

# From Migration in Geographic Space to Migration in Biographic Time: Views From Europe\*

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FROM a global perspective, two facts are worth noting from the outset. First, a person's place of birth is the single most powerful predictor of that person's lifetime income and other components of overall welfare.<sup>1</sup> Second, this distributional pattern is largely unrelated to the person's decisions, effort, ambition, or productive contribution, as one's place of birth is of course entirely beyond one's control and, in most cases, beyond the control of one's parents as well. The vast majority of people inherit the citizenship of their birth place. As a result, the acquisition of citizenship and the privileges and disadvantages tied to it have been described as a giant "birthright lottery."<sup>2</sup> Some, if born in the advanced societies of the global West and North (which includes some prosperous societies of the Asia-Pacific region), benefit from the infrastructural and civilizational accomplishments that have accumulated in these regions over many generations. Others, born into countries where such accumulation has not taken place (or perhaps was even prevented from taking place as a consequence of colonialism), have mostly to accept and live with the conditions that prevail in the global South, that is, much of Asia, Africa, and Latin America. In both cases, inherited citizenship is, on average, highly consequential for a person's life-long well-being and is arguably one of the most consequential assets or liabilities of a person.

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<sup>1</sup>Herbert A. Simon has observed that "any causal analysis explaining why American GDP is about \$25,000 per capita would show that at least two thirds is due to the happy accident that the income recipient was born in the US" (quoted in van Parijs 2001, p. 131). Miller (2005, p. 197) says similarly, "A person's life prospects depend heavily of the society in which she happens to be born."

<sup>2</sup>Shachar 2009. That is mostly in cases where it is acquired according to the *ius sanguinis* logic of descent, but also in cases where a strict *ius soli* logic applies (nowhere in the present-day EU). A pure *ius soli* regime of citizenship means that one's citizenship in a state is acquired by being born in the territory of that state, regardless of the citizenship, residence status, or origin of one's mother or parents. The pure version of *ius sanguinis* stipulates that the citizenship of one's mother or parents is transmitted through birth, regardless of where the birth takes place. Mixed arrangements are possible, such as making *ius soli* citizenship contingent upon length of legal residency in the relevant country of at least one parent.

There can be no doubt that these conditions constitute a challenge for normative political theorists, in particular theorists of global justice. These theorists try to devise arguments for the definition of (and methods to arrive at reasonable consensus about) *obligations*<sup>3</sup> that apply to *agents* (such as states, NGOs, and individuals) in the wealthy North. Such obligations would apply to their relations with people and political entities of the largely impoverished global South. Over the last 30 years or so, the normative theory of distributive justice in general, and that of liberal egalitarians with their keen awareness of “morally arbitrary” factors in particular, has been focused on the question of how the luck component and the effort component of distributional outcomes can be separated, and the former effectively neutralized, *within* the wealthy liberal societies of the West.<sup>4</sup> This challenge is even greater if we look at the interpersonal distribution of life chances on the global scale.

My aim in this article is much narrower, however. It consists in finding out whether and to what extent the *migration regimes* of the EU and its member states can be conceived of as contributing to the fulfillment of obligations of global justice, and which interests and normative principles they are designed to accommodate. One important difference between a normal lottery and the “birthright lottery” is that the latter involves (limited) options of *corriger la fortune*, that is, of changing the lottery’s outcome in beneficial ways. This can happen through migration, change of citizenship, the acquisition of additional citizenship(s), and the acquisition of (legal or irregular) residence status in countries with preferable overall life chances. Given vast inter-regional differences in prosperity, there are strong incentives for individuals to make use of one or more of these options. These options are shaped by the legal *conditions of exit* from countries which people want to leave and the *conditions of entry* which are established by the *migration regimes* of receiving countries.<sup>5</sup>

What I am trying to arrive at in this article is a minimum moral standard for migration policy and migration regimes. Receiving (“host”) societies have rights and duties in their relation to migrants (and persons with a “migration background”). We want to find out the nature of arguments that can serve as foundations for such rights and duties. Yet this is a modest position that stands back from larger substantive claims about the moral duties of migrants and host societies alike; from considerations of global justice (to the extent they can be promoted through migration policy); from group rights of migrants and

<sup>3</sup>Sen (2009) presents a rich and complex state-of-the-art account of this debate, as well as a compelling contribution to it.

<sup>4</sup>Dworkin 2000. Roemer 1998. Beckett 2008.

<sup>5</sup>In the case of the EU, a sharp distinction must be drawn between international migration to and from member states (which, by 2014 at the latest, will have turned into virtually unlimited mobility rights of persons as well as other economic items, despite the nominal autonomy of member states to set up their own citizenship laws and migration regimes) and the inward migration of *third nation citizens* (TNCs) from outside the EU. What migration, integration, and naturalization policies are concerned with in Europe is overwhelmingly TNC migration, not within-EU mobility.

non-migrants; from the moral qualities of multi-culturalism, cosmopolitanism, and sovereignty; from the impact migration policy may have on the overall level of trust and solidarity in receiving societies<sup>6</sup>; and so on. Instead, this minimal moral standard will stick to formal and procedural rules such as: keep promises; honor implicit contracts; stick to international conventions; do not reify the “identity” of groups; practice the art of abstraction and “color-blindedness”; remain consistent with existing legal norms and constitutional principles; provide ample institutional space and time for deliberation and reconciliation; refrain from using majoritarian rules in relation to minority issues; do not waste human resources, talent, and life time; for democratic reasons, do everything that is legal and effective to minimize the status gap between permanent residents and fellow citizens by urging and incentivizing the former to join the status of the latter; and most generally, be aware that you cannot get rid of problems by “keeping them out” or “exporting” them. Rather, problems have to be addressed “here,” from “now” on, and in the light of far-sighted considerations. Most importantly, perhaps we need to realize that the rights of migrants and their descendants apply to them not because they are migrants or foreigners but because they are human beings and bearers of human rights, who often suffer from specific vulnerabilities which are due to the fact of having migrated. If we were to introduce special rights for migrants, there would be no stop to introducing further discriminatory distinctions such as white versus non-white, male versus female, or desirable versus non-desirable migrants.

## I. TYPES OF MIGRANTS AND THEIR LEGAL STATUS

The very concept of “migrants” is a highly ambiguous one and requires considerable sharpening to be useful for statistical purposes. One of most encompassing versions of the concept is the one employed by the German Statistical Federal Office. It defines “migrants” as the resident population with a “migration *background*.” This includes (a) foreign-born persons who have migrated to the country after 1949 (since 1990, this includes the unified territories of the Federal Republic and the former German Democratic Republic); including ethnic Germans who were born abroad (for example, those belonging to large German minorities in Romania, Kazakhstan, and so on, who have migrated to Germany). It includes (b) all those born in Germany and who have at least one parent belonging to category (a). This broad definition yields a share of the total population with a “migration background” of almost a fifth—19 per cent in 2005.<sup>7</sup> In contrast, the term “foreigner” (*Ausländer*)—a term that is

<sup>6</sup>Cf. Abraham 2010. Pevnick 2009.

<sup>7</sup>There is a certain arbitrariness in this conceptualization. Suppose we were to take the year 1900 instead of 1949 as the retrospective limit in time and three generations instead of one as the prospective limit. We would easily arrive at a majority of the resident population having a “migration background.” Needless to say, this concept does not apply to temporary residents such as foreign students, foreign diplomats, *au pair* persons, seasonal workers, and tourists.

recently on the retreat from legal and statistical language—refers to persons who are (long-term) residents in the territory of a state, are foreign-born or children of foreign-born persons and not naturalized. It is a term with exclusionary ethnic, religious, linguistic, and phenotypical connotations. Also, it is a term that is exclusively used by *non*-foreigners, as those labeled as “foreigners” by the latter will of course refer to themselves as Croats, Turks, Pakistani, etc. “migrants” rather than “foreigners.”

The broad statistical category of people having a migration background can be subdivided into six major categories, according to the main purpose or circumstances of their being “here” and the legal status granted to them. In the following brief profiles of these categories, I will also include normative considerations which arguably apply to their claims and conditions, as well as current policies that (re)define their status.

### A. IRREGULAR MIGRANTS

Beyond entry *rights* that are granted by states, there are vast *factual* conditions of entry which, however, do not take the form of a legal permit to enter and to reside. This is the path that “irregular” or “undocumented,” “unauthorized” migrants (“*sans papiers*,” “*clandestinos*”) take outside the migration regime of the state they enter and in violation of its border or visa regime. Given modern means of transportation, communication, and organization,<sup>8</sup> neither national border control technologies nor Europe-wide (“*Schengen*”) controls are capable of effectively sealing their borders from irregular migrants.<sup>9</sup> For irregular migrants in Continental Europe, it seems to be relatively easy to come in (either individually or through people-trafficking organizations; either by overstaying on a tourist or study visa, or through forging a visa), while states encounter difficulties in keeping irregular migrants out or returning them to their country of origin (these are legal, logistic, and political<sup>10</sup> difficulties, including states of origin refusing to re-admit their own citizens, provided that the state of origin can be found out after passports may have been discarded by migrants). The result is the accumulation of a stock of migrants without any legal residence status, who make a living as cleaning and care workers, agricultural workers, in the tourism and catering industries, and as sex workers. Being illegal and undocumented residents, once they are in the country they are subject not only to state repression, but also to sometimes extreme forms of dependency and exploitation.

<sup>8</sup>cf. Jandl 2007.

<sup>9</sup>According to an Italian study (quoted in OECD 2008, p. 39), “about 60 to 65 per cent of unauthorized immigrants are overstayers, another fourth persons who entered with fraudulent documents and the remainder persons who entered illegally, by sea or across [land] borders”. In 2005, the EU has equipped itself with a special border police force by the name of FRONTEX which is mandated to guard the EU’s external borders.

<sup>10</sup>In many EU member states, there are active and vocal NGOs putting pressure on governments not to expel apprehended irregular migrants.

They typically work in low skilled, highly insecure, short term, low paid jobs, often in the informal economy and often that belong to the 3D category (“dangerous, difficult, dirty”).<sup>11</sup>

Not only is this virtual *de facto* openness of borders something that states find difficult to control, but additionally, apprehended violators are difficult to sanction in ways that would trigger individual and general prevention. If people’s determination to come and to stay is strong enough, and if their willingness to accept the risks and deprivations involved is equally strong, then the chances are good that they will succeed. Joppke speaks of “the states’ sheer incapacity to keep [irregular] migrants out.”<sup>12</sup> But beyond that incapacity, and even though virtually all EU member states are facing domestic waves and movements of what Joppke calls xenophobic “populist restrictionism,”<sup>13</sup> the governments of liberal states on the European continent and in Scandinavia (with the exception of Denmark) seem to have been somewhat reluctant to actually employ the limited means they have to either prevent irregular migration or to return irregular migrants to where they came from (*refoulement*). This reluctance may partly be explained in terms of (for example, agricultural) employers’ interest in cheap labor and the states’ complicity with that interest. Yet Joppke makes a rather convincing argument that, in addition to such interest-guided considerations, there is also a principled stance of major segments of Western political elites which he terms a liberal “antipopulist norm.”<sup>14</sup> The idea here is that under the soft pressure of constitutional and human rights jurisprudence, governments become forced to make concessions concerning the rigor of their border regimes that they would *not* make for the sake of popularity with their voters. The anti-populist norm would, in policy terms, call for opening up some option of regularization of irregulars.

## B. REFUGEES AND ASYLUM SEEKERS: HUMANITARIAN MIGRATION

Some measure of freedom of entry is provided by humanitarian international conventions which target *refugees* (from repressive regimes and from international and civil wars) and *asylum seekers* (who make a case before specialized administrations that they are threatened by violent discrimination, repression, and political prosecution in their country of origin).<sup>15</sup> While the term “refugee” describes the conditions for which people leave, the term “asylum” describes the status they (seek to) acquire after having arrived. The rights to enter and to remain (in case asylum is actually granted) are qualified, however, by restrictive conditions such as exclusion from economic activity, discrimination,

<sup>11</sup>cf. Triandafyllidou 2010.

<sup>12</sup>Joppke 1998, p. 266.

<sup>13</sup>Ibid., p. 268.

<sup>14</sup>Ibid., p. 270; cf. Freeman 1995.

<sup>15</sup>The Universal Declaration of Human Rights (1948) grants the human “right to seek and to enjoy in other countries asylum from prosecution.” (art. 14.1).

coerced internal immobility, material need, and high levels of overall uncertainty. We can say that “free entry” (together with its very restricted freedoms *after* entry) is granted only in those cases where it follows upon an “*unfree* exit,” that is, an exit that is necessitated by extreme conditions of threat and risk. It is also associated with precarious legal and material conditions with which beneficiaries of “free entry” have to content themselves. Given these empirical conditions, the question appears more and more open as to whether intervention on the place of origin—through “sending food and medical aid or intervening to remove a genocidal regime from power”<sup>16</sup>—is not the morally preferable (if costlier) way to proceed, compared to granting at least temporary<sup>17</sup> entry rights to the lucky few who may make it to “our” shores. The latter option may even have been adopted in some cases as an excuse to avoid the level of costs and engagement the former would require.

Also, European nation states have adopted in recent years a rich variety of sophisticated policies to prevent, deter, or discourage refugees from actually applying for the asylum to which they are also entitled under the Geneva Convention on the Status of Refugees (1951) and the Protocol (1967). Asylum seekers must demonstrate, in the face of strong suspicions concerning the evidence they produce, that they *are* in fact persecuted in their countries of origin on the basis of their race, nationality, religion, political opinion, membership and participation in associations, or gender. Any asylum granted thus implies that state A is officially passing a negative judgment concerning the human rights situation prevailing in state B, the refugee’s country of origin. Such judgment may or may not be fitting with diplomatic interests. Moreover, as asylees are perceived to be a burden, EU member states are interested in minimizing such burdens by either keeping potential claimants out, by seeing to it that other (member) states share the burden equitably, by increasing the hurdles which refugees have to pass in order to actually become asylees, or by returning those whose asylum-worthiness has been denied at the end of states’ administrative procedures. One such strategy, now widely adopted, is the establishment of a list of allegedly safe countries. When one of the countries on that list<sup>18</sup> has been transited by a refugee on the way to her chosen destination, such transit implies an automatic denial of even the right to apply in the latter. Probably the most serious violation of the intended humanitarian function of the Convention and

<sup>16</sup>Miller 2005, p. 303.

<sup>17</sup>After the civil war in Kosovo has become a matter of the past, and after most EU member states have recognized Kosovo as a new political entity in Europe, there are no valid legal reasons any more to grant asylum status to people who have fled the region half a generation ago or more; yet given the fact that Kosovo neither has legal provisions nor the fiscal means to accommodate returnees and to provide them with jobs or social transfers, sending those people “home” (together with their foreign born children who, as a rule, speak neither Albanian nor Serbian, but rather German or French or so on) clearly amounts to an act of deliberate deprivation that seems impossible to justify in moral and political terms.

<sup>18</sup>The French version of that list, adopted in 2005, includes “safe” countries such as Benin, Capo Verde, Ghana, Mongolia, Georgia, and Bosnia.

the Protocol, by now adopted as law by around 150 UN member states, is the denial of physical access to places at which they are entitled to apply for asylum.<sup>19</sup> As a consequence, the illegal crossing of borders has become the most common access road to places in which the procedure of applying can be started.

One rather obvious normative standard applying to refugee and asylum policies is that rights must be made accessible, and effectively so; otherwise, they remain entirely nominal. Another normative consideration is that the collective action problem of fair burden sharing must be solved through harmonization at the European supranational level.<sup>20</sup> Concerning the trajectory from accessing the procedural right of initiating an application to the actual granting of asylum status, there exist vast differences between European states. The most generous granting of that status occurs in the Netherlands, Denmark, and Switzerland, where around 48 per cent of applications were successful in 2009, compared to just 1.1 per cent in Greece and 7.8 per cent in Spain. Prospects of success (as well as other features of countries that make up their overall perceived desirability as destinations) seem in turn to feed back into steering the inflow of refugees, with the most generous asylum-providers thus predictably becoming flooded by applicants. Whereas, according to Eurostat data, generous Switzerland received 2065 applicants in 2009 per million residents, and Norway and Sweden (reputed as generous for other reasons) had to deal with even larger numbers of applicants (3570 and 2610, respectively), Spain got away with just 65 applicants per million.

As far as asylum seekers are concerned, and keeping in mind that the vast majority of asylum seekers access the point at which they can claim asylum as irregular migrants, there is a Europe-wide package of rights and claims evolving out of the member states' constitutional and statutory rules, and several rounds of European "harmonization" efforts. The latter were framed by the EU's competence in the fields of visa, asylum, immigration and other policies related to the free movement of persons.<sup>21</sup> This package consists of social, economic, and legal rights of asylum seekers such as: subsistence level transfers, basic health services, entitlements to some kind of accommodation (often in "homes"), the right to appeal decisions in court, and protection of children from being returned to the country of origin. On the other hand, there is a (temporary) ban from labor market participation, limited mobility rights, and the threat of being arrested for deportation (for widely varying lengths of time) in the case of those whose asylum claims have been denied. EU harmonization efforts are intended to preclude (through a data base of finger prints) multiple or sequential asylum claims and

<sup>19</sup>McBride 2009. Löhr 2010.

<sup>20</sup>Such harmonization has in part happened through the Dublin II agreement of 2003, which specified which state is in charge of which asylum seeker arriving where. In contrast to asylum migration, labor migration will always leave the choice of destination countries to migrants themselves.

<sup>21</sup>These are referred to by the names of cities where complex and short-lived agreements on asylum programs were reached at the EU level, such as Tampere (in 1999), Dublin (in 2003), The Hague (in 2004), Stockholm (in 2009).



to equalize the relative attractiveness of destinations. The latter, however, is undermined by two conditions. First, the generosity of the rights and claims of migrants remains a matter of national sovereignty, not European legislation, due to the principle of *subsidiarity*. Second, *geography*, together with the rule that claimants must apply in the member state where they first enter the EU, plays a big role in determining outcomes. Taken together, these factors have caused a mounting migration pressure on the Mediterranean member states (Spain, Malta, Italy and, in particular, Greece), while Germany, being one of the few member states (Luxemburg is another) that is completely<sup>22</sup> surrounded by other member states, cannot possibly be a country of *first entry*<sup>23</sup> and is thus allowed to return arriving asylum seekers to the country that they have passed through en route. To make things even more complicated, the disadvantages of its geographic location, together with its extreme fiscal conditions and highly restrictionist popular attitudes and policies,<sup>24</sup> have made conditions in Greece (and, to an extent, Italy) so unacceptable by standards of human dignity that courts in Germany, Sweden, and Norway have ruled that migrants may not be returned to Greece *even if* they demonstrably have entered Europe through that country. (Incidentally, Greece is the only EU member state that did not have a common border with any of the others until 2007, when Bulgaria acceded, and which is located on the South-Eastern margin of Europe where migration pressure from Asia and also Africa is greater than in the member states to the North.)

### C. FAMILY MIGRATION

There is a *soft force of normative consistency* that becomes evident if we look at why European states are relatively generous in allowing for the immigration of third nation citizens (TNCs), that is, those from outside current member states of the EU, for the sake of family formation and reunification. Family migration includes the three sub-cases of family formation, family unification, and the legal status of children immigrating with their parents. Yet national migration and residence laws, which typically regulate these cases in much detail, seem to be inspired by three suspicions. First, is the marriage for which (mostly) women migrate a voluntary act—or are women *forced* to enter into an arranged marriage by parents or relatives? Second and inversely, does the immigration genuinely take place for the sake of the marriage or is the marriage *just a cover* for getting easy access to long term residence rights? Third and less importantly, is the residential space of the resident partner (and hence his *income*) big enough for accommodating a couple and family?

<sup>22</sup>With the exception of Switzerland, to which, however, the same applies.

<sup>23</sup>By surface travel, that is; yet the presence of tight airport controls and respective regulations of airlines guarantee the truth of this proposition.

<sup>24</sup>Greece is the only EU member state that has neither signed nor ratified Protocol 4 of the European Convention of Human Rights (1950); its Article 4 prohibits the *collective* expulsion of foreigners.



Today, after the period of guest worker migration ended around 1973 and the homecoming of external ethnic minorities is exhausted in most places (except for Greece, Hungary, and Poland), migration for the sake of family formation and unification constitutes a major proportion of the annual inflow of migrants across the outer borders of the EU. Yet family migration is not popular. Nor is it desirable from a functional economic point of view, given that the labor market participation rates of female migrants tend to be far below those of domestic populations and also given that ethnically homogeneous parents can be strong hindrances to the integration of the next generation, especially in its linguistic dimension (which is of course strongly contingent upon the language spoken at home). At the very least, ethnic homogeneity in family formation is bound to increase the efforts made by educational institutions in terms of linguistic integration. But there are limits to the extent to which liberal states can dispense themselves from observing family rights, and these rights (as, for instance, proclaimed in article 6 of the German constitution) apply to human beings, not just to national citizens. The core of family rights is the right to enter into a partnership, to do so voluntarily, and to have children. These rights opened the door to residence and even citizenship rights for foreign-born family members, including prospective husbands or wives. Joppke sees a case here of “the independent workings of moral obligations,”<sup>25</sup> which follow a judicially enforced logic: since we originally allowed first-generation guest workers to stay (rather than to return home with the end of the post-war boom, as we had expected most of them would), nothing can prevent them from doing so, as their trust in a future as permanent immigrant residents must be honored; if they do stay (even without becoming citizens), their grown-up children enjoy the right to marry; and unless this right to marry is combined with residence rights (and in the case of a naturalized resident spouse: citizenship rights), their constitutional right to marry would be significantly injured.

This yields a general normative rule, or an answer to the question of what host states owe their migrants and migrants’ offspring. *We owe them what we have given them reasons to expect.* Such expectations are reasonable and hence legitimate if they are built not so much on migrants’ assessment of risks and opportunities, but upon the legal order of the receiving states and the normative commitments made by them.<sup>26</sup> These commitments differ widely across member states and across categories of migrants. The readiness and ability of states to protect the human rights of non-citizens is generally contingent upon

<sup>25</sup>Joppke 1998, p. 287.

<sup>26</sup>But note that the two are not fully independent. According to an estimate of the EU Commission, there were up to eight million irregular migrants residing in member state territories. Of these, around 400,000 were arrested in 2007, and less than 180,000 were eventually deported to their countries of origin, amounting to some 2 per cent of the “stock” of irregulars (Busse 2008). The legal and administrative practices that are reflected in these figures can ground the expectation of (irregular) migrants that their prospects for establishing themselves in the country of destination (including being regularized at a later point) are not altogether negligible.

constitutional guarantees of the rights of migrants and the extent of their enforcement, which in turn are affected by the configuration of three factors: forces of international public opinion; humanitarian political pressures coming from civil society initiatives within states; and the strength of restrictionist, populist, and xenophobic political forces.

To continue with the normative argument: since “we” have actually invited immigrants to trust us and to build life plans on that trust, be it through acts of commission or omission (for example, through our failure to fix termination points in contracts with migrant workers), this trust (which can be roughly supposed to grow with the length of stay and certainly with the transition from one generation to the next) must be honored. “They,” the migrants and their descendants, have become legitimate stakeholders whose well-being depends on being socially incorporated.<sup>27</sup> Claims deriving from this status are to be granted—and not just for their sake, but for ours as well. The latter applies not just because “we” have entered into an implicit or “quasi-contract”<sup>28</sup> with them, which we supposedly want to honor as a matter of moral consistency, but also for the consequentialist reason that there will be massive fiscal costs if we fail to assist long term foreign residents and their children in the process of integration and the acquisition of economic self-sufficiency.<sup>29</sup>

At the same time it is well known that, particularly in the case of migrant minorities with an Islamic background, the three types of social relations that occur in families—relations between husband and wife, relations between parents and children, relations between male and female siblings—often (though far from consistently) tend to deviate, for reasons of religious culture, from what a liberal understanding of the human rights of family members would suggest. In spite of the fact that the core family rights specified above must be held sacrosanct and are thus beyond the reach of legislators, the *actual use* family members make of their (marital and educational) rights may not be beyond such reach. In both Germany and France, a debate is emerging on the role of family structures and practices in the process of integration, that is, on the extent to which the paternal authority of fathers over wives and children (as well the presumed authority of brothers to regiment sisters in the name of “family honor”) can and must be curbed. Respective policy proposals include the introduction of mandatory

<sup>27</sup>Bauböck 2009, pp. 22–28.

<sup>28</sup>Miller 2008, p. 371.

<sup>29</sup>In economic terms, the implicit contract between the domestic population and migrant communities can be understood as an investment: only if the “stock” of the migrant population is “managed” wisely, a positive “return” in terms of demographic and economic benefits will occur. If not, the fiscal costs resulting from failed integration, in particular educational and labor market integration, will exceed positive results. As a German journalistic account has put it bluntly: “It’s a disturbing trend for Germany. The country needs immigrants because Germans aren’t having enough children. The population is shrinking and aging and its productivity is in danger. If the immigrants, who tend to have more children, are poorly educated and can’t find jobs, they’ll end up costing the state money rather than supporting it. A study by the Bertelsmann Foundation estimates that failed immigration is already costing the country up to €16 billion per year” (Elger et al. 2009).

kindergarten and pre-school programs for all residents beginning at year one (that is, at the beginning of the process of language acquisition and primary socialization). Also, special integration courses for parents (*de facto* mostly mothers) have been initiated by the German migration authority. Furthermore, the right of parents to decide whether or not their children participate in gym classes or school excursions is categorically denied. Instead, parents are fined if they fail to send their children to school and make them participate in the entire school curriculum. In order to prevent residential segregation (with its obvious implications for the ethnic composition of the student body of schools), pupils can either be allocated to schools through administrative measures (such as “busing”) or, arguably more effectively, the ethnic “mixing” of neighborhoods can be promoted through targeted housing subsidies and regulatory measures.<sup>30</sup> The media and civil society organizations of migratory *milieux* can be encouraged and challenged to launch change-oriented discourses concerning male and female, as well as adult and adolescent, identities and role models. At any rate, the integration of the next generation of migrants is increasingly seen as a problem whose solution cannot exclusively focus on the young. The solution must also address parents through comprehensive programs of family services which are designed to curb and redefine educational family rights.

#### D. EUROPEAN MOBILITY

With the mobility rights deriving from EU citizenship coming into full effect in 2014 at the latest, TCN labor migration (though not TCN illegal, humanitarian, and family migration) may decline—except, perhaps, at the highest levels of skilled labor, for which a global labor market keeps unfolding. The Irish case provides an illustration of this substitution effect (and of the overall Europeanization of labor markets): while the inflow of migrant workers coming from the 12 accession countries (the Baltics, Central Europe, South East Europe plus Slovenia plus one and a half small Mediterranean islands) rose from 9,000 in 2002 to 127,700 in 2006, the number of workers arriving from countries outside of the EU fell, less dramatically, from 38,700 in 2002 to 34,100 in 2006.<sup>31</sup> In Austria, Belgium, Denmark, and Germany, more than half of all immigration is intra-EU migration.<sup>32</sup> It is too early to assess the nature of integration problems caused by *intra*-EU labor migration, with the overall

<sup>30</sup>As Hartmut Häussermann has argued in unpublished work, the problem of managing urban ethnic segregation can best be approached by, again, thinking in temporal rather than spatial terms. That is to say, in the *short run* ethnically homogeneous segregation will be legitimately preferred by migrants because it provides a “bridgehead” where newly arriving migrants gain access to material, cultural, and political resources derived from the homogeneity of neighborhoods. Yet in the *medium range* of their presence in the host society, migrants should be encouraged to move to non-segregated parts of cities. In this way, segregated *neighborhoods* would persist, while their *residents* would move in and out.

<sup>31</sup>OECD 2008, p. 38.

<sup>32</sup>*Ibid.*, p. 35.

experience of Polish labor migration to Britain, Ireland, and Sweden (often ending in return migration) providing a favorable outlook. It is also worth keeping in mind that some of the richest EU member states have experienced a noticeable decline in the inflow of foreign nationals (both from within the EU and from outside) since 2005, with the decline from 2005 to 2006 alone amounting to 18 per cent in Austria; while a dramatic increase (118 per cent) occurred only in Portugal (mostly due to family unification inflows from Ukraine) and, to a lesser extent, the Slovak Republic, Sweden, Ireland, and Denmark.<sup>33</sup> Germany has experienced a recent decline in its overall resident population as a combined effect of declining immigration, increasing remigration, and increased emigration of nationals.

### E. THIRD COUNTRY NATIONALS' LABOR MOBILITY

In many EU member states, policy makers, as well as the public in general, still need to realize that third country nationals constitute a “stock” problem (of integrating those who are “here” already) much more than a “flow” problem of new arrivals (if we abstract from the problem of irregular migration, discussed above). If anything, the dynamics of change have shifted market sides, from supply-push to demand-pull. The stock problem, as I have argued, cannot be solved in space by incentivizing remigration, to say nothing about deportation. It can only be solved in time—the time that is needed for complex and contested processes of integration to which both sides (people who do have a migratory background and those who do not) must equally contribute. Even if borders could be effectively sealed to the flow of newcomers, the stock of residents with foreign roots and their integration would remain as the major challenge for public policy.

### F. ETHNIC KIN STATE MOBILITY

This type of migration, which accounted for hundreds of thousands of new arrivals after the fall of the Iron Curtain, does not play a significant role any more after the two waves of Eastern Enlargement in 2004 and 2007. The only countries in which this type of ethnically privileged migration is still significant are Greece, Hungary, and Poland, while Germany has the greatest proportional stock of co-ethnic migrants (called *Aussiedler* or “re-settlers”).

How do these different types of migrants relate to each other in quantitative terms, that is, as components of the whole? In many EU countries, *regular* labor migration from third countries (which could, in principle, be stopped by negative admission decisions) has dropped below 10 per cent of the overall flow of immigration. In contrast, and looking at the OECD world as a whole, 44 per cent

<sup>33</sup>Ibid., p. 29.

of all immigration was family related and only 14 per cent labor market related, with the second largest proportion, humanitarian migration of asylum seekers, varying widely between OECD member states.<sup>34</sup>

## II. THE CONFIGURATION OF INTERESTS

The *interests* that shape the migration transaction are located at the *individual* and *immediate* level of *persons* and at the *collective* and *long-term* level of *states* (as well as, in between the two, at the intermediate level of *organized interests*, at least in the receiving countries). These interests can be roughly summarized as follows. They are being pursued on the two liberal normative grounds of *individual* self-determination of people and *collective* self-determination of states.

First, the interests of *individual migrants* from countries of emigration. Most emigration is from the less developed to the richer countries.<sup>35</sup> Depending upon his or her level of marketable skills, the income prospects corresponding to those skills, perceived labor demand in the country of destination, and the (lack of) economic opportunities available at home (or through domestic migration within the country of residence), there will be strong economic incentives to migrate—be it legally or in irregular ways, permanently or temporarily. These incentives can become even more urgent if there are family members to support through remittances. At the aggregate level, these interests constitute a “supply push” causing “migration pressure.” There are not just anticipated gains migrants can expect from migrating, however, but also costs. Migrants need to accept and cope with the conditions of leaving their homes, local networks, and families. They must accept the costs and risks of migration, the burdens and uncertainties of adjustment, and possibly discrimination and exposure to exploitative economic power relations at the place of destination. Considering these costs, one can only agree with Brian Barry’s view that “an ideal world would be one in which the vast majority of people were content with conditions in their own countries”<sup>36</sup> and thus could afford *not* to migrate. Yet from a normative perspective, it seems easy to agree, at least under liberal presumptions,<sup>37</sup> that the right to emigrate (temporarily or for good) should not be denied to people who want to do so after assessing the net utility of the move. If they “want” to do so, however, because they feel the need to flee from economic misery or political repression (or both), the issue emerges of whether regimes that are causally responsible, be it through

<sup>34</sup>Ibid., pp. 36–7.

<sup>35</sup>Kleven 2002, p. 79. See also *ibid.*, p. 85: “Seven of the world’s richest countries (the United States, Germany, France, the United Kingdom, Italy, Japan and Canada) with less than one eighth of the world’s population, had about one third of the migrant population.”

<sup>36</sup>Barry (1992, p. 279). This notion of an ideal world applies to the supply side of sending states. A reciprocal demand-side ideal of conditions in receiving states is what Bauböck (2009, p. 2) describes as “states have no more reason to restrict admissions because the political and economic disparities between them that currently trigger refugee flows have been flattened out.”

<sup>37</sup>In contrast, strong republican presumptions would require migrants to weigh their individual interests against obligations they have towards their fellow citizens at home.

acts of omission or commission, for the conditions that people feel compelled to flee, should be allowed to get away with an appeal to the liberal principle of “freedom of emigration” rather than providing them with acceptable conditions at home—an alternative that applies with particular force to sending countries. The backwardness of these must at least in part be attributed to the impact of former colonial rule of the very same countries that are now receiving countries.

Second, the collective and long-term interests of the sending *states*. Here, there is a strong prospect of improving their overall economic situation, through the export of labor power<sup>38</sup> that yields private revenues in the form of remittances<sup>39</sup> and thus unburdens whatever funds for poor relief and unemployment benefits would otherwise have to be made available domestically. That provides a strong positive incentive to facilitate and even actively encourage labor emigration, be it for the sake of economic benefits or for the related sake of expatriating sources of social and political conflict.<sup>40</sup> They may also be interested in building bilateral ties to particular destination states as a result of migration. But there is a dilemma here. Sending states become increasingly aware that they are at risk of demographic distortions and losing labor through the (permanent) *brain drain* that results from emigration, given the increasingly selective skill-focused strategies that receiving countries apply. Yet sending states’ options for restricting their citizens’ right to emigrate are strictly limited by national and international law.<sup>41</sup> Some of them (for example, Poland within the EU) have therefore begun to incentivize the return migration of workers, particularly of those who have upgraded their skills through work experience abroad (“*brain gain*”). Others make it mandatory for students who receive fellowships from their governments for studying abroad to return after they have graduated. If they fail to do so, they are contractually bound to pay back the entire amount of the stipend they have received. From a normative perspective, states should probably be required not only to grant freedom of exit rights, but also to take into policy consideration the long-term effects of emigration upon those who stay. Such consideration cannot result in an illiberal individual, much less a collective, denial of the right

<sup>38</sup>In the trade of countries such as Turkey or Mexico, labor power has been at or near the top of their export items.

<sup>39</sup>Not much is known, at least to this author, about the distributional impact of remittances, either across the social structure of countries of emigration or across time.

<sup>40</sup>These incentives play a role even among EU member states. When in August 2010 the French president Sarkozy launched a campaign threatening sanctions against the 15,000 Romanian Roma legally residing in France under the European norm of free mobility of citizens of member states (Anon. 2010), the Romanian president Basescu expressed his sense of “gratitude” to his fellow-nationals abroad “for what they are doing for our country”—namely claiming social assistance payment in France rather than at home. “Imagine what would happen,” he added, “if the two million Romanians [currently working in other EU member states] would return home and claim unemployment benefits here, given the fact that our unemployment fund runs a deficit already.” (Schmidt 2010.)

<sup>41</sup>The International Covenant on Civil and Political Rights grants the right to leave except “when necessary to protect national security, public order, public health or morals or the rights and freedoms of others.” (Art. 12.3)

to emigrate as it existed under state socialism. But it may well lead to targeted policies which incentivize potential emigrants to stay or return. It also may justify claims for compensation for brain drain losses, addressed to receiving states.

Third, individuals and interest groups within *receiving* countries. Public opinion in most of the old EU-15 member states is clearly restrictionist as regards the granting of permanent residence rights and certainly citizenship rights, with Greece, followed by Austria and Denmark, being consistently the most migration-averse country. Only in Spain and Finland were *less* than half of the populations surveyed found to be immigration averse.<sup>42</sup> These restrictionist attitudes are inspired by a fear of *economic* consequences of migration (loss of jobs, wage depression, adverse effects upon the welfare state), the fear of *politically* motivated violence (including “terrorism”), and the fear of *cultural* incompatibilities and resulting conflicts. On the other hand, employers and their associations often advocate a stepped-up inflow of (skilled) labor, and middle class private households make extensive use of unskilled and cheap foreign labor employed in cleaning, taxi transport, and caring functions. This indicates, in many countries and regions, an evolving de-facto ethnic division of labor with considerable elements of “brain *waste*” (as when, for instance, a professional history teacher from Cameroon works as an office cleaner in Paris). The pattern of demand for migrant labor that results from these diverse interests on the receiving side is typically “hour glass shaped”<sup>43</sup> in terms of skills and education. As I shall argue in more detail later, there is no obvious normative argument against individuals and organized social categories pursuing their interests concerning both the quantity and quality of inward migration. The only moral requirement here, or so I shall argue, is (a) to honor the terms of the “quasi-contract”<sup>44</sup> between local populations and those who have been allowed in *already* and who have formed legitimate expectations on the basis of this contract and (b) to act truthfully, that is, to submit motivating counterfactuals (of the form: “if more people come in, the boat is going to sink”<sup>45</sup>) to rigorous deliberation. Morally, we may also be required to recognize that (c) the challenge of integration is one that imposes demands not just upon migrants, but on non-migrants as well. The latter demands will have to be met, in part, by a reorientation of public attitudes and behavior. Societies will of course undergo changes as the result of immigration. At the very least, these changes should not be resisted by non-migrants at the expense of migrants and their integration.

<sup>42</sup>For these and further data, cf. Howard (2009, ch. 3). See also Boeri et al. 2002, ch. 5.

<sup>43</sup>“Most recent South-North migrants have education levels significantly below host-state medians, but a minority of them—highly skilled/professional migrants—are more educated than host-state citizens” (Cornelius and Rosenblum 2005, p. 103).

<sup>44</sup>Miller 2008, p. 371.

<sup>45</sup>*Nota bene*: There is no doubt that boats *can* be full. But that needs to be truthfully demonstrated, and the resulting burdens of scarcity, if any, fairly distributed. If the boat is actually overcrowded, people can be asked to leave—or a bigger boat can be provided.



Finally, *political elites and governments of receiving countries*. They are also typically caught in a dilemma: on the one hand, they need to respond to restrictionist sentiments within their own constituencies; on the other hand, a sizeable inflow from both the new member states and, in particular, of TCN migrants is something that cannot be avoided under European law and in any case is positively needed to compensate for the distorted demography of aging EU societies (for financing their fixed benefits and pay-as-you-go pension systems, as well as filling labor supply gaps).<sup>46</sup> Moreover, there is an emerging international market for highly skilled labor from third countries, in which EU member states try hard to improve their competitive position as demand side actors, for example, through the proposed introduction of Canadian/Australian style point systems. Some European countries—notably Britain and Germany, being the greatest losers of emigrating skilled human capital in absolute terms—need to attract trained professionals from outside of the EU in order to compensate for their net losses of skills. In order to avoid what I have called “brain waste,” highly complex legislative and administrative initiatives are currently under way to validate and recognize occupational and academic credentials earned abroad. In general, the core dilemma of migration policy-making within the EU (and in particular its old member states of EU-15) consists in a constellation of time-inconsistency: elites find it hard to persuade mass constituencies “now” to accept and support policies that are highly desirable as to their medium term demographic and economic effects. Yet given the ongoing transition of an aging society into a “knowledge-based” economy, both increased rates of immigration and a more effective integration of immigrants’ children and grandchildren must be considered as *imperative* as they are *unpopular*. Restrictionist attitudes and resulting policies are typically based upon—or rationalized by reference to—one or more of the following propositions: (a) “more” migration jeopardizes democratic stability and increases the risk of “terrorism” or, for that matter, rightist populist mobilization; (b) it undermines the socio-economic viability of the welfare state; (c) it hinders the integration of the stock of migrants who are “here” already.<sup>47</sup> Elite strategies to escape from or circumvent this dilemma have included: pro-natalist family policies, with an emphasis on policies affecting the female and male work/life balance; an appeal to “growing skills at home” (rather than importing them via migration) through better education (which would also

<sup>46</sup>To be sure, an alternative to promoting immigration in order to fix demographic imbalances would be to increase the internal labor force utilization rate by making more people work longer per life, which was the implicit preference of the largely failed European Employment Strategy (EES) of 2000. As such measures of “activation” are known to be highly unpopular on the European continent (as they run up against the resistance of the growing cohorts of the elderly and near-elderly), promoting inward migration of workers may be considered by elites a slightly lesser evil. Also, from the point of view of business interests, (first generation) migrants have the considerable advantage of being flexible in space, as they do not have the rootedness and resulting stickiness of much of the domestic work force. Cf. Boeri et al. 2002, pp. vii–xiii.

<sup>47</sup>Such propositions can and must be subjected to rigorous plausibility tests.

reduce the costs of integrating the descendants of migrant families); and the largely symbolic upgrading of the status of citizenship through the adoption of courses, tests, and ceremonies which are mostly designed to signal to national constituencies that citizenship status is nothing that is to be acquired easily and cheaply.<sup>48</sup> In addition to this kind of time-inconsistency, there is an inverse dilemma, known from the days of guest-worker migration in the 1950s and 1960s, between the concentrated benefits of migration “now” and the diffuse incidence of costs “later.”<sup>49</sup> What are the normative implications here that could be addressed to governments and party elites? This question should probably be answered in terms of an institutional (re)design of migration policy-making that is capable of reconciling short-term and long-term concerns, or reconciling the often conflicting democratic virtues of *responsiveness* (to current popular preferences) and *responsibility* (to foreseeable future needs and conditions). In addition to public attitudes and behavioral patterns, much of the normative quality of host societies will depend upon the far-sightedness and “anti-presentist” capacity of institutional migration regimes.

### III. THE NATURE AND DYNAMICS OF MIGRATION REGIMES

Migration regimes are complex institutional arrangements, still mostly emerging from national legislation, which specify four items in substantive and procedural terms. First, they specify *who* is legally allowed to *cross borders* for what purposes and which procedural requirements (such as visas) apply to those who intend to do so. Second, they specify the regulation of *residence rights* (for example, residence duration, internal mobility rights, threat of termination and coerced repatriation) of categories of people who have arrived from abroad (ranging from tourists to applicants for naturalization). Third, migration regimes specify the rights and other resources migrants are endowed with or granted a claim to, duties they are supposed to fulfill, and efforts they are expected to make, in order to “earn” extended residence rights by achieving a gradual *integration* into the receiving polity and society (for example, through learning the language of the society into which they immigrate). Finally, the migration regime stipulates the procedural and substantive conditions under which migrants, typically after an extended period of continuous residence, are granted access to the full incorporation (or “naturalization”) into *citizenship* (including time-limited or unlimited dual or multiple citizenship), and hence full and equal membership in the polity of the receiving society.

According to a standard model, these four matters that a migration regime regulates are conceived of as a system of consecutive filters: admission → residence → integration → naturalization. Yet inversions within that sequence are

<sup>48</sup>Joppke (2007, p. 11) speaks of the symbolic dimension of courses and tests which he sees as serving the function of “appeasing anti-immigrant publics.”

<sup>49</sup>Freeman 1995, p. 885.

also to be found. For instance, *family migration* (that is, immigration for family formation or family unification) can be made conditional upon the success of *prior* integration through, for example, language courses taken in the country of origin (as in the German and Dutch cases). This means that a core component of integration, namely basic linguistic skills, must *precede* admission. Similarly, integration is supposed to take place prior to admission in cases where citizenship is granted to members of *external co-ethnic minorities*, and often (as in the cases of Germany, Hungary, and Greece) almost automatically so, with ethnic belonging taken as a valid indicator of integration.<sup>50</sup> Another inversion occurs when the process does not *culminate* in naturalization but when the granting of (partial, for example, local voting) citizenship rights is conceived of as a *catalyst towards* further integration. In such cases, the stages of naturalization and integration are inverted relative to the standard model. Nor need the chain from the initial entry through admission to eventual naturalization be completed. For many migrants it ends, quite intentionally from their point of view, with the stage at which they have acquired permanent residence rights and (partial) integration, as they are not interested in proceeding to full citizenship. Others, such as business men, managers, or professionals, provided that they import capital or earn high incomes, enjoy the privilege of being excused from any integration requirements. Still others, namely persons coming from *EU member states* and enjoying the mobility rights associated with EU citizenship, may well be in need of integration without having “migrated” beforehand, as their citizen rights apply EU-wide and access and residence rights are available to them upon request. As far as *refugees* and *asylum-seekers* are concerned, the process ends after the second step since, contingent upon improvements in their country of origin, they are expected and often mandated to return home. Lastly, *irregular migrants*, being subject to a generalized negative admission decision (which, however, remains largely unenforceable) by the state in which they are physically present, may (hope to) gain residence rights through some procedure of re-regularization and the long-term official toleration of their presence.

Finally, a rule of prudence is recommended by many theorists and practitioners of migration regimes. This rule refers to a desirable balance between stages one and three of the model, that is, a balance between the quantity and quality/origin of people being admitted at the *present* point in time and the *ongoing* and effective integration efforts the receiving state and its citizens are able and prepared to make. This balance can be tilted in two ways: either the available *programs and institutions* of integration are inadequate to absorb incoming migrants and their offspring or the *numbers and characteristics* of the latter overburden those programs and institutions. Both these frames involve pragmatic policy conclusions concerning the action parameter that can best be used to

<sup>50</sup>Not all states have a full-blown migration regime. When an exclusive *ius sanguinis* criterion for the acquisition of citizenship applies (as in Japan and Israel), only co-ethnic categories of people and descendents of ethnic citizens can be naturalized.

tackle integration problems. Here my thesis is that only the first of these frames and its policy implications actually makes sense, both morally and pragmatically, under present European conditions. That is to say, since numbers and characteristics of migrants are largely beyond the control of public policies (as most of the migrants and their offspring are irreversibly “here” already), any balance must be achieved through the supply of adequate programs and institutions, which is to say: not in space but in time.

What is actually going on in policy terms is a drift of migration regimes and their ongoing reform that follows two principles. First, residence status and also citizenship is made easier to acquire through migration and citizenship reforms adopted by most member states during the first decade of the century.<sup>51</sup> Second, the increased permeability of borders is accompanied by policies of “migration productivism” (even “eugenic” migration regulations<sup>52</sup>), that is, a selective emphasis put on the long term productive contribution migrants can make to the receiving economy and the capacity of migrants to support themselves. The first message is: “you are welcome, wherever you come from.” And the second: “you are welcome, as long as you are a self-supporting net asset for ‘our’ economy and as long as your presence does not raise concerns about ‘security.’ ”

In contrast to a normal contract into which two parties freely enter (supposedly after each having carefully considered their preferences, the alternative courses of action available to them, and the costs associated), decisions to migrate and to allow migrants to enter is a phenomenon full of uncertainties, collective action problems, and problems of myopia. Nor can the decision of migrants to exit their country of origin be taken as typically a “free” decision, since comparatively undesirable economic and political conditions can, and often do, necessitate a move that may well be regretted at a later point. Similarly, the governments of receiving states may be unable or unwilling to assume the responsibilities involved in a liberal regime of immigration. We can therefore conclude that interests, as the standard starting point of “realist” political theory,<sup>53</sup> are unhelpful in explaining and prescribing the design of a migration regime, as these interests are unusually hard to define in the policy area of migration and its regulation. What is needed, instead, is ultimately a yardstick that allows us to distinguish between *morally legitimate* interest and others.

Nor are economic and political interests (including the interests of political elites to appease politically destabilizing mass sentiments and their impact upon party competition) the only causal factors that drive migration policy and the ongoing overhaul of migration regimes both at the member state and EU levels.

<sup>51</sup>Howard 2009. Bauböck et al. 2006a; 2006b; 2009.

<sup>52</sup>Some German Christian Democratic MPs have proposed introducing mandatory IQ tests for arriving migrants. See, for example, Anon. 2010.

<sup>53</sup>Hendrickson 1992.

The growing parts of the migration that is actually taking place are governed by intra-European mobility rights anyway, as well as international conventions (regarding the admission and residence rights of refugees and asylum seekers) and national constitutional law (regarding family rights and the mobility of (prospective) family members). Moreover, there is an unknown but substantial number of *irregular* migrants whose movement is exclusively guided by an individual calculus of gains and risks/losses that escapes regulation through the interests and policies of actors in both sending and receiving countries.

#### IV. DIMENSIONS OF “INTEGRATION”

Of the four terms making up the standard model of migration (entry, residence, integration, citizenship) the term “integration” is by far the most elusive. It is a social construct that is a composite of two dimensions: the (normative) dimension of what members of a migrant minority *must* do in order to reach the status of actually being “integrated” (comprising the *demands* imposed on migrants by authorities and citizens of the receiving state), and their perceived *capacity* to comply with these expectations and to *supply* the expected behavioral contributions to the process of becoming integrated. In other words, migrants and their descendents are coded by actors in receiving societies in terms of what they *must* do (demand) and what they *can* and are typically willing to do (supply). Together, these two dimensions constitute types of implicit “integration theories” that inform policies.

Again, there are four analytically distinguishable cases.<sup>54</sup> If both demand and supply are held to be high, we arrive at a notion of integration that is *assimilationist*: migrants need to comply with *high* standards of conformity with the norms of the majority, and there is *no* reason to assume that, being reasonable and adaptable human beings, migrants (wherever they may come from) are categorically unable to do so, provided they are adequately guided and assisted in the process. The adoption of this type of integration theory logically involves the need to develop a fairly explicit and uncontroversial description of the distinctive normative foundations that “all of us” share as a collective identity, that is, the non-migrant majority; for this is the standard to which migrants will eventually have to conform. While such self-description can arguably be achieved in the case of French republicanism, it has manifestly failed in the case of attempts to canonize a German “lead culture” (*Leitkultur*); and it borders on the ridiculous when migrants are expected to adopt distinctively “Dutch values.”

If we move to the opposite end of our two dimensions we arrive at the *multiculturalist* integration theory: as virtually all people are born into and essentially confined by a cocoon of religious and other cultural identity<sup>55</sup> and

<sup>54</sup>Cf. Offe 1996.

<sup>55</sup>For an effective critique of this most rigid version of multiculturalism, see Phillips (2007, ch. 1).

hence cannot assimilate without a painful loss of that protective shell, it would be seriously unfair to expect them to conform to standards of the majority culture, which in its turn is likely to benefit from (and eventually also to come to appreciate the gains it derives from) the rich diversity of identities that it comprises.

Thirdly, integration can be conceptualized by making high demands in terms of what migrants *must* do while simultaneously *denying* that they will and *can* (ever) live up to those requirements, for reasons that are ultimately rooted in their “cultural genes” (if not their biological ones). This configuration is essentially—or serves as a pretext for—a *racist* construct, as it insists on a notion of integration that is largely premised upon an essence of ethno-nationalist purity to which foreigners cannot have full access (certainly not all kinds of them).

Its opposite is a *pluralist* concept of integration, which combines moderate adjustment demands addressed to migrants with cautiously optimistic assumptions concerning the ability and willingness of migrants to adopt—over the course of two or three generations—patterns of cultural, political, and economic behavior and capabilities that are compatible and ultimately may converge with those of the majority population (which itself is bound to undergo changes in the process). The starting point of this open-ended and bilateral process is the recognition, on the part of long-term residents and naturalized citizens *and* on the part of the non-migrant majority population, of basic constitutional values and procedures. In the spirit of a highly abstract “constitutional patriotism,”<sup>56</sup> these values and procedures can then be employed in the ongoing negotiation of the terms of cultural and socio-economic co-existence. Within the framework of the pluralist integration theory, the viability of its concept of integration is contingent upon two conditions: first, that the majority population is willing to live with and actively adjust to the condition of diversity that is brought about by migration, that is, to integrate *itself* into conditions of ethnic, religious and cultural pluralism. Second, that public institutions (foremost the education system, social services, the media, labor market institutions, and civil society associations such as sports clubs and faith-based organizations) adopt—and effectively deliver on—their responsibilities of helping the integration of migrants and their descendants and the overall management of diversity.

All of these four semantics (as well as the political pragmatics implied) of what is meant by “integration” coexist. They jointly form the background of fluid and fluctuating, often event-driven and resentment-driven public (as well as not-so-public) discourses in a European Union which is soon to face the condition of unrestricted mobility that *European* citizenship involves. With it will

<sup>56</sup>For a discussion of constitutional patriotism in the context of migration, see Müller (2007, ch. 3).

come a new wave of migration-induced ethnic and linguistic<sup>57</sup> diversity—the legal category of “migrants” will become obsolete as a descriptor for citizens of any of the 26 member states being present in any other of them; instead, they will turn, legally speaking, into European fellow citizens.

Of the four ideal-typical integration theories just distinguished, only the last can lay claim to normative validity as well as to practical feasibility. Assimilationism amounts to the imposition of a cognitive frame according to which the ethnicity, phenotypical markers, religion and other dimensions of minority cultures are condemned to insignificance and ignored in the name of official color-blindness. This frame does not work in practice and, on the contrary, nurtures a backlash of identity politics. The “micro-communitarianism” of multicultural migration regimes fails in the opposite direction, as it is plainly not conducive to any gradual approximation of a shared concept of cultural, socio-economic and political citizenship. And the “macro-communitarian” discriminatory approach of ethno-nationalist purity, while in some countries successfully appealing to large political constituencies, is normatively unacceptable as it verges on the categorical denial of human, civil, and social rights to migrant minorities and their descendants. After these simple steps of subtraction, what remains, in both normative and practical terms, is a version of the pluralist approach to integration that emphasizes complementary rights and duties on both sides of the migrant/domestic divide, while conceiving of the problem of integration as a long-term one that must be dealt with over several generations.

In Europe, the major difficulty with this pluralist (or “accommodationist”) approach derives from the fact that European nation states are made up of majority populations the members of which tend to claim for themselves some superior historical legitimacy, both in relation to minority nation(alitie)s and in relation to migratory minorities. “Titular” nations think of themselves not just as majorities, but as *historically validated*, *dignified* and *privileged* majorities, since “we” have “always” been here, which supposedly entitles “us” to unilaterally set the terms that govern the presence of others as a matter of collective self-determination.<sup>58</sup> In contrast, populations of the classical countries of immigration in the Americas and Australia are, as it were, constitutionally aware of the fact that “all of us” (except for the largely marginalized “native” or “aboriginal” populations) are (descendants of) migrants who have arrived at some point in historical time. Although the linguistic (and some legal, cultural and religious) legacies of Portuguese, Spanish, Dutch, French, and, most importantly, British colonialism are clearly visible in these classical immigration countries, these

<sup>57</sup>The EU-27 recognizes 23 official languages, many of them linguistically as remote from each other as Portuguese and Estonian, or Hungarian and Dutch.

<sup>58</sup>If the status of a titular nation is contested and there is more than one nation in a state making claim to the status of titular nation, the state is likely to fall apart. European examples are Czechoslovakia, Yugoslavia, Cyprus and (perhaps soon) Belgium.



legacies have been largely neutralized through successful movements of independence in which *new* nations were constituted. They consist, from the beginning, of ethnically diverse populations of which no part can lay a valid claim to greater historical and political rights compared to others who have migrated. Where everybody is a (descendant of a) migrant, the very category of being a migrant (or of having a “migratory background”) loses much of its significance as a frame of potential legal discrimination.<sup>59</sup> Lacking the opportunity to develop an ethnically-based patriotism, settler societies have comparatively easier access to a “constitutional” version of patriotism, while European nation states are still in the conflict-ridden process of transitioning from a “national” to a post-national or “constitutional” understanding of patriotism and citizenship. This admittedly highly stylized difference between the European and the (North) American/Australian contexts can also explain why issues of the cultural/religious compatibility of migrant minorities are still dominant in the former case, while in the latter the migration regime is unashamedly utilitarian, that is, focused on the balance of human capital gains and integration costs of migrants.

Integration is commonly understood as a process that results in something becoming a constitutive part of (or included in) a whole of which it originally was not a part. Starting with this intuition, we may ask: *into what* are migrants asked to integrate themselves by cooperating with the integration efforts of receiving societies? Answers differ widely according to the type of integration theory that is being used. Six commonly employed categories of integration criteria can be distinguished.

- (1) The ability to understand and speak the *local language* is a widely shared priority, on both sides of the migrant/non-migrant divide. It can be argued for as an encompassing precondition of employability and *economic* life, of a minimum of *cultural* assimilation, and of the ability of *all* migrants (not just linguistically homogeneous sub-groups of them) to develop *political* voice capacities in the polity they now inhabit (rather than the one they—or their parents—migrated from). Failure to read, understand, and speak the local language would thus count as a serious integration deficit, after an appropriate period of presence in the country and provided that formal learning opportunities (language courses, informal encouragement by native speakers) are available.
- (2) Successful participation of migrants and their children in formal *education* (itself premised upon language acquisition) is another measure of integration, which is in turn contingent not just upon the quality of

<sup>59</sup>Needless to say, this logic does not apply to those whose ancestors have “migrated”, yet not voluntarily so, and who, on top of that, are phenotypically recognizable as belonging to that group, namely the descendants of former African slaves in the US. And neither does it apply to those who (in historical time) never migrated, but constitute a “native” or “aboriginal” population.

pre-school and school services provided to them, but also upon low levels of—long term—urban segregation of migrant communities and upon effective limitations that can be imposed on the role of parents in the primary and secondary socialization of their children. Integration can certainly be said to be deficient if parents either fail to send their children to public (or state recognized) schools or if they cause children to boycott parts of the school curriculum (for example, co-ed gym classes). Other educational indicators of failed integration are ethnically specific drop-out rates and the underrepresentation of migrants in the student body of secondary and tertiary education.

- (3) A standard by which the degree of integration can be usefully measured is the “conduct” of soul and body. The former refers, again on both sides of the divide, to recognition of the positive *and negative* freedom of religion of fellow citizens (including adolescent family members), and to respect for the precedence of secular over religious law. The latter refers to styles of dress, food and food preparation, gender and sexual relations and attitudes, and inter-generational authority relations and conduct. It is in these areas of (nominally “private”) everyday life that cultural conflicts over the public use of identity signals are amazingly severe and persistent.<sup>60</sup>
- (4) A further measure of the degree of integration is law-abidingness and a rudimentary cognitive familiarity with the legal order and the principles on which the political system is built (while the basic contents of civic education, for example, knowledge about how laws come into being and so on, are required only for the last stage of the migration regime, naturalization). Group specific crime rates and the presence of ethnic criminal organizations are strong negative indicators in this area.
- (5) Majority populations usually also take a strong interest in defining integration in economic terms, that is, the ability of migrants to support themselves and their families rather than relying on social assistance and unemployment benefits. Negative indicators are disproportionately low enrolment in and graduation from vocational training programs, as well as differential rates of unemployment.
- (6) Strong positive indicators of integration are membership in civil society organizations (for example, sports clubs) of a *non*-ethnic nature, as well as the absence of strong ethnic preferences in the formation of friendships, partnerships, and marriages.

Note that the first segment of a migration regime—the rules regulating the legal crossing of the border of a state—is the only one that takes place in *space*, while the three subsequent stages (residence rights, integration, and naturalization) take place in *time*. In space we can move back and forth, which

<sup>60</sup>Cf. Joppke (2009) as a comparative study of headscarf policies in Europe.

is trivially not the case with time: what happened in the past cannot be undone. The right to *entry* is largely unproblematic to the extent that exit, after a relatively short period of time, can be expected to take place spontaneously<sup>61</sup> or otherwise can be effectively enforced. What *is* problematic is the right to *stay*.<sup>62</sup> The temporal structure of the migration regime is not just shaped by statutory limitations and extensions of the duration of residence rights, or by the length of residence required for naturalization, but most significantly by the temporal chronology of the human life cycle itself: people are born, go to school, learn a trade, earn a living, move to other places, form marriages and partnerships, have children, grow older, retire, and die. In the process, they join associations, enter into all kinds of contracts, practice religious beliefs, fall sick, experience and cope with problems of social and economic insecurity, and participate in political life. All of this is not only what they actually do; it is what they *expect* (and must be expected by others) to do, accordingly make plans about, and build preferences and normative claims about, usually long before they actually do it. They reflexively form life plans. From the beginning of the life cycle (should Muslim women be granted the demand to be assisted by female obstetricians only?) to its end (should deceased Muslims be allowed to be buried without a coffin, with the dead body just wrapped in a cloth?), institutional adaptations and policy decisions need to be negotiated between representatives of the domestic majority and migrant minority or minorities. Apart from the micro-chronology of the human life cycle, there is also a macro-chronology of public policies and the polity as a whole: constitutions are adopted with the intention of making their basic principles irreversible, parties and coalitions of social forces are formed and become entrenched, institutions are built and policies adopted, the collective past is selectively remembered and appropriated, the future anticipated and shaped according to current preferences, and so on.

Along the time line representing the life cycles of successive generations, there is an important distinction between the first generation of migrants who actually crossed a border and later generations who were born to migrants yet never migrated themselves. Since the former (except those that had to flee their country) have made a *decision* to migrate, presumably weighing risks and opportunities, they can be, to an extent, *held responsible* for having made a *right* decision in doing so. Should it turn out (to them) that it was not the right decision, they can, we may assume, eventually return, as their relation with the country of origin can still be fully reactivated. Therefore, arguably, they have less of a claim against the government of the receiving country to be assisted and promoted in their process of integration, than do their children and grandchildren. This is so because the latter had *no* choice as to their place of birth and upbringing. Chances are that they do not have a realistic option to return, for instance because they no longer

<sup>61</sup>This applies to tourism, business trips, and foreign students. It was also (wrongly) assumed to be the case in guest worker programs of the 1950s and 1960s.

<sup>62</sup>Hendrickson 1992, p. 222.

speak the language of their parents or grandparents, or because they lack social networks, or because job prospects and welfare state benefits are absent or inferior in the country from which their ancestors emigrated, so that there are strong interests that speak against even considering the option of returning. For all practical purposes, they are “trapped” and have become rooted in a place where they have not chosen to live. As a consequence, the responsibility of the receiving country for their integration and favourable development is much greater than with the first generation. An analogous difference between generations obtains in the intensity of affiliation with the culture of origin. While someone who arrives as an adult has been exposed to, and exclusively shaped by, the culture of his or her country of origin, that does not apply to the next generation(s). If the problem were one of migration in geographic space, it could be responded to by closing borders. But that is not the case, as the problem is of a “longitudinal” nature, unfolding in biographic time and the sequence of generations whose members are here already and who can neither be forced nor effectively incentivized to return. Retroactive “spatial” options of getting people out who were allowed to settle are no longer available, and neither is the option of closing borders to EU nationals. The only way to cope with the problem of integration—which, among other aspects, is a massive economic and social policy problem of wasting or underutilizing the talents and labor of poorly integrated descendents of migrants<sup>63</sup>—is to improve the arrangements of integration for those whose parents or grandparents originally “earned” the residence rights of which later generations cannot legally be deprived.

People who have themselves migrated made a *decision* to do so and remain *connected* to the society of their origin. In contrast, their children and grandchildren have not made such decision and mostly cannot even consider returning after adolescence. These two differences suggest the following normative guideline: members of the first generation cannot legitimately be expected to adopt the cultural norms (including gaining linguistic proficiency) of the country where they have arrived as adult persons. On the other hand, their claims on the host country in which they have chosen to settle are limited. Thus in both directions mutual claims from the “quasi-contract”<sup>64</sup> are relatively “thin.” They are much thicker, for the reasons just spelled out, in the case of members of the second and later generations. At the end of their adolescent years, they can legitimately be expected not to have fully “assimilated” into the dominant culture, but to be fluent in its language and to have arrived at an amalgamated synthesis of cultural styles, social norms, and traditions of both the migrant minority and the domestic majority. Yet this synthesis does not emerge automatically; it must be cultivated, assisted, encouraged, and promoted through institutions of formal education, family services, the media, work organizations,

<sup>63</sup>For a documentation and statistical analysis of the cost of failed integration in Germany, see Woellert et al. 2009.

<sup>64</sup>Miller 2008.

urban conditions, associative life, and religious and artistic practices. This process of a gradual approximation across generations can succeed, or it can fail. Whatever the outcome may be (with the qualifiers “success” and “failure” themselves being to a large extent a matter of debate), it is hard to disentangle whether “they” or “us” and our institutions are causally responsible for either of these outcomes. If the second generation of migrants turns out to be *more strongly* or exclusively rooted in their parents’ culture of origin than the latter, or if their levels of skills and employability are *inferior* to those of their parents, then clearly something went wrong—be it that parents and migrant communities were affected by the mechanism of *strengthening* their and their children’s identity definition in reaction to the diaspora situation, or be it that “our” schools and other institutions failed to play their proper role in the process of integration.<sup>65</sup>

The normative standard that an acceptable migration regime must fulfil can thus be derived from the *pacta sunt servanda* rule. Once migrants have been given reasons to believe<sup>66</sup> that their presence in the receiving country can eventually be turned into a durable one, the life plans that they make on the basis of this assumption must be honored, and their realization adequately assisted. The problem is not one that derives from the fact that migrants have *come* from some *place* outside of the EU; the problem is the conditions under which they *stay* and pursue their life plans across biographic *time*.

Most importantly, an ongoing and fair process of decision-making must be established concerning the claims both sides can raise against each other. More precisely, there should be three reasonably institutionalized discourses and corresponding procedures. First, the discourse *within* migrant communities where issues of identity, religious and cultural norms, and the political as well as socio-economic demands of these communities are negotiated, within a framework of fair representation of gender and age categories. The presence of such an institutionalized discourse would help to overcome the sectarian fragmentation we can often observe within minorities of migrants, which tend to be divided between “orthodox” currents, with symptoms of seclusion and self-marginalization, versus liberal, even strongly assimilationist, tendencies. Second, there must be a discourse within the *receiving* society, which is typically also divided between, on one side, restrictionist social and political forces and resentments, and on the other, more open-minded ones, with the latter being partly motivated by demographic and labor market concerns and partly by multiculturalist ones. Both of these internal discourses aim at a critical assessment of what are, respectively, “our” histories, traditions, identities, and needs. Third,

<sup>65</sup>To *welcome* such persistence of culturally inherited patterns is the point at which multiculturalist ideologies turn openly cynical, as they discount the socioeconomic and cultural marginalization that victims of such persistence will have to experience.

<sup>66</sup>In France, residence rights are explicitly contractualized. Immigrants are mandated to sign a contract in which they agree to the performance of legal, economic and educational duties on which the duration of their residence rights is made contingent.

these two discourses and their shifting priorities must feed into an overarching deliberative process in which the terms of coexistence between migrants, their descendents, and non-migrants are to be continuously negotiated. The key characteristics of this process are the emphasis on mutual respect, the generation of mutually acceptable reasons, and the absence of majoritarian claims to the effect that the preferences of the domestic population must be taken for granted and must prevail. Institutions that have tried to approximate these ideals are the German *Islamkonferenz* and the French *Haut Conseil à l'Intégration*. They represent a method of building norms and establishing insights that differs sharply from the conventional methods of majoritarian elections, parliamentary legislation, and the processing of conflicts in courts. As such, it can be appreciated on both sides as a welcome challenge to probe into one's own understanding of identity, history, and one's normative essentials, thus contributing to the formation of a political culture that is shaped by a continual exercise in abstraction and reflection. Max Weber's famous "feeling of belonging together" (*Zusammengehörigkeitsgefühl*),<sup>67</sup> which he considered the ultimate foundation of national statehood, would become the result rather than the premise of such reflection. Yet note that we have not arrived at any substantive answer to the (probably unanswerable) question of which moral rights and duties an ideal migration regime should entail. What we have arrived at, instead, is a *meta*-norm concerning morally desirable procedures according to which the previous question should be answered in a given situation and context.

## V. THE ACQUISITION OF CITIZENSHIP

Let us next look at the last stage of the migration model: the acquisition of citizenship, or naturalization. Migrants and their descendants who hold full residence rights, and thus are potential candidates for naturalization, are legally *entitled* (after waiting periods that vary widely between European countries and categories of migrants) to *apply* for citizenship, but they can hardly be *forced* to actually do so and become citizens, least of all if that would imply that they give up (or automatically lose, according to the laws of their country of origin) their original *ius sanguinis* citizenship. On the other hand, political commentators and philosophers have always converged on the view that it is highly desirable, for the sake of the *democratic* quality of the polity, that all of those (adult) citizens to whom the law applies, including long term residents, have (and actually make use of) equal political rights in the making of the law. The political incorporation of long term residents is deemed desirable because the greater the quantitative difference between the universe of citizens and the universe of permanent residents becomes, the closer we would move from democratic equality to a kind

<sup>67</sup>Similarly, Michael Walzer (1983, p. 62) speaks of the national political community as a "community of character."

of majority despotism, defined as a political system where a majority enjoys the exclusive entitlement to make the laws that bind *all*, including long-term resident denizens.<sup>68</sup> It is therefore also in “our” interest that foreign-born long-term residents and their descendents do actually adopt the citizenship of their country of residence, as that will presumably build loyalties to the country and also will prevent them from “importing” political causes and conflicts from their country of origin. Yet as naturalization cannot be mandated or enforced, it needs to result from a free decision on the part of those who are legally entitled to apply. Such decision is, on the part of potential candidates, likely to be shaped by two considerations. First, what do “I” *gain* by transforming myself from a mere long term resident (“denizen”) into a citizen of the country in question? Second, to what extent would I *feel* “at home” in the country of my new citizenship, and feel recognized and respected by relevant segments of the majority society as a fellow citizen?<sup>69</sup> If that is right, the decision to join the political community would be driven by perceived individual *interests* and *emotions*.

The acquisition of citizenship by holders of a foreign citizenship is a transition that is nowhere automatic, as it is when it is acquired through birth by *ius sanguinis* or *ius soli*. In contrast, it always depends upon an explicit decision, initiative, and formal application by persons after they have met certain requirements (such as duration of legal residence and so on). The specific interests of migrants to actually opt for the transition from long term resident status to that of full citizenship are, as a rule, not particularly compelling; as their social and economic rights, having been acquired at an earlier stage of the migration sequence, often do not depend upon being a full citizen. For even without being citizens of their country of residence, they are entitled to vote in local elections (and, in addition, European elections if they hold the citizenship of an EU member state). Thus the first thing that naturalization provides access to is active and passive voting rights at the national level. Secondly, some member states exclude non-citizens from some social services and non-contributory social assistance (“welfare”) transfers,<sup>70</sup> although such discrimination is more often contingent upon the duration of legal residence than it is on the citizenship status. Thirdly and most importantly, only national citizens (and in some countries also EU citizens) have access to public sector employment. Finally, failure to become a citizen involves marginally more limited mobility rights within the EU. Summing up these conditions, we might say that migrants who are not

<sup>68</sup>“On democratic grounds, it appears wrong for someone whose interests are chiefly impacted by the policies of a particular state to have no say in determining those policies.” (Miller 2008, p. 377).

<sup>69</sup>Note that there is one seemingly insurmountable discrepancy between the majority of *ius sanguinis* citizens and newcomers. While the former form a political community, defined as having a common future *and a common past*, including the memories and responsibilities deriving from that past, newcomer citizens share only a common future. For instance, what sense, if any, should a Ukrainian born German medical doctor make of the standard phrase of German political elites that, given the facts of history, Germany bears a special responsibility for the state of Israel?

<sup>70</sup>Howard 2009, pp. 6–7.



particularly interested in the politics of their country of residence, are not poor, earn a living in the private sector, and do not intend to relocate within the EU have at best very limited interest-related reasons to naturalize. Additionally, the acquisition of citizenship is not costless. Not only does it cost the time and effort to attend naturalization courses and pass the respective tests. It also involves in most cases the renunciation of one's own original (or, in the case of the second and third generation, one's parents') citizenship—a move that can be experienced as costly in material and immaterial terms as it involves at least symbolically severing ties to the legal system and the national culture of the country of origin.

Insofar as emotions are concerned, the sense of being excluded or discriminated against, and of being deprived of opportunities and recognition, will certainly not contribute to the readiness to acquire citizenship. The readiness for and the subsequent act of "citizenship acquisition can serve as a rough measure of integration."<sup>71</sup> If this is so, it should be food for policy makers' thought that just over a third of Turks in Germany have actually adopted German citizenship, and that the number of Turks who have chosen to make use of their legal entitlement to do so declined from 83,000 in 2000 to just 25,000 in 2009.

In addition to interests and feelings, the readiness to acquire citizenship status can also be driven by a *rational understanding*<sup>72</sup> and appreciation of the institutional order of the country in which long-term resident migrants and their offspring are to be incorporated as citizens. The acquisition of the cognitive prerequisites of civic competencies can take place through mandatory courses and tests, the introduction of which has been a major institutional innovation in the migration regimes of many EU member states<sup>73</sup> during the first decade of the century. At the same time, not all citizens, but only migrants and their descendants, are mandated to attend naturalization courses and to pass tests, and never is the citizenship of a native born at risk of being lost as a consequence of poor grades they receive in civics classes. This can lead to the perception of discrimination and stigmatization, deriving from a generalizing background assumption that all migrants suffer from symptoms of civic incompetence and ignorance. To the extent that values are taught and the adoption of these values is tested, such procedures invite the objections that (a) what is tested is not the actual adoption of values but rather the adroitness in paying lip-service to them and (b) that immigrants are asked to express value commitments that their domestic-born future fellow citizens have never been formally asked to make, thus amounting to a practice that Joppke has termed discriminatory and "illiberal liberalism" In other words, if you want to become a citizen, then you need to be a citizen that is better than and morally superior to everyone else—which is a

<sup>71</sup>Ibid., p. 8.

<sup>72</sup>In a "thin" Weberian sense, "rationality" is a quality of all matters that can be learnt and taught, rather than emanating from revelation, intuition, habitus, or affect.

<sup>73</sup>Pioneered by the Netherlands, mandatory integration and citizenship courses are now standard routines in Austria, Finland, Germany, France, Denmark and the United Kingdom.

blatant violation of standards of political equality. These three objections—stigma, lip-service, unfair demands—can be countered only by designing naturalization courses in analogy with what is taught in civics courses at public schools of the country of immigration. In this way participants, to the extent they are first-generation immigrants, are provided with the opportunity to “make up” for lessons that they missed as children and youths due to reasons that were beyond their control. Also, tests must be designed to check knowledge and understanding, not attitudes and values. And, almost needless to say, the courses (and, if need be, their repetition in case of failed tests) must be free of charge—just like ordinary public schools.

David Miller has asked the core question of the whole debate.<sup>74</sup> The question is “whether *citizenship alone* is a sufficiently strong cement to hold together a democratic welfare state, whose successful working depends upon relatively high levels of interpersonal trust and cooperation or whether it is also necessary for the citizens to share a cultural identity of the kind that common nationality provides.”<sup>75</sup> In several of his earlier writings, he leans towards the second alternative, arguing in essence that diversity (ethnic, linguistic, cultural, religious, “racial fractionalization” in the US) will demonstrably undermine the functioning of the democratic welfare state. But that argument is a move that I would label “premature empiricism.” For the alleged causal link between diversity and distrust (with which the non-migrant majority addresses migrants and their descendents) is mediated by the attitudes and practices of people of whom it is, to say the least, not categorically inconceivable that they might be able to *change* their habits and, as a consequence, render the causal link between diversity and distrust less forceful. Also, there are arguably *other* causal mechanisms (such as, in Europe, population aging, persistently high levels of unemployment, competitive disadvantages of EU economies under the impact of market-making “negative integration,” austerity responses to the financial market crisis, and the transformation and subsequent defeat of social democracy) that play a greater role in weakening popular confidence in both democracy and the welfare state. Regardless of the answer to that question, I see the greatest weakness in Miller’s argument in the clearly implied assumption that the second alternative, the one that ties citizenship to national culture, is still viable and feasible. Should that assumption be wrong, we are compelled to try to cope with the fact that citizenship is the *only remaining kind of cement* that is still at our disposal.

My thesis is that citizenship is a good that is being traded in what used to be a sellers’ market (that is, the terms of the transaction of becoming a citizen were determined by receiving states) yet is currently being transformed into a buyers’ market. Once upon a time, states were able to make the granting of citizenship

<sup>74</sup>Cf. also Abraham 2010.

<sup>75</sup>Miller 2008, p. 378 (my emphasis).

rights contingent on all kinds of conditions, beginning with ethnic belonging and a ban on dual citizenship. Such demanding and exclusionary conditions are no longer legitimately feasible. As I have tried to show in my review of interests, emotions, and reasons for acquiring citizenship, the status of being politically incorporated in a particular nation state has lost much of its unequivocal attractiveness, and particularly so under conditions of derivative European citizenship. In contrast, what *is* valuable is the status that permits permanent residence and hence access to labor and other markets. It follows that, in order to transform migrants into fellow citizens, much will depend on facilitating their identification with (and their feeling at home in) the political community that *invites* them to join.

Immigration, if all goes well, will not just solve demographic and labor market problems. Moreover, it will provide all involved—migrants as well as “us”, the non-migrants—with a welcome and durable challenge to practice the art of abstraction, which allows us to form and live in a kind of political community that is reasonably robust even in the absence of a much-mystified ethno-cultural “cement” of identity-based fellow-feelings. This challenge will exert an ongoing pressure to think about who “we” are and how our self-identification must be revised and upgraded so as to make it compatible, within the framework of constitutional patriotism, with an equally reflexive self-definition of others and their rights. It is this persistent challenge that would be responded to in the system of three negotiating tables I have suggested above.

## VI. THE DISANALOGY BETWEEN EXIT RIGHTS AND ENTRY RIGHTS

After the end of the Cold War and the Iron Curtain, four human rights norms governing across-border mobility have clearly gained validity and recognition. First, the norm that states are not permitted to summarily “arrest” their own population (for example, by building a border wall with armed guards). Citizens are, as a matter of their human rights,<sup>76</sup> free to leave their country of citizenship; they enjoy *exit* rights. If exit rights of citizens are curtailed in particular cases (think of defendants under criminal prosecution), legal arguments must be provided according to standards of rule-of-law and in view of the individual case. Second, the norm of protection from *coerced* exit. It stipulates that states are not permitted to expel or deport their own citizens beyond state borders (as in cases of ethnic cleansing that occurred in the post-Yugoslav wars). As a corollary, states are obliged to allow the *re-entry* of individual citizens as well as expelled

<sup>76</sup>According to the United Nations Universal Declaration of Human Rights (UDHR) both the physical exit from one’s country (Art. 13 (2)) and the legal exit from the nationality of one’s country (Art. 15 (2)) are guaranteed.

minority groups returning from abroad.<sup>77</sup> The right of *free* exit, in other words, means that the act of exiting must not be paid for by the price of its irreversibility. The horrors of the post-Yugoslav wars and practices of ethnic cleansing have given rise to a categorical revision of the doctrine that was considered valid, throughout the 20th century, that states have the right to determine the composition of their own populations through the expulsion or coercive deportation of minorities or the implantation of settlers who are brought in to replace them.<sup>78</sup> It seems that as a result of the evolution of human rights doctrines and international conventions, nation states have lost much of their competency to select and manage the composition of their populations.

To summarize, exit-related human rights—the right to leave one’s country, the right to give up one’s nationality, the right to do so voluntarily rather than due to being individually or collectively coerced, and the right to return and to resume full citizen rights (in case nationality has not been given up, be it explicitly or by implication<sup>79</sup>)—seem all firmly entrenched. Yet in a world whose land is virtually fully covered by territorial states with their borders, every exit from one state is bound to imply an entry into the territory of another state. This being so, the freedom to exit can be rendered entirely nominal by the absence of the complementary right, the freedom to *enter*.<sup>80</sup> The absence of the latter freedom would thus appear to limit the extent and value of the former. States that limit the right to enter across their own borders can be said to diminish the exit options of an unspecifiable number of potential inward migrants. Without entry rights,

<sup>77</sup>This norm against expatriation that was violated in spectacular and highly consequential ways by the GDR government in 1976 when it denied re-entry to the dissident poet Wolf Biermann when he was trying to return home from a trip to West Germany.

<sup>78</sup>The UN Human Rights Commission unanimously adopted, in 1997, a “Draft Declaration on Population Transfers and the Implantation of Settlers.” Its formal ratification by the UN is, however, still pending. As it was first stipulated in the Dayton agreement of 1995, wherever such dislocations of people have taken place, victims have the right to return and states the obligation to facilitate and desist from obstructing such return.

<sup>79</sup>“Implicit” abdication occurs when second generation *ius sanguinis* citizens live abroad and relinquish their rights and duties from being a citizen. To them applies a negative *ius soli*, as they no longer have a stake in the country from which their parents have emigrated.

<sup>80</sup>People were “walled *in*” by the border and its guards that the GDR government erected around West Berlin in 1961 and that crumbled in 1989; up to 200 people were shot dead during those 28 years by border guards when they tried to cross the wall to enter West Berlin. In contrast, the fences and border control arrangements that the US government installed on the Mexican border were designed to “wall *out*” illegal migrants from the south. Among those who try to cross anyway, an estimated 350 die every year (Pevnick 2009, p. 160)—though not from being shot, but from other causes such as dehydration and accidents. It seems worth reflecting upon the vastly different attention the two cases receive, and also on the fact that “walling in” and “walling out” are not opposites, but amount to the same condition—except that the latter can more precisely be described as “walling in from the outside” rather than by the government of those whose movement is obstructed. Remarkably, the “walling out” of people seems to be a much more justifiable practice than that of walling them in, although the former can cause the same (or greater) amount of human suffering and death. The answer may be that if state A blocks the entry of citizens of state B, they remain free to try it at the border of states {C, . . . , N}, whereas such freedom does not apply if state B walls in its own citizens.

somewhere, exit rights are meaningless. The same applies for immigration rights of one state without emigration rights granted by all other states. Yet the complementarity that exists between exit rights and entry rights, or so I wish to argue, is a highly *asymmetrical* one. For the two categories of rights differ in four respects. First, exit rights involve just *negative* duties of a respective state (at least if we disregard the trivial positive duty to provide travel documents), while entry rights imply *positive* duties of the receiving state (for example, duties to provide police and basic health protection even to short term visitors, at the minimum). Secondly and closely related, exit is a single event that takes place at one *point* in time, while entering another country can cause a whole *chain* of events, and the more so the more durable the stay is. To put it differently: granting access to immigrants involves an embryonic contractual relationship between immigrant and receiving state, while granting exit effectively terminates, at least for the time being and until a possible return, any contractual relation. Third, the loss (or gain) of (human) capital that exit can cause to the sending country can normally only be measured at the level of aggregate externalities, that is, the loss depends on *how many* people leave within a period of time; while the gain (or loss) that occurs in the receiving country can be attributed to concrete individuals and their interaction in local settings at their point of arrival. Finally, the duty to grant exit rights to would-be emigrants applies unambiguously to the state of residence/nationality alone, while the duty (if any) to grant entry rights is shared among all potential countries of destination. Therefore, if a person is denied exit rights, she or he is severely deprived of *all* rights to cross-border mobility; whereas, if denied entry rights by a particular state, there remain others, though perhaps less attractive ones, to turn to for admission. If that is so, denial of access to immigrants amounts to a comparatively lesser violation of rights than denial of exit.<sup>81</sup>

This would be different, and hence the complementarity of exit and entry rights would be more symmetrical, if either of the two following conditions were to apply, one objective and one subjective. The objective condition is that the world consists of just two countries, A-land and B-land, which means that the refusal of A-land to receive migrants from B-land amounts to the categorical *denial of exit rights* to citizens of the latter. The subjective condition applies when in a multi-country world a preference order exists (across all potential migrants) of the form: admission to country A > stay in country of residence > admission to countries {C, . . . , N}. In this case, the denial of admission to country A would amount to the cancellation of the *desire* of inhabitants of country B to *make use* of their exit rights. As these two constructs are evidently of a nearly absurdly counterfactual nature, the above claim of asymmetrical complementarity holds.

<sup>81</sup>This asymmetry manifests itself in the generalization that “emigration does tend in practice to be far freer than immigration, which is highly controlled by most countries.” (Kleven 2002, p. 73.)

I propose to conclude from these considerations<sup>82</sup> that entry rights granted to immigrants are, in morally perfectly legitimate ways, more qualified and restrictive than are exit rights granted to emigrants. As a consequence, (long term) migrants' liberty to leave is more extensive than their liberty to arrive, to stay, and to be incorporated into their desired country of destination. Correspondingly, states' duties to let people go are more binding than receiving states' duties to let people come and stay. This having been said, we need to determine what *justifies* the gap between the extent of exit rights and that of entry rights and how a fair balance between the two, or an *appropriately* asymmetrical complementarity, can be designed.

Rephrasing the problem in terms of the two core norms of liberal political theory—individual self-determination through rule of law and collective self-determination through representative democracy and external non-interference with the “internal” affairs of states—we get the following result: in the (typically rich) destination countries of migrants, collective self-determination trumps the individual self-determination of individual migrants, while the opposite is the case in (typically poor) sending countries with their strictly limited rights to restrict individual emigration moves in the name of their collective and long term interests. This configuration of priorities clearly favors the rich countries of destination, as it maximizes their options to “harvest” global labor power and talent according to criteria that they remain perfectly free to determine without any significant outside interference. This asymmetrical interdependence between the two types of countries calls for normative standards and practical measures that can restore a measure of symmetry and fairness.

Let us first look at countries of emigration. As we have seen in the rough account of interests given earlier, the typical case of poor sending nations is the combination of a long term individual interest and also, though ambiguous, a long term state interest in letting people emigrate. The ambiguity results from the fact that among the people who leave will be some who are (or will soon be) urgently needed for building the country and maintaining its infrastructure. Their absence causes a negative externality at the aggregate level (in the form of a shortage of human capital and skills), though that may be partly offset by positive externalities at the micro level of families who receive remittances from income earned abroad. If the negative externalities are seen to exceed the positive ones, sending countries suffer a net damage. As a consequence, governing elites may be tempted to make the emigration of skilled workers legally more difficult for them and thus to interfere with their exit rights, particularly given the fact that the skilled strata of the domestic work force are those increasingly in demand abroad. But outright violating the exit rights of skilled workers—building the equivalent of a Berlin Wall, as it were—is not the only way to control emigration.

<sup>82</sup>This is in contrast to attempts to establish a strictly symmetrical (or “consistent”) relation between exit and entry rights (cf. Goodin 1992; Ypi 2008).

*Incentives* can be used (and are in fact widely used in contexts as different as soccer clubs and universities) to make people refrain from *using* their right of exit while, *as* a right, it remains fully intact. Another option for controlling emigration without undermining the right to emigrate consists in the *contractual* abrogation of the right for a specified period of time, with contractual penalties being imposed on violators. The same applies if some international regime were to be set up which imposes restraints on the hiring of skilled labor from poor countries. Still another option is to establish an exchange mechanism such that receiving countries assume the responsibility to send, within the framework of a mandatory or voluntary service program for young people<sup>83</sup> set up by these countries, one “man-year” worth of development aid in return for every man-year worth of foreign labor admitted.<sup>84</sup> Such services could be rewarded by partial tuition waivers for returning students, who would also benefit from the experience. Finally, similar compensation could take the form of granting fellowships for college and university study (with contractually mandated return clauses) for student migrants from a country in proportion to the foreign labor (legally) employed that originates from that country. I mention these options just to demonstrate that the greater stringency and extent of exit rights compared to entry rights, if it involves burdens such as a brain drain for states obliged to grant exit rights, can and should be mitigated by means other than the denial of exit rights.

Now, the immigration countries and their (qualified) obligations to grant entry rights. The argument so far has been that their obligations to grant rights to entry (and stay) are more limited than the obligations of sending countries to grant exit. That proposition, however, does not yet answer the subsequent question: what are morally *unobjectionable reasons* to design admissions in ways that are selective and restrictive?

The discriminatory granting of entry and residence rights can be positive and negative, as well as quantitative and qualitative. In either case, discrimination is not to be morally excluded, provided that such discrimination can be justified—and if so, not just to local constituencies, but to the hypothesized figure of the “neutral spectator.” *Negative quantitative* discrimination (limiting the quantity of people allowed in) can be justified with reference to an existing discrepancy of flow and stock. That is to say: we, the host state, have admitted so many migrants in the past that admitting more of them now would threaten the prospects for integrating those who are here already and who therefore, because they have developed a legitimate “stake” in living here, deserve to be given preference. Yet this justification would lose much of its validity if it could be demonstrated, in response, that the country in question has short-sightedly failed to provide migrants with the appropriate arrangements within the

<sup>83</sup>US examples are AmeriCorps and Peace Corps.

<sup>84</sup>This idea was suggested to the author by Micheline Ishay.



educational, housing, and labor market systems which are prerequisites for their successful integration. *Negative qualitative* discrimination occurs when it is based upon assumptions and suspicions about the cultural incompatibility of categories of migrants (for example, by religion, by gender, by country or region of origin), or upon the anticipated costs and frictions resulting from their presence. The logic of this attempted justification is what I have called “racist.” The only respectable argument that could be made here would refer to the manifest failure or unwillingness of migrants to learn and use the local language. Such linguistic failure, however, would manifest itself only *after* an extended period of exposure to the language community in question. Furthermore and happily, the ability to learn a particular language and to use it, at least at an elementary level, is known to be a universal human capacity.<sup>85</sup> The analogous objection of “it remains to be seen” (and cannot be presumed *ex ante*, at least not at the individual level) applies to the closing of borders to those who are deemed unable to support themselves and their families. Whether or not they in fact are unable will turn out only after they have entered.

*Qualitative* and *positive* variants of discrimination use two criteria. First, capital, in particular scarce human capital, and second, ethnic or regional affinity of migrants with the prospective host society. The first is taken as a token of the economic assets the migrant represents, often assessed by using a point system; the second as a token of the “integration costs” (including ascribed security risks) the migrant and her or his offspring will cause. As far as the first is concerned, it is likely to cause damaging externalities on the human capital pool of the country of emigration; if so, these effects can be morally defended if compensatory mechanisms are in place of the kind I have mentioned when discussing them as alternatives to the limitation of exit rights.

Finally, the quantitative and positive combination is not really a variant of discrimination, but an expansionist strategy that is motivated by the need of host countries to stabilize and improve their demographic structure. Take the example of Germany. It is the most “polyethnic” country in Europe, with nearly 20 per cent of the resident population having a “migration background” of various sorts.<sup>86</sup> Among all experts on the matter, there is virtually no disagreement concerning the prognosis that by the year 2050 the resident population of Germany will have fallen from 82 to 69 million people, or by nearly 16 per cent—unless, that is, a massive wave of new immigration is allowed in. Thus a rational policy response would seem to be to avert this “sudden” shrinking and aging of the population, together with the associated crisis of production and

<sup>85</sup>Here is a problem of circularity: if the right to stay is made contingent upon some linguistic proficiency, this may stimulate learning efforts; it may also *demotivate* them, as the anticipation of having to leave may make such efforts appear in vain.

<sup>86</sup>At the same time, incidentally, the country is one of the least “multinational” ones in Europe, having the smallest autochthonous population—just about one per cent—with recognized ethno-linguistic minority status.

(intergenerational) distribution, by opening borders as widely as possible and providing for more effective integration and human capital formation. Given this demographic emergency, there should remain little leeway for discriminatory admission practices.

This instrumental and consequentialist policy orientation should certainly trump all restrictionist qualifications of the right to entry, as I have just discussed them. In reality, however, it turns out that this unequivocally rational expansionist policy approach is, in its turn, trumped by what might be called “democratic myopia.” Given the overwhelmingly restrictionist attitudes and preferences of constituencies (which, in their turn, are nurtured by poor integration results), policy elites feel that they simply cannot afford to act rationally without risking being punished by voters. Compared to the 1950s and 1960s, the logic of “democratic myopia” has remained the same, with just the algebraic signs inverted. In the earlier period, the post-war boom caused policy makers, largely responding to employers’ interests, to permit a *great* influx of “guest workers” without providing for appropriate integration arrangements that (quite foreseeably) would be needed for them in the medium term. In the present period (and largely responding to popular resentment and the fear of populist mobilization), an overly *restrictionist* approach is maintained in spite of the foreseeable negative consequences of this approach for the demography and the political economy of European welfare states, their labor markets, and pension systems.

## VII. CONCLUSION

I conclude with a negative proposition concerning the normative foundations of migration regimes: it is unpromising to make an argument for open borders that is based on a concern for *distributive global justice*. To be sure, migration regimes can be designed so as to provide protection to (some of) those who come as refugees and apply for asylum. But the question “would open borders lead to an international redistribution of wealth that benefits the globally worst off?”<sup>87</sup> must clearly be answered in the negative. First, it is not the worst-off in the sending countries who migrate in the first place, as these typically lack the material means and other resources they would need to migrate.<sup>88</sup> Second, open borders would withdraw human resources from the countries of origin which would be needed in order to improve the economic, as well as the political, conditions in these countries. If global inequality is what is to be remedied by an appropriately designed migration regime, it would have to be a regime that (a) is sharply selective as to the countries whose citizens are allowed in and that (b) entails strong conditions of mandatory and definitive remigration to the country of

<sup>87</sup>Bauböck 2009, p. 4.

<sup>88</sup>Miller 2005, p. 198.

origin, as well as mandatory remittances. Both of these conditions are unlikely to be adopted and enforced in a liberal polity. If we want to heal the injustices of global distribution, designing a migration regime is neither a promising nor a realistic place to start.<sup>89</sup> Yet if the promotion of global justice is clearly too demanding a normative standard to which migration regimes must comply, seemingly less demanding ones—such as procedural fairness, non-majoritarian modes of conflict resolution, the non-discriminatory provision of labor market and educational opportunities, and the curbing of some educational family rights—remain normative challenges to which European migration regimes still need to fully and adequately respond.

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<sup>89</sup>That does not preclude efforts of, in particular, BRIC countries to benefit from student (re)migration. For instance, the idea of attracting back “home-grown but overseas-nurtured” talent is incorporated as a major policy objective in the 11th Chinese five-year plan. This idea illustrates the fact that remittances can take the form of both monetary transfers and human capital transfers.

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