledge_id=MWOToegangEnVerblijf

⁶ Retrieved from <https://www.ind.nl/organisatie/themas/momi/veelgestelde-vragen/Paginas/default.aspx>

admission requirements for migrants, these remain unchanged. To combat the sprawl of purposes of stay that has developed over the year, The MMPA has limited the purposes of stay into eight clusters listed below.

Table 12. Clusters in the MMPA

Clusters purpose of stay
Exchange students
Study
Seasonal Labour (Including Internships)
Regular Labour (Labour with TWV)
High-Skilled Labour
Family Reunification
Humanitarian Stay
Special Purpose

The introduction of the MMPA will mainly affect the role and status of employers, who will now become official sponsors with respect to immigration procedures. According to the Dutch Government, status of the employer as an official sponsor of highly skilled workers is comparable with their current status (IND, 2010). There is a clear focus on a supply-demand approach towards labour migration, where the initiative lies with the employer to find an employer and begin responsible for him. Sponsors⁷ in the MMPA may submit for an Admission and Residence Procedure (TEV) on behalf of a foreign national(both skilled and non skilled). The TEV is new in the MMPA and entails that the entry-visa (MVV) and the residence permit (VVR) combined in one application and this can be handed in together, if necessary, with the work permit (TWV). Benefits are that it reduces the administrative process, the residence permit is issued for the entire length of stay (up to a maximum of five years) and family members get the same duration of stay as the employee. In cases of transfers employers must hand over a statement from the foreign (parent) company. Sponsors can also lodge objections and appeals. Authorization is mandatory in the case of educational institutions (students and scientific researchers), au-pair agencies and employers of highly skilled migrants. The sponsor has the obligation to make sure his employee meets all the requirements and is in possession of the right documents. Until June 2013, this preventive test of admission was a responsibility of the IND, that now is the responsibility of the sponsor. Next to that the sponsor has a ‘duty to inform’, meaning that it needs to has to inform the IND of every relevant fact or circumstances that can influence the right of residence of the employee, such as change in salary,

⁷The sponsor is the person or organisation (for example a company or education institution) with an interest in the relocation of a foreign national.

sabbatical and termination of employment, within four weeks. Another duty given to the sponsor in the MMPA is the duty to care. It is not clear what this duty entails as it differs for the purpose of stay of the migrants. For example, the sponsor of an au-pair has to mediate in a careful manner between the migrants and the host-family. The sponsor of a highly skilled worker on the other hand has to be kept up to date with the, for him or her, relevant legislation. Same applies to student migrants. Initially the idea behind the duty to care was to improve the integration and participation of migrants in Dutch society and have the sponsor play an active role in this. However this is not regulated in the MMPA (Groen et al., 2013).

It should be noted here that cases where international obligations, and specifically EU-guidelines, do not allow an application to be rejected (such as family reunification or employees with a EU Blue Card), the application will be accepted and the party of interest will be *appointed* as a sponsor. For family reunification new restrictions are introduced with the coming of the MMPA. The possibility of family reunification is made applicable only to the nuclear family (spouses/registered partners and minor children) and overruled earlier policies that had made that possibility applicable to unregistered partners, extended family, children over eighteen years of age, and the elderly (single, dependent parents over sixty-five years old) (Ballin, 2010).

Given that the entry procedure for the Netherlands has been simplified, the government will more closely monitor compliance with the rules and step-up, where necessary, their enforcement. The IND is given more instruments of control for violations of legal obligations. These sanctions could result in employers being excluded from “accelerated procedures” (IND, 2010). The new migration policy has the ambition to be inviting but restrictive. This new policy gives the IND more instruments for supervision and control, the rationale is that the IND can monitor migrants more closely with an authorized sponsorship and because the procedure is faster for authorized sponsors, it should be more appealing to highly-skilled workers/students to come to The Netherlands since the procedures is swift and efficient. For migrants for whom there is economic and cultural need a special status is made through the authorized sponsorship. They get prioritized when filing for admission. Unauthorized sponsors cannot use their own declarations and still have to file all the relevant documents. They still face the administrative barriers.

As we have seen there are international regulations that decide the criteria for immigrants who are allowed in and who are not. In international law The Netherlands is bound to the UN Convention on the Status of Refugees to take in refugees and needs to comply with European conventions and the European Convention on Human Rights. What we see in the European regulations is that there is a wish to manage migration. A focus of security when it comes to irregular migration and a focus on mobility and freedom for migrants for whom there is a economic and/or cultural need. The

development on a European level has made migration policies focused on only accepting migrants that are economic viable, if possible with proof such as a labour contract, and distressing cases of refugees. There is a clear supply-demand approach towards dealing with migration. The Netherlands own migration policy followed this line and went a step further with the introduction of a new migration law, making it easier for employers to hire foreign workers and making them more responsible for them. Without the help of a 'sponsor', which in most cases is an employer or on an exchange program, there are few means to enter The Netherlands legally. The new migration law created a new division of responsibilities: It places the task of determining whether a labour migrant fulfils the criteria for working in the country predominantly on the shoulders of the private sector. The new system is expected to decrease the time needed to process a working permit application substantially. It is still to be seen if this new system is taking into account the interest of the migrant worker as well and is an improvement or downturn for the freedom of movement of migrants.

In sum, when comparing political refugees who seek protection against personal persecution and economic refugees who want to try their luck for a materially better life elsewhere, the immigration policy tends to admit only the first group based on international conventions on protecting refugees. Economic migrants are admitted if they meet all the conditions mentioned above or if they fall in one of the categories for whom there is an exception. This means that in practice, low-skilled migrants and migrants without sufficient resources, are refused. There is an employer-selected immigration regime constructed so that people who are not a refugee or don't have the economic resources will not be a burden on society since they can only enter if they have needed skills and an employer that confirms. The motive of migration is becoming more important than origin. Freedom of movement is an important part of migration policy, but only for the economic viable. When someone is thought or expected to be a burden on social welfare it is hard to gain legal entry into The Netherlands. The Netherlands has with the implication of the MMPA made a shift from government selection towards employers selection of migrants. To give more migration options it is most viable to look at ways that the role of employers can be extended in the migration policy.

4. New Ways of Migration Management

“Migration is as old as humanity but we need to start thinking about it in new, smarter ways. On this International Day we focus on the well-being and safety of migrants, IOM calls for strengthening of existing policies or develop new ones to protect human rights of those who leave home to seek better opportunities. We are ready to assist our member states and other partners in the development and implementation of those policies.

We need measures that will enable employers in countries with labor shortages to access people desperate to work, and we need to ensure that these people are not exploited or exposed to gender based violence. We must work in a whole-of-government, whole-of-society approach in the best interests of countries, communities and people, in particular migrants themselves.”

- William Lacy Swing, Director General, International Organization for Migration, 2013

As said by William Lacy Swing, in his annual speech on international migration day, a whole-of-government and whole-of-society approach when dealing with migration and migrants in particular. How such an approach should look like is not specified. So far, in this thesis is focused on the need for migration towards Europe and the legal ways that are offered to do so. Although the aim of this thesis is still to describe a way to facilitate an migration policy that is more beneficial for migrants and the receiving society. This whole-of-society approach thus entails taking into account and taking seriously the sentiment of the receiving country, the domestic justice. I will go into further detail regarding two of the major concerns about migration; societal security and welfare migration.

4.1 Concerns About Migration; Societal Security

If more people migrate to The Netherlands unhindered, understandable, people can raise questions about the consequences for the security this entails. If people are not checked for background, affiliation and risk in general, it becomes more difficult to ensure that no terrorists or people connected to crime are kept out. As we have seen in the previous chapter, security has become a important issue when it comes to the development of migration policies. Mobility of citizens and third-country nationals has to be improved *but* without undermining security.

The literature distinguishes two strands when it comes to dealing with security and migration. These two approaches are the security studies approach and the migration studies approach. The former focuses on strategic security and reasons from the states point of view, whereas the latter is more attentive to human security and reasons mainly from the migrants and citizens’ point of view (Huysmans and Squire, 2009). In the field of security studies, migrants flow, geopolitical interests and future scenarios are taken to formulate national security questions. The functioning of society, the functioning of the economy and the possibilities of migrants becoming

violent political actors are important subjects of analyses (Rudolph, 2003; Choucri, 2002). Migration is approached as a way of dealing with labour shortages and demographic imbalances (as I have shown in Chapter three), but uncontrolled and free migration can be a security threat that to the receiving society in the form of a geographic and temporal concentration of migrants (Rudolph, 2003). The fear is that, in the case of an large influx of migrants, the migrant minority will become dominant and becomes a threat to local culture, values and identity. It is therefore said that ethnic diversity undermines the social cohesion as it creates a conflict between cultural values (Putnam, 2007; Miller, 2005). The possible threat that migration can pose for the functioning of society has led to a shift in states' selection on purely economic grounds to select more on ethno-cultural grounds (Constant and Zimmerman, 2005).

When it comes to human security, the main subject of analyses shifts from state-centered to human-centered. The focus is laid on the security of the migrant and the citizen and consequently a more normative dimension is posed. This comes to show in the attention given to refugees, asylum seekers and victims of human trafficking, rather than the 'conventional' migrants (Huysmans and Squire, 2009). Attention is given to the involuntary dimension of migration and the negative effects migration and the wish to manage migration can have. In the view of human *security* "*the weakest and most vulnerable members of a society are exploited, frequently by exploiting conditions of poverty or forced migration due to civil unrest or the collapse of economic systems*" (Clarke, 2003; p. 247). Waever et al. (1993) tried to combine both and came up with the concept of societal security. Although the human security of migrants is not incorporated in this concept, it does entail the interest of the state and its citizens and is the most relevant concept to take into account when arguing for more liberal migration policies. The main argument against loosening migration policies is that the people already living in the society will be worse off. Waever et al. (1993) see competing identities as one of biggest threats for societal security which in a later work, they defined into three threats migration brings to the identity of a society.

1. Migration – X people are being overrun or diluted by influxes of Y people; the X community will not be what it used to be, because others will make up the population; X identity is being changed by a shift in the composition of the population (e.g., Chinese migration into Tibet, Russian migration into Estonia).

2. Horizontal competition – although it is still X people living here, they will change their ways because of the overriding cultural and linguistic influence from neighbouring culture Y (e.g., Wallonian fear of Flemish Belgium).

3. Vertical competition – people will stop seeing themselves as X, because there is either an integrating project (e.g. the EU) or a secessionist-“regionalist” project (e.g. Catalonia, Kurdistan) that pulls them toward either wider or narrower identities (Buzan et al., 1998).

Next to the cultural threat, societal security also takes into account economic threat. In the literature a lot of attention is given to the welfare of the local workers that is competing with labour migrants. (Picard and Worrall, 2011). Although the impact of migration on the unemployment of citizens and the wages is not clear, it suggests that low-skilled worker and workers in low wage sectors have the most to fear from a large influx of migrants into the labour market (Borjas, 2003).

4.2 Concerns About Migration; Welfare Migration

The second concern that I will discuss is the fear of welfare migration. There is an economic need for labour migration, at the same time it is argued that migrants are overrepresented in claiming social benefits making it economic unwise to allow large quantities of migrants into society and, consequently, the welfare system. An international labour market affects the status of the migrants in welfare states and the welfare state itself (Freeman, 1986). The main argument provided by Freeman is that some states can offer more, social, rights to their citizens since they have more wealth and power and can afford to distribute more of its wealth. But because of the gross inequalities between states in the international market, it is key for the more affluent states to exclude the less fortunate from their benefits in order to preserve them (Ibid.). If everyone who becomes a resident get access to all social benefits, the fear is that people will come *only* for the benefits and thus becoming a burden on society.

The welfare magnet hypothesis was first coined in a paper by Borjas (1999). The debate and issues concerning welfare migration are twofold; it is about the number of immigrant household that receive welfare benefits. People are afraid that immigrant households are overrepresented in claiming benefits from the welfare state. Secondly, there is the fear that a generous welfare system acts as a magnet on immigrants. According to the welfare magnet hypothesis, immigrants will collectively migrate to a state with the most generous welfare system since this gives them the best guarantee if they happen to become unemployed (Ibid.) Borjas argues that generous welfare provisions works as a magnet on migrants in two ways; it could attract migrants that otherwise would have not migrated in the first place and it can convince migrants to stay in the country of arrival that otherwise would have returned to their country of origin. Immigrating entails making costs, an investment. For migrants it would be the best investment to migrate to a country that provides good insurance against unemployment or other risks that would leave one without a basic income. Although Borjas' hypothesis provides a clear explanation of the attracting function a generous welfare state has on migrants, there has been some critique on his model. The model only

predicts migration in a world where there are no restrictions on migration and the costs for migrating are the same for everyone.

That migration policy that a country adopts, in fact does play a role in the self-selection of migrants (Razin and Wahba, 2011). With no restrictions on migration and higher wages for all skill levels than in the country of origin, this would encourage high and low skilled migrants to migrate. The investment of migration would be itself back in a higher salary. Combined with a generous welfare state, this attracts more unskilled migrants as to have more to gain from welfare provisions than they will be paying in taxes, in contrast to high-skilled migrants. Skilled immigrants are more likely to be net contributors to the welfare state, and low-skilled immigrants are more likely to be net beneficiaries (Ibid.). From a native point of view, one would then favor a restricted migration policy with a generous welfare state, that allows skilled migration and restricts low-skilled migration.

The role of social capital also play a role in the decision to migrate which is not taken into account in Borjas' hypothesis. Diaspora and social networks provide information on the labour-market and benefit system of the intended country of destination (Beine et al., 2011). The choice to migrate is not made solely on the welfare system that a country has. Immigrants are restricted in their choices by immigration policies and available social networks. The costs of geographical distance and language barriers may also increase the cost of migration and limit the choices of destination even further.

The welfare magnet hypothesis has some valid explanatory power and a generous welfare system indeed attracts, mostly unskilled, migrants. Some nuance is necessary here. The costs of migration is not the same for every intended destination and more factors play a role when it comes to determining a destination to migrate to. Having a generous welfare system does not imply having to fight-off low-skilled migration that want to be a part of the welfare system. For a society with generous welfare provisions it is most beneficial to manage-migration and have favorable policies for high-skilled migration, since they are likely to be contributors to the welfare system as a whole.

To sum up, there is an economic need for labour migration, at the same time it is argued that migrants are overrepresented in claiming social benefits making it economic unwise to allow large quantities of migrants into society and, consequently, the welfare system. Citizens are afraid that their wages will decrease if there is a large influx of foreign labour and as an addition there is a fear that less control on migration will make it easier for criminals to enter the country. At last there is the possible threat of loss of identity and dominant culture.

4.3 Alternative Ways of Migration Management

What alternatives, then, can be constructed that take into account the interests of all the actors in the field of migration? In an ideal system for migration management all interests are taken into account and moral and practical considerations are weighed. Morally, we have stated that there are some ground on which an individual's freedom of movement can be limited if there are valid concerns about the most vulnerable in society. Practically, it should be seeking to be beneficial for all agents in the field of migration. It should be welcoming for economic viable migrants, both for the host society and the migrant itself but keep out migrants that form a threat, such as international criminals and terrorists. And at least, it should cost the state less money than it does at the moment, with investing in border control and visa schemes.

There already has been a lot of thought on this matter by different scholars from different disciplines. I will discuss two of these new approaches to migration management that are already visible in the new way The Netherlands is dealing with labour migration in the new migration policy act; namely the People Flow Approach and Public Private Partnerships.

4.3.1 People Flow Approach

A first new approach provided to think about a sustainable migration policy is offered in the form of the people flow approach. This approach aim at being *"..capable of adapting to the complex reality created by ongoing migration flows, reinforcing the benefits of higher mobility, and encouraging interdependence between sending and receiving countries, long-standing residents and newcomers"* (Veenkamp et al., 2003; p.18).

Same as in the current migration policies, the People Flow Approach distinguishes between different types of migrants in the field of migration. There is still a distinction between the two only are they now called target-oriented migrants and explorers. For the target-oriented migrants Veenkamp et al. state that *"All categories other than refugee claimants are required to have a passport. Workers also need proof of employment, or to qualify through a 'points-based' system that shows their eligibility for certain types of work that are deemed a priority. Sponsored residents must have proof of the support of an accredited sponsor who is a citizen of an EU country"* (ibid. p.28). So a labour-market led form of migration is suggested where a management of demand and supply is fulfilled by sponsors and make migration management a private sector subject as far as selection goes. Control can still be a public subject. A visa is issued upon registration rather than selection. A migrant, or the sponsor of a migrant, is encouraged to register in order to receive residency. As we have seen in Chapter three a sponsor-based migration policy for labour-migration has been adopted in The Netherlands. Although a points-based system is not adopted, a labour shortage targeted

policy is in place. For this part, the People Flow Approach is already incorporated in the MMPA. Especially the second category is addressed differently is this new approach. Since irregular migrants are now addressed as explores, meaning that they have no connection to the receiving country regarding employment or family, they are given a different legal status rather than being labeled as illegal. Migrants that come to a country without a sponsor and thus proof of employment, are pulled out of the grey area of illegal residence and employment by given them legal residency but restricting their access to social benefits. According to the approach, they should register at a specialized, private, agency to get residency, a right to a minimum wage salary or equal pay for the work they are doing in addition to getting help with the transfer of remittances. In this way the migrant benefits since it is protected by a legal status, the sending country can get remittances, the receiving country gets more workers and won't have to be afraid that they will be overrepresented in the welfare system. The best asset of this approach is that it 'bans' the illegal status of irregular migrants and takes into account the fears that are present under the receiving populations.

Although the People Flow Approach seems like a theoretically feasible approach in which everybody wins, there has been some critique. The first criticism is the practical implementation of this approach. Since the People Flow approach is a no-control system, and the explorer category is provided with a minimum wage this could be too costly considering the economic differences between sending and receiving countries. This could work as a magnet on migration. Between the Western countries it could work perfectly, but for the rest of the world there are doubts (Jandl, 2006). A second point of critique is about the efficiency of the banning of illegal migration. Although the idea of registering in exchange of legal residency sounds fruitful, the risk of excessive bureaucracy measures for migrants may be discouraging for migrants. Next to that it is feared it will have a negative impact on the refugee system, where the refugees will lose their special status (Ibid.)

Critique is also expressed about the extent of migrant-friendliness of the People Flow Approach. Although it is said to be beneficial for migrant *and* citizens, it is said that the approach tends to favour residents in the sense the migrants has to adapt to the host society, where for the resident not much changes (Marchetti, 2003). Migrants are only welcome if they have needed skills or are able to be net contributors to the welfare state. Without a proof of employment, in this sense a proof of being beneficial, migrants are not admitted as a migrant with full citizens rights. Migrants and residents are consequently given an openly different status. Citizens are allowed to be net-beneficiaries of social welfare, but migrants have to earn that right. At last this approach fails to create a different status for entrepreneurs and self-employed, since a proof of employment is critical to get conventional migrant status (Ibid.).

Looking at the Dutch context, where we have seen that the selection of migrant workers has become decentralised to employers and sponsors with the new MMPA, security in the sense of

workers protection and protection from terrorism can be undermined. When it comes to national security, the control of migrants moving in the country has become less strict. Employers have the duty to make sure the migrant workers fulfill the requirements and has the necessary documentation. There is no preventive check whether one is a security threat or not. When it comes to human security, there is more competition for domestic workers. Employers have more access to foreign labour. It is made much more convenient for them to employ from abroad, the protection of the domestic workers competing with migrant workers is slim. The decision to hire domestic or foreign is for a large part up to the employer.

4.3.2 Private-Public Partnership Approach

Instead of privatising the migration management as in the People Flow Approach, a private-public partnership is suggested also. Private-public partnerships (PPP) are a collaboration of government and private partners, usually in the form of businesses and civil society, on a subject to their mutual benefit (Pongsiri, 2002). Instead of providing a service or addressing a problem by itself, a government can choose to include the private sector as they sometimes can provide services or tackle problems more effectively. Next to that, it gives the private sector a social responsibility that they have to consider and encourages the public sector to create a democratic and participatory climate in decision making, making it the only viable mean to achieve a particular end (Ibid.). Since in the field of migration there are many interest of many actors, a cooperative approach seems an appropriate one. A private-public partnership has the ability to formalize blurry lines between public and private actors in policy-making and regulations (Palmer, 2013). A PPP can construct a set of rules that lead to directives for the partners, and enable further negotiation through the partnership. The most important asset of a private-public partnership in the field of migration is that it offers to a form of governing that has the potential to create practical and workable solutions to political and ideological problems (Ibid.).

Practical solutions with a PPP in the field of migration can mean that the government and private sector can work together in identifying gaps and surpluses in labour markets to effectively address skills and labour needs. To be beneficial for all, they can engage migrant workers to address challenges of brain drain and promote brain circulation. They can pool their financial resources for increased investment in human resource development. Together there is more chance to mitigate negative aspects of immigrant labour on wage. And lastly, in a private-public partnership there are more possibilities to facilitate the economic and social integration of migrants into local communities if both state and employer are responsible for the costs of integration.

A PPP seems to be a win-win-win situation, where the state, public sector and the migrant can benefit from. There are however scholars who have their doubts about the mutual benefits of such an approach. As is the case with the People Flow approach, there has also been critique from different scholars on the concept of private-public partnerships. The focus of criticism lies on the motivation and outcome of PPPs. It is said that the interest of a few individuals in the private sector are first served, then those of the state and that the public interest is addressed insufficiently since they are not actually at the negotiation table. There is also a fear that eventually a PPP will lead to the state vouches for the risks that the private sector has to take in order to get them to cooperate (Bloomfield, 2006).

Another possible outcome is that because a PPP searches practical and workable solutions to political and ideological problems, it has a commercial orientation. This may not lead to an outcome that is in the interest of the general public, or even the government as it is not commercial in its nature. In excess, it can lead to the private partner is taking over a government program or service that used to be carried out by the government instead of cooperating with each other and there are questions about the transparency of these partnerships (Palmer, 2013).

In the Dutch context, The Netherlands has a work visa permit system based on the MMPA, that came into effect in 2013 as discussed in Chapter three. Sponsors in the MMPA may submit for an Admission and Residence Procedure on behalf of a foreign national. Making the employer responsible for the selection of the migrants according to the needs of the labour market, and giving the government the duty to control.

Next to the selection, the sponsor is given the 'duty to inform', meaning that it needs to has to inform the IND of every relevant fact or circumstances that can influence the right of residence of the employee, such as change in salary, sabbatical and termination of employment, within four weeks. Another duty given to the sponsor in the MMPA is the duty to care. This makes the private sector partially responsible for the living conditions of the migrant worker. All together, there is cooperation, if it is a partnership and if the private sector was involved or had a advisory role when drafting this law is not clear as this is not made public. It can be said that the ground work for a PPP is laid down by the MMPA. The challenge is to actually make it beneficial for all actors, as far as possible. An ideal system of win-win-win may not be achievable and there is criticism on every approach suggested, but there is groundwork for improvement and more sustainable migration management. At least, it makes room for more focus on the freedom of movement in migration than is currently the case.

4.3.3 A private-public partnership in the Dutch Context

Taken the criticism about PPPs and the concerns about migration into account, how can a private public partnership create a regime which facilitates labour market matches and is fair and ethical towards the migrant, including the 'temporary' low-skilled? Before starting to describe how a PPP would like it is useful to realise that there is no ideal or perfect system. Every system has its negative impacts and ways of getting around a system are likely to be found. The goal is then to find improvements rather than a perfect system.

In Chapter three we have seen that there are different arguments for labour migration, and that in order to counter skills shortages on the labour market effectively, recruiting only domestic labour is not going to be sufficient. International labour recruitment is therefore necessary. This recruitment can be performed by public employment services, private employment agencies and by private businesses that need the employers.

So let's take recruitment as the first step in the labour migration process. Taking into account the security and welfare of the Dutch state, the challenge is ensuring ethical recruitment in an employer-selected migration regime. The problem of unethical recruitment goes beyond exploiting individual workers, domestic or foreign, although this is also a distressing consequence. Without ethical guidelines of recruitment it is possible that workers are enticed to migrate with the false promises of jobs and end up doing different work than promised. They can be misled about the working conditions and be given a different contract, with for example a different salary, than promised before departure. It can even go as far as forced labour and human trafficking. The consequences can also cause that, with the different terms and conditions for employment for foreign workers, domestic workers become more vulnerable as a whole and it leads to a violation of labour rights. It also reduces the positive feedback from labour migration for the countries of departure, undermining the development aspect migration can entail. All by all it is important that the first step of labour migration, the recruitment, is done ethical.

Private companies and private recruitment agencies that employ migrants have to be encouraged to recruit according to a particular standard. This could be done by stimulating them to incorporate migration and migrants in their corporate social responsibility policies (CSR) and comply with international labour standards. The IOM has suggested that countries should ratify the "private employment agencies convention" from the International Labour Organisation and incorporate this convention into legislation. The convention guarantees

- freedom of association and the effective recognition of the right to collective bargaining
- the elimination of all forms of forced or compulsory labour
- the effective abolition of child labour

- and the elimination of discrimination in respect of employment and occupation.

Since this document promotes equality of opportunity and states that it *“applies to all categories of workers and all branches of economic activity”*, migrant workers would be protected from exploitation and abuse the same way as domestic workers. Secondly it guarantees that *“that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability”* (ILO Convention No. 181; p.4-5). The Netherlands already ratified this convention and could point at the responsibilities private recruitment agencies have regarding migrant workers.

Next to treatment of migrants workers another way to promote an fair way of recruitment can be accomplished by providing honest and accurate information before a person decides to migrate. This goes beyond information about the working conditions and the wage and fringe benefits, they should also incorporate information about the process of migration and the cost of living in the destination country and the living conditions that go along with them. This can combat the practice that migrant workers end up paying half their wage for rent in an apartment that has to be shared a dozen other migrants.

Not only is there a role for private actors in providing information for would-be migrants, they can also contribute in providing information about current and future labour shortages and demands. As we have seen in Chapter three the most labour and skill shortages are expected in the retail, healthcare and industry sector. To come to an useful partnership, working together in occupational councils can help offer additional training for employers and specific needed skill training for future employment. This way the needs of the employers and government objectives can be addressed properly. This can be done in The Netherlands but can also be done in source countries, giving an development boost and preparing migrant workers for their future employment.

As a second step we can think about the role the private sector can fulfill in the integration process. As a beneficiary of the migration process, they can in a private-public initiatives contribute to improve language skills together with additional skills training in order to improve labour market outcomes of migrants. Making them less likely to end up in unemployment and having to rely on social benefits.

Concluding, in a private-public partnership the idea to address issues together to come to a mutual beneficial outcome. In the case of migration there are possibilities to come to such a partnership that can be an improvement for al actors. This would mean being ethical and honest in the recruitment process of labour migration. Decreasing exploitation is not only beneficial for the migrants worker, but also for the domestic worker since their jobs don't devaluate and labour rights are guaranteed. Identifying skill and labour shortages benefits both the employers that have their

vacancies filled and the state since their objectives for development of certain sectors are pursued together with the private sector. A partnership in language training and additional skill training can benefit the migrants since they get a stronger connection to the labour market and the host society benefits by having more contributors to the welfare state.

5. Conclusion

To conclude on the research question if can freedom of movement be improved without undermining domestic social justice the answer should be 'yes'. There are however a lot conditions that have to be met and nuances to be discussed. In a practical way an assessment was made if immigration can be integrated into a broad-based democratic distributive welfare state and theoretically an answer is sought if a cosmopolitan notion of human equity can co-exist with the instinct to favour one's own community.

5.1 The Research Question

Governments find it increasingly hard to make a case for more migration, reasons that we have discussed are the fear for societal security and welfare migration. With the recession a fear also has been generated about the competition with migrants about already scarce jobs. As the public opinion is inclined to view migration as a burden on Dutch society that brings more costs than benefits, demographic and economic developments point in the opposite direction. Anti-immigration parties are finding an audience for their standings. To drive in the opposite direction and promote migration is politically unwise given that elections are always lurking on the horizon.

This does not mean that governments do not echo that controlled migration can be beneficial for society. In the contextual framework it is shown there is no doubt that labour migration has a positive effect on the demographic imbalances in The Netherlands and helps economic growth. With skill and labour shortages around the corner an increase in migration is desirable and needed. There is an urgent need to better understand skill shortages and labour market needs, especially in sectors characterized that employ large numbers of migrant workers (Construction, agriculture and business services i.e.).

From the private sector there has always been a call for more and easier migration of labour to fulfill their need for labour. We have seen that there are visible skill shortages in certain economic sectors that are expected to increase when the economy will recover and begin to grow. For some parts of the economy migration is the only way for them to grow.

Seen from the public sector we have seen that the Dutch society and the labour force are aging and that it is putting a strain on public expenditures, especially regarding health care. The people that are going to be care-dependant will rise significantly and the number of people that are going to contribute to that care are declining. On the short-term, migration can help to address this imbalance. Because of the focus of security in the development of migration policies it seems hard to adapt to a changing migration climate. Taking in migrants is seen as a way to stay competitive and

economically vital, but because of the focus on security issues of migration the intake of migration remains limited.

In the policy framework the friction between the freedom of movement and freedom of association is present in the development of the migration policy. Liberal democracies are committed to take in refugees and provide a safe haven for the persecuted, but at the same time are restrictive and selective when it comes to other, voluntary, immigrants. However, we have seen recent changes in priorities when it comes to migration policy in The Netherlands. There is made a shift to an employer-selected immigration regime constructed so that people who are not a refugee or don't have the economic resources will not be a burden on society since they can only enter if they have needed skills and an employer that confirms. The motive of migration is becoming more important than origin. Freedom of movement is an important part of migration policy, but only for the economic viable.

The business sector can make a strong case for migration, and would benefit from even more unrestricted migration. A private-public partnership seems to be a viable option for The Netherlands to establish a migration policy with more attention for the freedom of movement without arousing the society's fear about security or welfare migration. The foundation is already laid down in the MMPA. The private sector can help the public sector by framing migration into a more positive context and help to achieve goals for development and economic growth. At the same time the private sector needs the public sector to implement more flexible migration procedures and give them more responsibilities in the process, giving them more freedom to pick and choose when it comes to employers. The challenge in going forward is working together more intensely and in other stages of migration than selection.

5.2 Limitations

This research most evident limitation is that only one case is selected, namely The Netherlands. Conclusions drawn from this thesis are therefore only applicable for the one case and that results are hard to generalize onto other cases. However, the goal of a case study is to get an in-depth insight into the specific rather than the universal. The conclusions should be seen as applicable to the Netherlands only, but the research can easily be repeated on another case. Context dependant knowledge is just as valuable as generalized knowledge and it does not discard that there are universalities to be found in the specific.

Another limitation in this thesis is that it relies heavily on secondary data. Although this has its benefits, such as spending less time on data-gathering and having data from experts in the field, it restricts you in not having specific information on subjects you might want to explain. I write about migrant workers, private and public actors without having consulted them myself. Therefore the

research will display forms of subjectivity and implicit assumptions that will be visible by the reader. I tried to overcome this by using scientific sources to make up for the lack of own data. Using data from different interest groups in the field of migration, this resulted in the fact that this research is done by literature study and policy analysis. Nevertheless, I would have been able to provide stronger arguments and assumption if I had own observations from the relevant actors.

5.3 Recommendations

To actually achieve a mutual benefit for the private and public sector some recommendations are made for future policies. First is that a constructive debate about labour migration should be promoted between private and public actors discussing the concerns and benefits of migration to national economies and societies. This is the only way to move beyond short-term interests and think about future proof arrangements. Secondly, more attention should be giving to identifying shifts in educational levels and occupational growth. This way policies can aim at responding on changes in the availability of national labour skills and look at international compensation. Third and last, pay attention to improving the protection for labour migrants. This is best done by providing honest, reliable information about the job they are going to do and the country they'll be working in. Additionally, it could be thought of to cooperate with the private sector to not only attract migrants, but also provide additional training, housing and language courses. This entails decentralising and maybe even privatising aspects of current migration policies. Although there are ideas and literature available about possible scenarios that may work and improve migration outcomes for all actors, little evidence is available. The most important recommendation therefore is to create experiments on a small scale when it comes to new migration policies. This way an evidence based opinion can be made about alternatives way of dealing with migration and the practical implementation of different approaches. Decentralising and giving municipalities more saying in the kind of migration they need, in deliberation with the local private sector, can create beneficial outcomes that cannot be achieved on a national scale. To actually get better insights in the need that sectors are facing due to demographic and educational changes, more research on this matter is suggested. Identifying what skills are necessary is key for optimizing skill utilization in future gaps.

Secondly, more focus on the protection of workers is needed to ensure a fair outcome for both migrant workers and domestic workers. This thesis focuses on the way to create more room for migration in a fair way, but how to ensure that workers rights are protected in temporary (seasonal) and permanent migration is not elaborated on. More research on ways to incorporate workers' rights in migration schemes and ways to prevent declining wages and fringe benefits is helpful on this point. This also includes research on the labour market connection of migrants, how easily they lose

their job and how easily they find re-employment to see how realistic it is that migrant workers have to fall back on social welfare.

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Appendix A: Example Coding Network

Figure 1: Example Coding Network; Freedom of Movement

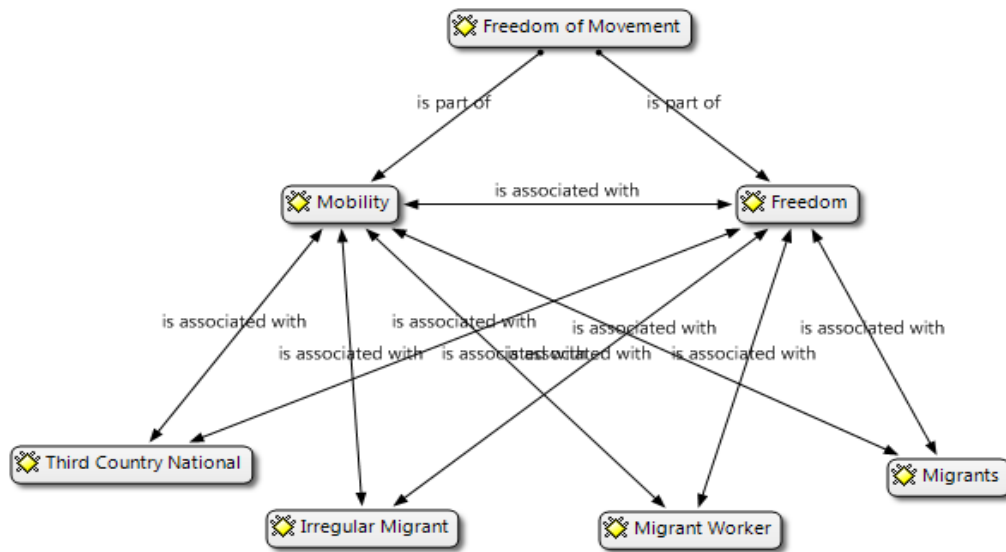


Figure 2: Example Code Migrant Worker

29 quotation(s) for code:

Quotation-Filter: All

2:5 economic migrants (9:3173-9:3190)
 3:10 migrant workers (14:1011-14:1025)
 7:1 Migrant Workers (4:1359-4:1373)
 7:2 seasonal worker (4:189-4:203)
 7:3 Cross-border workers (7:2841-7:2860)
 8:1 migrant workers (3:1819-3:1834)
 12:1 migrant workers (1:1612-1:1626)
 14:1 migrant workers (12:1748-12:1762)
 14:3 migrant workers (29:2485-29:2499)
 14:6 Migrant workers (70:365-70:379)
 14:7 migrant worker (70:947-70:960)
 14:8 migrant workers (72:417-72:431)
 14:12 immigrant labour (126:2680-126:2695)
 14:19 labour migrants (185:1373-185:1388)
 14:23 seasonal workers (223:3073-223:3088)
 14:24 skilled workers (223:3140-223:3154)
 14:25 foreign workers (224:830-224:844)
 14:26 guest workers" (224:948-224:962)
 14:27 Seasonal worker (235:3291-235:3305)
 16:1 migrant labour (3:476-3:491)
 16:6 migrants to employment (5:503-5:526)
 16:7 labour immigrants (5:2146-5:2162)
 16:15 migrant labour (7:1507-7:1520)
 16:17 immigrant workers (7:2752-7:2768)
 16:23 labour immigrants. (10:1683-10:1700)
 24:2 migrant labour (4:3404-4:3417)
 24:4 that the determination of volu.. (4:2934-4:3463)
 27:1 migrant workers (21:480-21:494)
 27:2 freedom of movement for worker.. (21:364-21:395)

Appendix B: Documents used for content analysis

Convention Implementing the Schengen Agreement of 14 June 1985

Regulation (EC) No. 296/2008 of the European Parliament and of the Council of 11 March 2008 establishing a Community Code on the rules governing the movement of persons across borders

Policy Plan on Legal Migration {SEC(2005)1680}

Council Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

Council Resolution of 20 June 1994 on limitation on admission of thirdcountry nationals to the territory of the Member States for employment

Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons

Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

COUNCIL DIRECTIVE 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

Council Regulation (EC) 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC)No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality

COUNCIL REGULATION (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals

COMMUNICATION FROM THE COMMISSION on Policy priorities in the fight against illegal immigration of third-country nationals

COMMUNICATION FROM THE COMMISSION ON THE DEVELOPMENT OF A COMMON POLICY ON ILLEGAL IMMIGRATION, SMUGGLING AND TRAFFICKING OF HUMAN BEINGS, EXTERNAL BORDERS AND THE RETURN OF ILLEGAL RESIDENTS

Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union

DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Presidency Conclusions (2004). Seville European Council, 21 and 22 June 2002.“*Presidency Report*

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