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# Americans At Heart But Not On Paper

A Normative Study of Amnesty in U.S. Immigration Politics

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# Abstract

The initiative Deferred Action for Childhood Arrivals is an example of the use of amnesty within American immigration politics. Enacted in June 2012, it addresses the delicate situation of young undocumented immigrants so called childhood arrivals. They are part of the society in many ways, but not on paper. The dilemma is characterized by a conflict of interest – the rights of the sovereign state to control its borders and territory, and the individual's right to belong to a society where it can get political membership and protection.

The aim of this thesis is to elucidate the two perspectives and to answer the question of whether granting amnesty to childhood arrivals can be justified. I use the normative, “given-that” method as the central aspect of the question is best answered with reference to values. The analysis is centered around the value “sovereignty” regarding the state and the right to membership in a society regarding the individual. I conclude that while amnesty can be justified with reference to the rights of the individual, it cannot on behalf of state sovereignty. I therefore find that other values are of importance to the state regarding decisions in immigration politics.

*Key words:* state sovereignty, cosmopolitanism, amnesty, United States, immigration, normative dilemma

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# 1 Introduction

The current number of undocumented immigrants in the United States is approximately 11.5 million people (Kernell et. al. 2012, 177). These are persons who have entered through an unofficial channel, overstayed a visa or failed to depart following a direct order (Hovdal-Moan 2012, 1225). In this thesis undocumented and unauthorized have the same meaning. A portion of this group, so called childhood arrivals, were brought to the U.S. at a young age by relatives or family. Without their express consent, they migrated. Their delicate situation has led some to advocate for reforms that would grant them amnesty. They would thus receive an official pardon for the criminal offense they committed (Doty 2009, 183). However, the political progress toward any type of solution is characterized by deadlock in Congress between the two main parties (Bhagwati & Hanson 2009, 3). While waiting for the politicians to act, many young immigrants publicly revealed their legal status in 2010. The unknown number of unauthorized residents in the U.S. were thus given a face (Galindo 2012, 590). The debate around their fate has since continued. An important event consequently took place in the summer of 2012 when President Obama issued an executive order to the Department of Homeland Security. It is called Deferred Action for Childhood Arrivals and addresses these immigrants who are young and educated. The President gave an introducing speech in which he described the target group as:

*“These are young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper”* (The White House 1).

The struggle for citizenship raises many critical questions on the individual's as well as the state's rights. Citizenship and legality is a dynamic rather than static political entity and undergoes constant change (Doty 2009, 183). Yet, we should ask what type of development that is desirable (Naím 2003, 28). The question leads us to the following section where I will present my research question and intent.

## 1.1 Problem and Purpose

This case exemplifies the conflict of interests between the two main actors – struggle for citizenship among young undocumented immigrants and border security for the state. (Benhabib & Post 2006, 17). The delicate situation of childhood arrivals confounds political scientists with questions regarding the rules for political membership. How should the state confront illegal immigration? Should it give young undocumented immigrants amnesty for action committed by their peers? Or should they be subjected to the same process as other immigrants regardless of their delicate situation? In this thesis I want to explore the different sides of the conflict. With regards to the latest developments I raise the question:

*In what ways can amnesty for childhood arrivals in the United States be justified?*

To make my research question precise I will dedicate a few sentences to further explain the research ambitions. To begin with, the amnesty focused on in this thesis is the Deferred Action for Childhood Arrivals. Further, as my question regards the justification of an action I will use moral principles as the foundation of my study. I feel that the act of granting amnesty to undocumented immigrants is strongly connected to the concept of *state sovereignty* regarding and the cosmopolitan “right to have rights” and consequently belong to a society for the individual. What distinguishes this paper from others is the focus on immigrants who arrived as underages and have been living in the country for a considerable time. It differs from traditional perspective which regards immigrants who are not already living in the country. I therefore think that, in combination with the study of a recent event, it will contribute to the general debate on immigration.

## 1.2 Background

In order to gain a thorough understanding of the chosen topic, I think it is essential to get a background to the dilemma. The question of my thesis addresses issues within U.S. immigration policies. However, I will not describe the subject in its entirety but focus on the occasions where amnesty has been given.

American immigration policy is a complicated matter. Although the country can be said to be built on immigration there exists an ambivalent attitude towards it (Immigration Policy 1). The openness and welcome that founded the country was not unequivocal and did never address everyone. There has always been selective immigration of such type that has been regarded as desirable (Schain 2008, 207-208). Problems within this political sphere are neither new, nor characteristic for the United States. The failure to control the inflow of undocumented immigrants has become the focus of immigration politics (Schain

2008, 254). It was in the 1970s that the number of undocumented immigrants rose from some thousands to several millions. One explanation was that many ways of legal entry was taken away (Orrenius & Zavodry 2012, 86). Thus, an important observation is that actions against undocumented immigrants often have had a reversed effect. When policies become more restrictive undocumented immigrants tend to stay longer. The risk of not being able to return after leaving the country is too big (Schain 2008, 213-215). Thus, much of the undocumented population are permanently residing in the country and most of them have lived there for more than ten years (Orrenius & Zavodry 2012, 88). As earlier stated, policies of immigration is largely dependent on the balance of forces between the political actors. The situation in Congress is characterized by the absence of a common agreement on immigration policies. At the same time the evolving role of the presidency has become distinct. This fact was elucidated in President Obama's executive order in 2012 (Schain 2008, 256). It was delivered to the Department of Homeland Security without any majority consent from either the Senate or House of Representatives. It is defined as a discretionary act of determining whether an individual can be protected from deportation and thus receive a work permit. Janet Napolitano, Secretary of Homeland Security, stated in connection to the announcement of the initiative that laws of deportation were never "blindly enforced without consideration given to the individual circumstances of each case". The order thus specifically addresses the delicate situation of undocumented youths. It is limited to a two-year trial period (BBC 2012). To be eligible for consideration the person (a) "must have come to the U.S. before the age of sixteen"; (b) "must have been continuously residing in the country since June 15, 2007, up to the present time"; (c) "must be under the age of 31 as of June 15, 2012"; (d) "must have entered without inspection before June 15, 2012, or have a lawful immigration status that expired as of June 15, 2012"; (e) "must currently be in school, have graduated or obtained a certificate of completion from high school, have obtained a general certificate of completion from high school, have obtained a general education development certificate, or be an honorably discharged veteran of the Coast Guard of Armed Forces of the United State"; (f) "may not have been convicted of a felony, significant misdemeanor, or three more misdemeanors, or pose a threat"; (g) "must be present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS" (The White House 2).

Formally, amnesty is defined as the pardon that a country give to persons who has violated the law. In this amnesty it is the act of illegal immigration. Some of these legalizing reforms grants permanent residency to undocumented immigrants, but this one will only ensure protection against deportation and grant work permits (Kate Raynor 2012). The first and most extensive amnesty was the Immigration Reform and Control Act (IRCA) of 1986 in which approximately 2.7 million people were granted permanent legal residence (Census Bureau 2012) (Kate Raynor 2012). Even though the IRCA was thought to be a one-time event, less extensive amnesties have been given afterwards. Section 245 (I) of 1994 was

a temporary rolling amnesty which granted legal residence to about 578,000 people. It was later extended and reinstated in 2000 through the so called LIFE Act Amnesty when 900,000 undocumented immigrants also gained permanent residency. Other examples are the Nicaraguan Adjustment and Central American Relief Act (NACARA) in 1997 and the Haitian Refugee Immigration Fairness Act Amnesty (HRIFA) in 1998 which authorized one million respectively 125,000 undocumented immigrants (Kate Raynor 2012).

As earlier stated, the Deferred Action for Childhood Arrivals addresses the dilemma of young undocumented immigrants. Approximately 1.8 million people are affected by the new rules. More than half of the group, about 936.000 people, are over 15 which makes them eligible for protection immediately. Additionally 426.000 immigrants are under 15 and therefore potential beneficiaries which can apply after reaching the required age. However, there are also those who do not fulfill the requirements. About 400.000 are between 15 and 30 are not eligible for the new initiative and have to finish their high school degree, alternatively the army service (Immigration Policy 2). Thus, what can be concluded is that the initiative is of importance to a considerable amount of young, educated people in America who up til now have faced potential deportation.

### 1.2.1 Childhood Arrivals

As my question regards childhood arrivals I will give an explanation to the concept. This group consists of immigrants who arrived before the age of sixteen (The White House 2). Regarding their legal status, no consideration is taken to the circumstances under which they crossed the borders. As the number of undocumented immigrants in the U.S. increase annually, so does the number of underage immigrants. This is a result of family immigration in which the adults bring their children with them. According to a 2007 Congressional Budget Office report there are approximately five million undocumented children in the United States. Two out of these five millions are currently enrolled in American schools (Carabelli 2009, 116). Alien children have the right to education, as ruled by the Supreme Court in 1982. Their dilemma is instead founded on the fact that no further benefits or protection are offered after graduation. When they finish their education they are transferred to the group of undocumented youths without any rights (K. H. 2011, 8). Thus, their situation resembles some kind of limbo as they can acquire an education but not use it in a job. Despite participating in the American society in this way, they are not entitled to the same rights as the other members.



## 1.3 Material

The material used in this thesis is mainly scientific peer-reviewed articles focusing on amnesty within immigration politics. I have also retrieved information from official websites of the authorities handling the Deferred Action for Childhood Arrivals. The information about the requirements for the deferred action can be found on the Department of Homeland Security's website. I feel this information is reliable and that they reach the requirements for intersubjectivity. However, regarding the numbers given on undocumented immigrants this information is an estimated number. As these persons are unofficial and thus impossible to track or count, it is hard to give a precise figure. Numbers are often a mix between documented and undocumented children. I feel that this uncertainty does not jeopardize the results of my study. Even if the accuracy of the dilemma can be further stressed by the number of people it affects, I think the ones given are certain enough to give a realistic account of the situation.

## 1.4 Disposition

To give the reader a chance of making him- or herself a picture of the design I will dedicate this Section to describe the outlining of this study. The Introduction and Background are meant to give an introduction to the accuracy of the research question. Therefore I have attempted to give an overview of the central concepts of this study. In the next chapter I will present the two values used as reference points in my analysis. Chapter 3 is dedicated to the normative methodology and choices I have made within it. In the sequential chapter I will present my analysis with the conclusions I make which draw upon the previous chapters. It is divided into two main sections between the two theoretical values to make comparisons possible. In the concluding chapter I will present my reflections on the study and future research.

## 2 Theory

In this chapter I will present my choice of theory. The moral claims on immigration that this study builds on is the conflict of interest between the state and the individual. As explained in Section 1.1, the value that my discussion will emanate from is sovereignty and the right to belong to a society. The two theoretical parts are discussed with reference to immigration.

### 2.1 Why the State and the Individual?

Within political science there is an ongoing debate regarding which actor that ought to serve as main reference in the international system (Benhabib 2004). The rise of non-governmental organizations is one example and their growing influence should not be ignored. However, regarding the dilemma of this thesis I argue that the state and the individual are the dominant ones. Immigration is by definition the movement of human beings across the borders of a state (Laegaard 2010, 248). Regarding the concept *state* this address federal states as the United States. I will thus use the word state when addressing the country. Further, it is only the receiving state that will be focused on in my discussion. The central value in the conflict is interpreted as sovereignty and territorial rights as these are affected by immigration. The perspective of the individual is centered on cosmopolitan norms and the right to belong to a society. The individual may cross borders, but for immigrants it is not always certain where to seek political membership. The fact is exemplified by childhood arrivals. The interpretation of the state's and the individual's rights are in my opinion relativistic. I acknowledge that the concepts can be widened but state that the chosen points of reference are accurate for this thesis (Badersten 2006, 59).

### 2.2 The Perspective of the State

Since the Peace Treaty of Westphalia in 1648, the unit of the nation-state has been the single most important actor within international politics (Payrow Shabani 2007, 88)(Britannica Online Encyclopedia 2012, "Peace of Westphalia"). To a great extent, it was the "territorialization" of space into protected boundaries that created the modern state. It thus became the building block of the modern political system (Benhabib 2007, 22)(Krasner 2001(a), 230). Even though more than three

hundred years have passed since the treaty was signed, it is constantly invoked (Kerber 2009, 108). The ability to protect these borders is in turn what defines a *sovereign* state (Benhabib 2007, 24). In fact the state asserts itself through its borders (Hovdal-Moan 2012, 1225). Sovereignty can be said to have two meanings; state sovereignty and popular sovereignty (Benhabib 2007, 21). The first meaning relates to the traditional aspects such as being the sole authority and thus having monopoly over “the means of violence”. It can be seen as the link between authority and a combination of exclusive political institutions. The state can only trust itself for protection and uses the institutions to exercise its power (Barkin & Cronin 1994, 110-112). Thus, it can be interpreted as the rights the sovereign state is entitled to. One way of formulating them is through the so called *territorial rights* which are the: “(a) rights to exercise jurisdiction (either full or partial) over those within the territory, and so to control and coerce in substantial ways even non-citizens within it; (b) rights to reasonably full control over land and resources within the territory that are not privately owned; (c) rights to tax and regulate uses of that which is privately owned within the state’s claimed territory; (d) rights to control or prohibit movement across the borders of the territory...and (e) rights to limit or prohibit “dismemberment” of the state’s territories, by prohibiting unencumbered transfer of land to aliens, alienation of land to “the common”, or private or group secession” (Lægaard 2010, 250). The rights can be divided into two groups. One addresses all subjects on the territory and the other one regards the territory itself. As the dilemma of this thesis is immigration, only rule (a) and (d) will be included in my analysis. However, I have presented them all to show the concept in its entirety.

Contrary to state sovereignty, popular sovereignty is the representative and democratic characteristic of the state. It is what legitimizes the power of the state as the population both are subjects and objects to the law. Even if the state has to gain recognition from other states in order to be an actor on the international stage, it is also the population which grants the authority over the territory and those residing on it. The population thus create as well as submit to its power (Benhabib 2007, 21). This is what have led some to say that the state cannot be said to be sovereign without representing its own people (Lægaard 2010, 249). Therefore the two meanings of sovereignty are interconnected and one cannot exist without the other.

Borders are the first point of interaction between foreigners and the state. It is a space where individuals, goods as well as other non-material things enters. Globalization has presented various challenges to the state as an actor. What has mainly changed is the *scope* of the state's influence over its borders. Thus, it cannot be said to have lost all control, only the extent of it (Krasner 2001(b), 20). This fact is especially evident regarding undocumented immigrants who enters the country without authorization. As border security is such a central quality of sovereignty, some argue that the state loses its function if it can no longer exercise this right (Barkin & Cronin 1994, 108). The borders can further be seen as a divided concept. These first descriptions are the qualities of the so called *external* borders. However, there are also *internal* borders which function as “institutional markers”. They are the laws and administrative rules, regulating

both economic and political activities of a state. The internal borders control access to public funds and services. Thus, they restrict the movement and lives of non-citizens even though they have already crossed the external borders (Hovdal-Moan 2012, 1230-1231). However, does sovereignty give the state the same right to exclusion on its inside, as on its borders? This question is especially interesting regarding undocumented immigrants (Hovdal-Moan 2012, 1223-1225). Some argue that open borders would imply a risk of overloading the state with new citizens. Offering the same privileges to these people as to the citizens would result in strenuous usage of state resources (Weiner 1996, 173). Accepting new members is not an act of moral obligation, rather the legal act of giving the privilege and entitlement of membership to persons chosen by the authorities (Payrow Shabani 2007, 90).

Sovereignty has entered the political debate in the course of the past decade and a half as a center concept. It has almost gained unquestionable importance and rank (Jennings 2011, 24). However, with such a broad concept there is always the possibility that important indicators are missed out. The distinction between state and popular sovereignty is *one* way of describing the concept. This fact also regards the description of territorial rights. I acknowledge that there might be other ways, though in my opinion, this is the most constructive one. In this section I have strived to accomplish a correct description, limited to immigration politics. It is my interpretation that primarily the qualities of sovereignty that addresses border control and influence over the population are essential to the debate on immigration politics.

## 2.3 The Perspective of the Individual

Cosmopolitanism is one of the theoretical fields that acknowledge the development of increased interconnectedness between states. The concept was first encountered within Roman and Greek thought. The so called *kosmopolite* was someone who thought that to realize the cosmopolitan justice, one has to distance oneself from the rule of the state. Today cosmopolitanism implies that individuals are moral persons who are entitled to protection in virtue of being human beings. However, even if states recognizes the basic rights of individuals there exists a tension between how the rights should be exercised (Benhabib 2009, 30-33). The main question is therefore *how* justice for the individual's should be secured and *who* should do it.

Seyla Benhabib, a modern day cosmopolitan, has recognized this tension. According to her, the dilemma is that the state system is caught in choosing between sovereignty and hospitality (Gilbert 2008, 72). Globalization has increased the individual's ability to move around the world, even though some are excluded from these new opportunities (Benhabib 2007, 20). Likewise it has had an impact on state sovereignty as well as territorial integrity (Osborn 2010, 119). Benhabib has drawn upon previous work within this field of study, especially

regarding Jürgen Habermas and Immanuel Kant. She agrees with Habermas discourse ethics and consequently advocates a conclusive conversation among individuals. Thus potentially, all humanity should be part of and have a say in the political debate (Gilbert 2008, 72). Additionally, Kant inspired her through his rules for the modern state. It is primarily the principle of hospitality that interests Benhabib. It states that “the law of world citizenship shall be limited to conditions of Universal Hospitality”. Kant himself meant that hospitality is not equal to philanthropy but rather the right a stranger has not to be treated as an enemy when arriving in a foreign country. Even though this means that the world's territory should be accessible to some degree, it does not imply that one can demand permanent residency (Benhabib 2009, 33-34). Benhabib acknowledges that there are problems with having completely open borders and argues that it might result in “soulless despotism”. It is only within bounded communities that there can exist democratic control (Gilbert 2008, 72). The question is thus how the boundaries should be defined and who should be included as members? (Benhabib 2009, 40). Benhabib defines citizenship as the legal and social status an individual has who is part of a collective identity. He or she is entitled to social and economic benefits and other ways of protection the state offers (Benhabib 2007, 19). A *just membership* implies that every human being has the right to be legal. No individual is ever illegal. Permanent alienage is thus wrong, no matter the reasons behind it (Benhabib 2004, 3). It can be argued that being outside the state's system is equal to being outside the law itself, to be rootless (Benhabib 2009, 40). Thus, the main argument in her theory is that every human has the right to belong to a society where it can exercise and benefit from its rights. Thus, the individual has to be recognized as a member of *some* society and be entitled to the same protection as the other members. A member of a community also has to respect the rights of other individuals. The institution of the state is most commonly responsible for protecting these rights (Benhabib 2004, 56-57).

What is the future ideal in Benhabib's theory? Habermas predicted that the interconnectedness as a result of globalization would result in an “involuntary community of shared risk”. That would in turn create the need of a single, global society (Masciulli & Day 2005, 681). In a similar way, Benhabib advocates for the state to accommodate to a globalized environment. The interdependencies requires new modules for cooperation in a global joint venture (Benhabib 2007, 30). Making decisions in relation to this type of universalism also implies taking notice to the rights previously described (Osborn 2010, 120). As we do not choose into which society we are born, people who are less fortunate have the right to seek membership elsewhere (Weiner 1996, 174). The cosmopolitan norm advocates for viewing citizenship as belonging, not to a certain state, but to the world in its entirety (Benhabib 2007, 32). What Benhabib imagines is a situation where the local, the national and the global systems are all interconnected with one another (Gilbert 2008, 73). This situation will be attained through what she calls *democratic iterations*. It is the processes of “public argument, deliberation, and exchange through which universalist rights claims are contested and contextualized, invoked and revoked, posited and positioned throughout legal and political institutions as well as in the associations of civil society” (Benhabib

2009, 37). Through this process it is possible for communities to revise their conception of what constitutes a citizenship. Such usually happens when claims are made by people standing outside society as unauthorized immigrants. Thus, the moral compassion and solidarity of the actual citizens are addressed (Benhabib 2004, 177-179). As a response to both the solidarity of the population and the thought of the state as belonging to a world community, Benhabib advocates for *porous* borders. It does not take away the right from the state of determining citizenship but is a more liberal option than having either open or closed borders. The transformation into cosmopolitan law thus emanates from the free will of the state's population.

Benhabib has also acquired critics. One complaint regards the possibility of creating universal norms that address all of the world's population. Benhabib asserts that she has found values that are both universal and which recognizes pluralities among opinions. However, this is not compatible with the relativistic view on values I have in this thesis. Benhabib takes for granted that everyone has the ability to recognize these norms and agree upon them (Onuf 2009, 127). She asserts that this knowledge is accessible to all through globalization. An additional dilemma within this cosmopolitan theory is Benhabib's advocacy for porous borders as being reshaped to fit universalism. To draw the lines of these borders might however be a dilemma. Thus I think one again has to view Benhabib's claims as one way of interpreting the rights of the individual. It is a normative stance regarding in which direction developments should be directed, not a detailed map of the way there.

# 3 Methodology

In this chapter I will present my choice of methodology. An introduction to the normative methodology and the concept of values is given. Further, the type of analysis as well as the research framework will be presented. I thereafter explain what choices I have made within the framework and how these affects the results of my study. A discussion on research ethics in relation to normative method will also be presented.

## 3.1 Normative Methodology

As the aim of this thesis is to evaluate the moral aspects of an immigration policy, I think normative method is best suited to answer my research question. To begin with, the relation between values and politics has not always been clear. However, today values have a more profound place within the political debate. For example, one can say that the founding idea of modern democracy is that values restrict the influence of power. The political process depends on ethical principles about what is right and what is wrong (Sjölin 2005, 5-6). Conflicts regarding values and normative dilemmas are in that sense the essential parts of politics as they help to prioritize between various principles (Badersten 2006, 29). A discussion of how things *ought* to be can be seen as more abstract than empirical data (Searle 1979, 101). In that sense, normative questions are connected to a discussion different from that on empirical observations. Normative ethics are founded on the systematic and critical search for the correct moral standpoint when solving practical problems (Tännsjö 2000, 16).

### 3.1.1 What is a Value?

A value is within normative methodology what the reality is within the empiricist field of study. Values determines what is good and bad, right and wrong (Sjölin 2005, 5). A normative analysis has the aim to uncover, specify and problematize these norms (Badersten 2006, 21-23). The value describe *what* should be justified and the normative method describes in what way this can be done (Badersten 2006, 32). The advantage of using normative reasoning in this case depends on the fact that the debate on the formation of immigration policies seldom receives philosophical attention. A discussion from a normative point of view would thus

contribute to the subject. It is a possibility to identify the general norms after which immigration politics should be conducted (Blake 2005).

## 3.2 Type of Analysis

There are different types of normative analysis; normative conceptual analysis, “given-that” analysis and traditional normative analysis. By using the conceptual analysis, the author makes the meaning of normative values more precise and clarifies normative dilemmas. In traditional normative analysis the author takes an assessing standpoint of how something ought to be (Badersten 2006, 188). However, this study has the aim to neutrally compare the perspectives of the two actors in the dilemma of amnesty and therefore the “given-that” type is most suitable. The advantage is that it neutrally problematize different normative principles. The analytic process emanates from the values such as justice or freedom, to uncover the normative conclusion. A “given-that” analysis show that different conclusions can be reached within the same question, depending on the reference value. The values used in this study are presented in Chapter 2. It was proven that contradicting principles offers a moral debate on conflicts between different interests. The sovereignty right of the state and the “right to have rights” of the individual symbolizes such a situation and thus they are a good foundation for discussion. It is not clear whether it is the perspective of the state or of the individual that primarily can justify amnesty. Thus, the analysis might show different results depending on the value that serves as reference (Badersten 2006, 43-47).

## 3.3 Research Design

The main framework of my study is illustrated by Terry Cooper in *Politisk etik*. This model is a foundation for all normative studies as the construction is rather hollow. Thus, it can be formed to suit different types of studies. It consist of three parts which together forms the analytical process. To begin with, the researcher has to stipulate the normative dilemma. What is the essential problem of the study? In this case, it is the moral issue of opposing interests regarding the question of granting amnesty to young undocumented immigrants. It is symbolized by the state's wish to control its borders and territory and the individual's strive to find political membership and protection in a society. The analysis will raise question regarding moral principles and how the society *ought* to be, rather than examining how it *is*. The second part of the framework is the identification and evaluation of different solutions to the problem. It is essential to understand that few situations have an either or-solution but rather a mix of different alternatives. The different outcomes advocated through the two



perspectives of the state and the individual. In the final step, one justifies the arguments and conclusions made (Sjölin 2005, 12-13). As stated before Cooper's framework has room for making adjustments to the specific case of the study. The instructions for the steps are not very precise and therefore I will apply Björn Badersten's instructions for normative method according to the order prescribed. Badersten gives more thought and thorough description of the possible choices one can make within the research design (Badersten 2006, 137). I will implement the normative method "given-that" to the first step as formulating the comparison between the two perspectives. The second step consist of the reasoning principles. The case of the state is argued using deontology and regarding the individual, it is instead consequentialism that conducts the line of arguments. For the final step, I will use one of the hypothetical principles of justification as described by Badersten. In the following sections the second and third steps are discussed.

### 3.3.1 The reasoning principle

Consequentialism is a logic in which only the consequences of an action determine it as either good or bad. The important thing is to act in such a way that the outcome of ones actions are as good as possible. What this implies is that the arguments made with reference to the individual's perspective depends on which outcomes are created. For example, actions that create desirable ends for the individual immigrant will be justified. Within consequentialism no value can be classified, it is solely the consequences of the action that is of importance. For example, no matter if it is right to lie or not, doing so is justifiable if it creates a good outcome (Badersten 2006, 114). Deontological reasoning can be said to be the contrary to consequential reasoning. It determines what is good or bad by the value itself with no regard to the actual outcomes. Some actions are said to be better, and others worse. What is characteristic for deontology is therefore the process of isolating the value which should be followed unconditionally. The value is not prescribed by the reasoning but depends on the research question. One type of deontological reasoning is called "rättighetsteori", or theory of rights. The two concepts are viewed as equal in this thesis. It states that the value prohibit actions that violate somebody's rights, normally human rights. Thus, I think it can be argued that the difference between this type of deontology and consequentialism is narrow. This way of using deontology is common within international relations when advocating for the state's rights regarding terrorism. I have thus chosen this principle as I think it is essential to view the state's rights when analyzing the dilemma of amnesty for undocumented youths. Within this study it will be argued that actions violating state's rights cannot be justified (Badersten 2006, 110-112). To conclude I would like to comment the fact that the reversed order of reasoning is commonly used. Sovereignty is then seen as a consequential value as the state asserts itself through the "power monopoly". However, this study will instead enhance the importance of respecting state rights. The structure will also elucidate the opinion that it is the consequences of an

action which are essential. What is central to the individual immigrant it whether it is possible to receive protection or not.

### 3.3.2 Principles of Justification

The last step of a study is central to normative methodology as it makes sense of the empirical facts and argumentation. The reasoning and motivation should be based on clearly defined principles. Justification is thus the act of defending or motivating something based on a value (Badersten 2006, 134-137). I will use the hypothetical principle as I feel it is suitable for the current dilemma. The principle of justification is closely related to the knowledge we think is possible to attain. Some argue that the researchers of social sciences needs to think objectively (Hollis 2011, 203). The advantage of the hypothetical principle is that it conducts such a standpoint. It asserts that it is possible to find objective conclusions. Thus the principle is especially suited for the “given that” analysis. The aim of the analysis is to neutrally compare different conclusions (Badersten 2006, 165). Actions are thus justified through a hypothetical framework with a judge who is neutral, free, and independent. It is assumed that this person has access to all relevant facts and has humanity's best in mind. Thus, a more concrete foundation of justification can be created (Badersten 2006, 156). The process can be compared to Rawls' *veil of ignorance* which outlines a theoretical situation in which a person makes his choices without knowing the role he or she has in society (Badersten 2006, 158-160). The theoretical person will weigh in the interests of the state as well as the ones of the individual in the conclusion.

## 3.4 Research Ethics

The central criterium to have in mind when conducting a scientific study is that it should not only be understandable for the author alone. Instead the more important thing is that it is comprehensible to such extent that other researchers can recreate it and draw the same conclusions from the material. In other words, the study has to fulfill the requirements of intersubjectivity (Badersten 2006, 73-75). In this section I will present the criteria needed to qualify for valid scientific research.

To begin with, a central aspect of the study is the arguments. Thus, in accord with the *generosity principle* the writer should present such that contradicts his or her own thought. Likewise the researcher should question his or her own arguments. I feel that my research design is well suited to fulfill this criterium as it is built on the comparison of two perspectives. Additionally, the arguments should fulfill the following criteria: intelligibility, validity as well as internal relevance and objectivity (Badersten 2006, 93-94). Intelligibility address the ability of the arguments to be both unambiguous and logic. It is then possible for others to

understand why and how they are used. Their inner structure and logic is instead what constitutes the second criterium of validity. It is what makes the conclusion follow naturally from the line of statements (Badersten 2006, 96-97). Another aspect to the arguments than how they are presented are their inner quality of being objective. When facts are correct and precise, internal relevance is reached (Badersten 2006, 100). These last two thus address the empirical facts presented as well as the operationalization of the theory. If the operationalizations does not cover the correct indicators of the phenomenon, important clues might be left out (Badersten 2006, 86-88). This issue was also addressed in Section 2.2. The presented criteria regard the internal qualities of the study, yet the external validity and accuracy is also of importance. It is the research's ability to be anchored in reality (Badersten 2006, 170). Others than the people familiar with the subject has to view it as relevant in the societal debate (Badersten 2006, 21-23). I think my topic qualifies for this criterium as it deals with a current dilemma within American immigration policy. As noted in Section 1.2, a considerable amount of people, 1.8 million, are affected by the amnesty executed in 2012. How well the internal validity is considered will be proven in the next chapter, the analysis.

## 4 Analysis

This chapter consist of the analysis as well as my conclusions. What I seek to explore is whether the solution, amnesty for childhood arrivals, can be considered to follow logically from the problem, illegal immigration. The rights of the state with regard to sovereignty is first discussed, followed by the discussion on the individual's "right to have rights". The goal of the analysis is to problematize the conflict between the two actors. Thus, the two values might reach different conclusions.

### 4.1 The Perspective of the State

The value *sovereignty* is a central value to the state. It regards the central qualities of a secluded territory and borders that constitutes the actor. As noted in Section 2.2, the value can be interpreted as divided into *popular* and *state* sovereignty. Illegal immigration and thus the dilemma of childhood arrivals is strongly connected to the concept of sovereignty as it addresses border protection and the state's right to exercise power of its territory and those residing on it. State sovereignty is partly interpreted as *territorial* rights. As presented in the previous chapter, the argumentation will be conducted using the deontological theory of rights which essentially implies that the arguments depend on the value itself. Actions that violates these rights cannot be said to be a logic solution to the problem of illegal immigration.

#### 4.1.1 External Borders

As noted in Section 2.2, the state has been the most important actor since the Westphalian Peace Treaty in 1648. The entity of the state was created through the "territorialization" of the world where it was divided into secluded areas. They were of such size that it was manageable for a single actor to protect it. In that sense, what constitutes the sovereign state is, to begin with, its separation from other states. However, it is also the ability to protect the territory. Borders are the first point of interaction with the outside world and thus an integral part of sovereignty. They are equal to what is called the state's *external* borders. The rights was what constituted *state* sovereignty and these could be interpreted as the *territorial* right to "control or prohibit movement across borders of the territory". The rights of the state influence all, whether citizen or not and regardless of age.

Developments of interconnectedness has changed the state's ability to exercise control over its boundaries. The fact is apparent regarding the case of illegal immigration to the United States. The majority of immigrants enter the country through official channels, but an increasing proportion instead uses unofficial ones. As noted in the Introduction the amount of undocumented immigrants in 2012 was estimated to be approximately 11.5 million. The figure mentioned includes a group of individuals who entered the country as underages. Recent events in the American societal debate has displayed their delicate situation. It can be said to resemble a sort of limbo as the possibilities of receiving authorization are few. Many young undocumented immigrants surprisingly started to reveal their legal status in 2010. Thus, they made themselves trackable for the authorities. The amnesty issued two years later in the executive order Deferred Action for Childhood Arrivals is therefore of great importance to them. During a two-year period they can apply for protection against deportation and receive a work permit, which would allow them to work legally.

As the theory of rights prescribes, one should always act according to the principles. Any act that violates these is wrong regardless of the consequences. The question is therefore how to address an act as amnesty that forgives the offense of entering the state without authorization. Further, the question was also directed specifically towards childhood arrivals. As earlier stated no consideration is taken to their age and the central fact is solely that they are hold responsible for committing an illegal act. They entered the state without any official authorization and in that sense hindered the state from exercising its right to regulate movement across the borders. This can be described as a widespread problem for the U.S. as the happening is not a one-time event but rather a constant flow of unauthorized individuals onto its territory. The act of forgiving this offense is in that sense controversial. What I interpret from the situation is that amnesty is not a logical way of encountering the dilemma of unauthorized movements across the country's borders. It can be motivated by the deontological reasoning which states that the sovereign rights are crucial to the existence of a state. I therefore conclude that amnesty for childhood arrivals cannot be justified.

#### 4.1.2 Internal Borders

This analysis also includes the second principle of sovereignty which is the right to exercise jurisdiction over its territory. As earlier concluded, these rights address citizens and non-citizens alike. The state apply this rule through a set of institutions which both include the monopoly of power, distribution of justice as well as controlling the economy. This power is legitimized by the population itself. They agree to be both subject as well as objects to the power of the state. In a democracy, the population enters a societal contract in which they are both entitled to electing the authority but also have to obey its will. As the group of people addressed in the amnesty of 2012 are residing on the state's territory the state has the right to exercise jurisdiction over them. They are thus subject to state power, but not a determiner of it as they are not citizens. The previous section

proved that increased illegal immigration to the United States is an example of the diminishing influence the authorities have over movement across its borders. Thus, the power of the state to control its *external* borders thus has changed. The importance of what is called the *internal* borders can thus be seen as having gained importance. The internal borders constitutes the institutional structure a state uses to control and restrict the movements of its population within the territory. It can for example limit the access to social benefits undocumented immigrants have even though it could not hinder them from entering its territory. However, the state might also grant benefits to non-citizens when it thinks it is suitable. One such example presented in Section 1.2.1 is the ruling from 1982 which proclaimed that all children have the right to attain basic level education in the U.S. Upon graduation this entitlement is again withdrawn and no further protection is offered. It has created a huge problem for young undocumented immigrants as they are not able to use the education they have acquired. Without any official documents it is impossible to get a work permit and thus there are not much other alternative than illegal jobs. The Deferred Action for Childhood Arrivals grants this group of immigrants the right to protection from extradition as well as work permit.

Yet, the importance of the dilemma is not only apparent for the individual but also for the state. The majority of all unauthorized immigrants have resided on American soil for more than a decade. It is thus a remaining problem as long as the people do not leave voluntarily. The act of residing illegally in a country infringes upon the state's right to fully control and exercise jurisdiction over its territory and everyone who live within its boundaries. This is a problem the state itself did not *choose* to be part of. I interpret the situation as forcing the state to come up with a solution and deal with this problem. The act of residing on the state's territory without its consent can according to my discussion be said to be a violation. It does not follow as a logical solution to confront this problem by granting amnesty to the group of people who are part of it. I therefore think that amnesty cannot be justified with reference to the sovereignty principle of exercising jurisdiction over the territory.

### 4.1.3 Conclusions

The sovereignty principle of the state grants the right to exercise control both over borders, territory and residing population (regardless of their legal status). What I conclude from my analysis is that the right of the state to control its external borders has been offended as well as its influence over its internal borders. As no direct consideration of the age of the immigrants follows from the principle of sovereignty, childhood arrivals are also seen as committing an illegal act. They have offended the right of the state to control its borders, by crossing them without any official authorization. I make this interpretation based on the fact that the sovereignty principle asserts that the state has some particular rights regarding the issue of immigration. The central aspect is that it makes the state's action predictable. However, giving special treatments to a certain group is not. Further,

the state may have influence over its internal borders and institutions yet in the sense that they can refuse undocumented youths the right to health care. As the dilemma of young undocumented immigrants remain, I think the state is forced to deal with it. It is thus possible that no amnesty would have been granted without the illegal action as they then would not have been residing on the territory. In that sense, amnesty does not follow logically as a solution to the dilemma of illegal immigration. This discussion proves that deontology elucidates the rights of the state as well as the possibility the individual has of opposing them. It is both interesting that the state grants amnesty to people violating the principles of sovereignty as well as differentiating among the people who committed such an offense. As it is argued that the principles of sovereignty is crucial to the existence of the state, it is not logical to grant amnesty and any excuse. My conclusion regarding the perspective of the state and the sovereignty principle is that amnesty for childhood arrivals cannot be justified.

## 4.2 The Perspective of the Individual

The central aspect of the individual's perspective is "the right to belong". The fundamental value it thus partnership in some society and as consequently the right to protection. Every human being has the right of being part of a society, even though the rule is not specifying *which* society this is. As noted in Section 2.3, the problems of the individual in an international society has become elucidated as a result of the increased interconnectedness throughout world. Connected to it is the question of political membership and citizenship. The essential fact in the dilemma of the unauthorized immigrant is how his or her future will appear. The consequences of the individual's rights are the central concern. The reasoning will therefore be conducted using consequentialism which founds its arguments on whether the outcome of an action can be seen as desirable or not. Thus, if amnesty is seen as a good solution to the problem of the undocumented youth, it can be justified.

### 4.2.1 The Right to Belong

As noted in the Introduction the function of the state has been questioned together with the development of globalization. The state can no longer fully regulate who enters or remains on its territory. Cosmopolitanism is concerned with the individual's right to movement and membership in the world community. As we do not chose into which society we are born, the less fortunate have the right to seek membership elsewhere. Seyla Benhabib states that every human being has the right to belong to some community, and therefore permanent alienage can never be justified. The rootlessness that underage immigrants currently experience in the United States is thus wrong. The state may not ignore their situation and let

it be unsolved forever. That it would accept them as permanent members is to begin with not obvious. Today the future situation for these people can be seen as rather uncertain. The political process and search for a solution in Congress has been stationary. In the wait for progress, many undocumented youths started to reveal their legal status in 2010 as part of a manifestation. Thus, they have given a face to the unknown number of persons who are estimated to make up around 11.5 millions of the United States residing population. President Obama said in his announcing speech to the executive order Deferred Action for Childhood Arrivals that undocumented youths “are Americans in their heart, in their minds, in every single way but one: on paper”. In that sense, they are already part of the society. Additionally, they have the right to acquire basic level education in the U.S. and become integrated at a young age. Yet, as they are left without protection upon graduation from high school, it was earlier concluded that their situation resembles some kind of limbo. They are only members to a certain degree, but may never fully enjoy the same benefits as people born in the country.

A relevant question to ask is why being part of a society is so *important* for human beings. The answer lies in what the state has to offer. Through its power the state grants the individual both entitlements as well as responsibilities. As Benhabib says, even if the rules of the international society has changed, the only provider of security is the state. The implications of membership are thus consequential. To belong implies that one is guaranteed protection in the form of social services, medical treatment, political rights etc. However, an amnesty does not necessarily imply the same benefits. In this case, the amnesty would give protection against deportation as well as a work permit. Thus, the young immigrants would be able to use the education they have acquired through the state system. They would not have to hide in the shadows of society and worry about the possibility of extradition. My interpretation is that given that the individual's right to have rights is fulfilled, one can agree with such a policy. A positive fact is that the state *acknowledges* these persons and their situation through the Deferred Action for Childhood Arrivals. It would bring the individual one step closer to citizenship and grant some kind of security. The consequences are desirable and I therefore interpret it as an justifiable action. However, with reference to the individual's fundamental right to belong to a society, the initiative is not enough to fulfill this principle. As said, this is only *one* step in the right direction.

#### 4.2.2 Universal Hospitality

In her theory, Benhabib also underlines the right to free movement across the world. Like Kant, she argues that no person should be confronted with direct hostility upon arrival in a foreign country. Janet Napolitano, Secretary of Homeland Security concluded in connection to the announcement of President Obama's executive order in June that there is no reason to regard the young undocumented immigrants as a national security threat. Thus, their residency on the state's territory should not be regarded as a concern of state security. The main



fault they have committed is the action of crossing the border in an illegal fashion, or because of some of the other reasons for being counted as undocumented (see Section 1). Therefore, I think there is special cause to advocate for the rule of universal hospitality in their case. This rule recognizes the increased interconnectedness in the world that has been created as a result of different exchanges among different states. As Jürgen Habermas concluded, an effect of these developments might be the “involuntary community of shared risks”. The state can not be seen as a completely secluded phenomenon, but is rather existing in relation to other entities around the world. Benhabib agrees with Habermas and asserts that states will have to accommodate to these developments. She therefore advocates porous borders, rather than closed or entirely open ones. What this means is that a state should be liberal in their border policies, and have an easier take on movement into its territory.

How is this related to the debate on amnesty for undocumented immigrants? What I interpret from Benhabib's rule is that while the action of crossing the border can be justified even without official permission, it is not sure that they have the right to stay. As stated in Section 2.2 it does not belong to the moral obligation of the state to do so. Therefore, what the individual has to address is the state's solidarity. Even though this might occur as a simple fact the situation will remain as long as the state is the sole determiner on membership. The individual can in that sense never take for granted that it will get the political rights as all the other people residing in the country who were born there. My conclusion is that, with reference to the principle of universal hospitality, amnesty can be seen as a desirable solution to the dilemma of illegal immigration. It acknowledges the situation of childhood arrivals and makes an effort to improve their future prospects. From the individual's perspective it is an acceptable solution to their dilemma of being caught an existence of limbo. In that sense, amnesty for childhood arrivals can be justified.

### 4.2.3 Democratic Iterations

Together with the hospitality and solidarity of states, Benhabib advocates a solution which she calls *democratic iteration*. Those are the processes within a society through which changes takes place. They are formed by the democratic will of its people. As stated in Section 2.3 this is also the way through which the state can change its conception of citizenship. In such a theory, Benhabib addresses the voluntary will of human beings to feel compassion and strive for a more liberal view on immigration. She asserts that the citizens themselves has to undertake the necessary measurements of realizing the goals of her theory. Thus, by electing the offices of the state body the individual member has the chance to influence political decisions. However, the opinion on immigration among Americans is far from coherent. As the deadlock in Congress shows, there are many suggestions on how to solve the issue of illegal immigration, but no common agreement. The executive order of President Obama can be seen as an important standpoint regarding which direction this leading politician wants

developments to take. Additionally, Benhabib asserted that these process can be started by a group of people who stand outside society. I think an example can be seen in the 2010 events where several undocumented youths revealed their legal states. They make up a rather large group of people who are currently standing outside society as they are not entitled to the same privileges as the other members. The movement advocated for amnesty gained it from the state. The media attention around the events spurred much debate and drew new attention to the delicate and often desperate situation they are currently in. Thus, with reference to Benhabib's principle of democratic iteration, I interpret this as a desirable development. The movement triggered a debate that attracted the attention of American politicians and policy makers. I therefore conclude that amnesty for childhood arrivals can be justified.

#### 4.2.4 Conclusions

The fundamental right of the individual according to Seyla Benhabib's cosmopolitan theory is the right to have rights. Consequently it is the right to belong to *a* society. This is the thought that permeates her whole theoretical framework. Even if the group of so called childhood arrivals were not entirely integrated with society by the amnesty, it can be seen as a first step to citizenship. To realize such a situation, states have to make room for policies that advocates for *porous* borders, implying a more liberal immigration policy. This is an effect of the developments globalization has brought with it to a world that no longer consist of separated entities, but rather an interconnected puzzle of states. To recognize the shared responsibilities this generates is a core solution to the dilemma of increased illegal immigration to the U.S. In that sense one must address the solidarity and hospitality of the state's population in making political decisions and advocacy towards such a development. Through the democratic iterations described in Section 4.2.3 the population itself can make a difference, something that has ben apparent through the happenings in 2010 where undocumented immigrants revealed their legal status publicly. My conclusion is therefore that amnesty, with reference to the individual's right, can be seen as a logical solution to the dilemma of childhood arrivals. Deferred action and protection against extradition is a justifiable act for these young people. As the initiative is limited to a two-year period, I think the end result will depend on future developments. Yet, for now, my conclusion is that the initiative can be justified.

## 5 Concluding Remarks

The Deferred Action for Childhood Arrivals is in many ways an important event within American immigration politics. The discussion brought up by it has made the delicate situation for undocumented youths more clear. As I have used the “given-that” analysis, the goal of this study has been to elucidate the different perspectives of the state and the individual. The research question I formulated in the Introduction was: *In what ways can amnesty for childhood arrivals in the U.S. be justified?*

As the perspective of the state was argued using the deontological theory of rights, the conclusion depended on if the value or right was violated. Actions that violate these principles could not be justified. Sovereignty was argued to be the central value for the state regarding immigration as it address its right to control borders and territory. A violation of these was not seen as a logical solution to the dilemma and consequently amnesty for childhood arrivals could not be justified. The perspective of the individual instead brought light to the actual consequences of different policies. Amnesty granted protection from extradition for the young immigrants and the right to work in the U.S. Thus, it gave the individual *some* rights and was brought on by democratic iterations in the American society. I therefore concluded that it was in accord with the cosmopolitan principles of the individual's rights. However, I noted that this justification still depend on the future developments and what situation awaits for these people after the executive order has seized to exist.

In my opinion, what the dilemma essentially symbolizes is the process of changed conditions of movement across the globe. As can be noticed from this example, the development results in changes for the state as well as the individual. Both actors have to accommodate to the new system in world politics. The interesting fact was that the state through this initiative acknowledge the situation of childhood arrivals and differentiated them from other undocumented immigrants. Thus, the act depended on other reasonings of the value. The legalization of unauthorized immigrants is foremost a political matter, but the conclusions of my analysis proves that there are other factors influencing such decisions. Some argue that a possible determining fact is the economy (Orrenius & Zavodny 2012, 86). In that case the reason for addressing young, educated immigrants could be the possibility of extracting taxes from them later. It was thus proven that the perspective of the individual was more important than the sovereignty right of the state in the decision of granting amnesty to childhood arrivals. What other factors might interfere in this type of politics is however the subject of another thesis.

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