

Global Citizenship: The Case of Migrants and Residents

By

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Migration: A Political Issue

Migration constitutes a particularly challenging paradox of the globalizing age. On the one hand, migration is facilitated by a number of developments including easier international transports, increased IT technologies, and higher financial capabilities. Accordingly, individuals nowadays can travel easily, know more about the destination countries, and have (relatively) more money to pay for their movement. On the other hand, however, migration is constrained by normative, political, and legal barriers erected by receiving countries. Principles of political communitarianism, nationalistic and racist feelings and the legal privileges of national citizenship prevent individuals from moving to the richer countries of the global north. Economic reasons are played out in both directions equally to attract working force when needed, and to repel labour competition when under the threat of unemployment. Hence global practical possibilities are constrained by national normative limits.

The kind of global vs. local tension underpins the (non)-management of the issue of migration at the international and global level. While international migration is increasing putting under pressure the current institutional framework, the kind of response that is given to it remains within the limits of national policies. Beyond the exceptional case of the Geneva Convention on Refugees (created in a very different international context for a very specific category of migrant), there is no effective and comprehensive international institution dedicated to the issue of migration. The International Labor Organization (ILO) has during the years elaborated a number of conventions but they remain depressingly unattended. Limited cooperation is achieved within the General Agreement on Trade and Services (GATS) for what concerns high-skilled workers only. Also, limited cooperation is developing through a number of UN conventions on illegal migration, human smuggling and trafficking. Regional cooperation, such as the case of the European Union, is more significant, though being territorially delimited it reproduces the logic of state management writ large. All in all, the general and more quantitatively significant case of economic migrants is left to the free will of national policies, with no international regime emerging for its collective management.

Two practical considerations related to the power position of receiving countries explain why the issue of migration is stuck in such a desolating stalemate (Zolberg 1992; Koslowski 2004). From an economic point of view, the economies of the rich countries can collect working force from poor countries whenever they need, for foreign labour is in abundant supply globally speaking. Consequently, states do not need to commit to any long-term inter-governmental agreement for they can always—bilaterally or unilaterally—open up their borders and immediately fill the labour gaps in their domestic economic system. Instead, from a political point of view, receiving countries are continuously under pressure from an electorate that is often threatened by (real or perceived) menaces generated by the inflow of foreigners. Employment, national culture and even public institutions are usually depicted by (not exclusively right-wing) political parties as destabilized by the integration of alien members.

In this paper, I develop a normative argument with the intent of providing a better defense of the idea of a world migratory regime by bridging two different discourses. Normative arguments based on the ideal of cosmopolitanism will be used to prove the case for the re-thinking of the notion of citizenship and global democracy. In particular, this paper will begin by setting the definitional characteristics of the migratory phenomenon and of the political concept of citizenship, and will proceed to a survey of current policies regarding migration. The core argument about the cosmopolitan interpretation of migration and citizenship will then be introduced. Finally, some political institutional recommendations will be offered on the cosmopolitan governance of migration.

Migration: A Matter of Citizenships

In a sociological sense migration occurs every time one moves from the original community (defined, among other, by a net of social relations with reference to a defined territory) to another one. Local migration has always been a constitutive phenomenon of human history. Although the main character of societies has been their permanency, there has always been collective displacement of people. Moreover an important, often unregulated, feature of socio-economic systems was movement of specific groups of people such as merchants, slaves, soldiers, artists, scientists, and those escaping from dangers and looking for a better fate. The conquest of the 'new world' gave a strong impulse to long-distance migratory fluxes towards the North and the South American continents from Europe and Africa. In the following centuries up till this day, both voluntary and forced movements of people had increased substantially thanks to the new opportunities offered by the technological progress of the industrial revolution applied to the means of both communication and transportation. The linguistic heterogeneity present in almost every idiom is probably one of the clearest evidence of the continuous and persistent relationship between peoples throughout human history.

In this paper, however, another kind of definition of migration is used. Reference is made rather to the political than to the anthropological meaning of movement. While the sociological interpretation refers to phenomena that are almost as old as society itself, their political reading is more recent and is concerned with admission into foreign political society. A strict definition of immigration, in fact, needs to rely on the modern concept of citizenship and therefore of the nation-state. A conventional and symbolic date, which is used to signify the start of a new nation-state model of active membership, is considered to be August 26 1789, the Declaration des droits de l'homme et du citoyen. It is, in fact, from the period of the formation of the modern nation-state, that the distinction between e-migration and immigration and all the relative discriminations arise, which marks the difference between political communities today. More recently, at the beginning of XX century, another concrete and equally relevant event was the introduction of the passport as a compulsory means of trans-border travel. And finally, in recent decades a continuous tightening of the admission requirements has brought about the current state-centered apparatus (Torpey 2000; Salter 2003).

In this context, citizenship is understood as the set of entitlements that allows the acquisition of a full community membership that is the central element of any democratic political theory. Membership as the right to participate in the collective exercise of self-governance is also the core principle of most of the contemporary constitutions nowadays in force. Conventionally, three different sets of rights can be distinguished according to their scope: civil, political, and socio-economical rights (Marshall 1950). Two major principles of citizenship have been adopted throughout history: *jus solii* and *jus sanguinis*, integrated by the practices of naturalization. While the first grants citizenship to everyone born in the territory of the country, the second considers blood relationship as the marking element of distinction. This formed the base of the traditional concept of allegiance, according to which loyalty is due to one's own country, regardless of any other kind of secondary responsibilities extending beyond borders. This stance is, however, increasingly under pressure both from a normative point of view for its inconsistency with fundamental principles of impartiality, and as a matter of fact, for the increasing number of states that recognize the possibility of double or even multiple nationality (Habermas 1992, 2002).

The Origins and Policies of Current Migratory Institutions

Migration is commonly included in the list of the global issues, and yet is almost exclusively managed merely by national or regional policies¹. This 'disconnect' reveals a fundamental normative contradiction between claims (that are universal to all humans) and the communitarian entitlements (upheld by mainstream political philosophy as well as national and international laws). The most blatant example of this contradictory logic at work is possibly Article 13 of the Universal Declaration of Human Rights

adopted by the UN General Assembly in 1948 concerning the right to leave (but not to enter into) any country.

International law has played an important, and yet discontinuous, justificatory role in keeping the legal setting of migratory policy domestic. Although recognition of the human rights regime has grown substantially over the last fifty years as it has slowly challenged national sovereignty in many aspects, the alien's right to admission is still a solid prerogative of the state. But this has not always been the case. In the first stages of *jus gentium*, which were anchored to the tradition of the Law of Nature, in fact, the duty to admit the alien was accepted as standard; it was the expulsion of the alien that was considered exceptional. Vitoria, Grotius, and Pufendorf all recognize the principle of freedom of movement, together with a number of minor limits. Minimal rational principles common to mankind supported a legal system in which domestic and interstate relations were consistently linked. The *jus societatis et communicationis* and the *jus commercii* were the driving principles of the scholars of the Law of Nature regarding movement of people (Vitoria 1539; reprinted 1917; Grotius 1625; reprinted 1925, 1, II, § XIII and XV; Pufendorf 1672; reprinted 1934, 1, III, § III). This perspective was accepted for a long period.

Later on, the dominion theory and its subsequent developments, in exact opposition to the principles of the law of nature, formed a paramount historical and theoretical source of legitimacy for the current exclusionary attitude toward migration and citizenship. According to such a theory, citizenship was originally considered a good belonging to the state, whose right of property extends over its territory. The imperia on people, an expression of the dominium on the territory marked by the principle *qui in territorio meo, etiam meus subditus est*, granted the state absolute power over the political and social existence of individuals within its domain. Afterward, an important significant contractual variant was inserted into this tradition, which substantially modified the ethico-political justification of the state, but left intact the normative distinction between insiders and outsiders. With the American Revolution, and, above all, the French Revolution, in fact, citizens acquired an active part in collective decision-making and in the exercise of sovereignty, but the fundamental power to determine civil inclusion remained strictly the group's prerogatives. The universalistic law of nature coexisted with the domestic contractual framework, but a consistent and definitive synthesis was never established.

Until the beginning of the 20th century, this coexistence was well suited to the socio-economic circumstances. These principles, in fact, underpinned and legitimized a situation where both the country of destination and country of origin had a clear interest in favoring migration, as in the case of the migration from Europe to America. When the 'golden age' of free trade ended and a tougher nationalistic political era took the center-stage of international relations alongside protectionism, migration policies changed too. Suddenly, within a few decades most countries adopted entry limitations inspired by domestic political and economical ends. It was, in fact,

the supposed protection of domestic labor markets and welfare systems that convinced governments to invent new forms of barriers.

Thus while for many centuries a substantial trans-national flow of people characterized both the internal and the external image of many countries (Spencer 1993), today the situation is largely different. Current international customary law, which is consistent with the dominium theory of sovereignty, holds migration standards to be contrary to the original formulation of the *jus naturae*. While the formal difference consists in the switch from the moral to the legal status of law, the substantive change concerns the legitimate criteria for entrance. An absolute right to refuse admission is granted to the state. While sovereignty is threatened in other respects, legislating the admission of immigrants is one of the instances in which state prerogatives are most obviously still intact. Provided no relevant conventions or humanitarian measures are applicable², the refusal to admit the *alien* is never an illicit act. However, if an *alien* already resides in the national territory the right of the state to remove him/her is partially limited; accordingly, there is no absolute right to expulsion (Goodwin-Gill 1978, 136; Nascimbene 1984, § 6). The only agent towards whom the state has an international duty of admission, are its own citizens.

A Normative Argument

One way of re-interpreting the issue of immigration, as an historical development of the original dominium theory (through citizenship), happens through progressively drawing limits to state sovereignty according to international superior laws. Usually this interpretation implies considering migrants in the negative light as *aliens*, or non-citizens or non-subjects, the state being accepted as the only agent entitled to confer such privileged status (Nascimbene 1984, § II). This approach typically corresponds to the image of concentric circles, according to which the starting reference is the group (or even the family) and from there on progressive enlargements are envisaged. This mechanism inevitably generates exclusion. By contrast, the approach that this paper advocates is diametrically opposed to it: it is, instead, cosmopolitan and all-inclusive from the beginning. Migrants are considered cosmopolitan citizens entitled in certain degrees to rights which extend to different spheres of political action, for they have as great an ultimate right to freedom of choice and control over the decision-making processes world-wide as do 'permanent' residents. In accordance with a new concept of universal membership based on a de-territorialized notion of person's rights, this paper develops an argument for a consistent global democratic regime able to grant not only civil and social, but also political rights to migrants, through a legitimate migratory regulatory system.

Cosmopolitan Citizenship: Weighing Residents' and Newcomers' Claims

At the world level, a proper conception of political agency has to acknowledge the need for the enlargement of the current view of political agency. Traditional politics draws on a conception of responsibility and vulnerability, usually pertaining to the state domain, which is too narrow to deal properly with the ethical problems exacerbated by the increasingly global dimension of political life. In such an interdependent political situation, social freedom depends on the extent to which the individual can express his consent in several political domains. In this regard, world citizenship engenders a more consistent political means to address the phenomena which in fact affects one's life, and a more effective way of aligning one's personal with one's political identity (Linklater 1998; Hutchings & Dannreuther 1999; Dower & Williams 2002). Underpinning this is a concept of complex citizenship, according to which individuals and collective agents are entitled to a multilevel citizenship and, as a consequence, a political voice in the decision-making process at all socio-economical levels (Pogge 1992; Held 1995; Goodin 1996; Marchetti 2008a). This new interpretation of political agency is particularly significant in those cases, such as that of transnational migration, where traditional state-centric conceptions of citizenship demonstrate an increasing inappropriateness, both moral and political.

Two principal dilemmas centered on the notion of citizenship challenge any normative political theory which aims to deal with the theme of migration: how to deal with the received migrants, and if and how to admit new would-be migrants (Schwartz 1995; Bader 1997b, 2005; Seglow 2005; Juss 2006). Despite some recent attempts to consider migration from a wider perspective including a more global approach—a receivers' point of view still dominates in the normative literature on migration. Both explicitly nationalistic (Walzer 1981; Miller 2000; Meilaender 2001; Miller 2003) and globalistic scholars (Carens 1987, 1989; Bader 1997b) commonly adopt the partial perspective of the receiving countries, in as much as admission to a country is considered the principal (sometimes the only) turning point of the entire issue. As an alternative to this, a radical repositioning of the receivers is developed, and the shift from the state-centric paradigm of national membership to a truly global political principle of residency and multilevel citizenship becomes the turning point for the renewal of the cosmopolitan paradigm, and a unique chance for the social and political development of the theory and practice of democracy. In opting for a different vantage point based on an all-inclusive perspective, this paper thus deals with migration within a larger conceptual framework that includes a further crucial element, i.e. the institution of multilevel citizenship as inherently anchored to the distribution of international responsibility.

With regards to the political reading of migration, the cosmopolitanism argument on the movement of people stems from two

different observations: one descriptive and one prescriptive. In factual terms, migration is considered principally and inevitably as a global issue in that it refers to social phenomena primarily concerning the world level of political action and producing international effects. International inter-dependence is utterly evident with reference to the phenomenon of migration. International events such as the fall of the socialist regimes in Eastern Europe, the unleashing of civil wars, or the North-South divide- all constitute powerful international push-factors for migration. More, once migrants (are forced to) move, they “choose” their country of destination not only for the specific characteristics of the would-be receiving country, but very often by a comparative assessment of the remaining countries’ rules of admission. Asylum is, for instance, often sought in the most open countries. If a country restricts its admission rules, the remaining countries will receive an increase in requests of entry, as in a system of water-pumps in which when water goes down in a container, it goes up in the other. In normative terms, instead, the fundamental ethical postulate regarding cosmopolitan impartiality demands the extension of the application of the norm of non-discrimination also to the global level (Singer & Singer 1988; Goodin 1992; Marchetti 2006).

An interpretation of cosmopolitan citizenship in terms of freedom of movement forms the core of this paper. The fundamental principle of political justice is affirmed in the maximization of individual freedom of choice, as a tool for the maximization of social welfare (Marchetti 2005). In line with this universalistic and consequentialist reading of normative politics, equal status of cosmopolitan citizenship is granted to both migrants and receivers for what concerns individual possibility of choice. Accordingly, it takes as a primary object of concern the capacity of individuals to modify their personal choice possibility through changing place of residency, and thus, to pursue control over the political system and, *a fortiori*, over their own future. A cosmopolitan citizenship characterized by these entitlements becomes a *de facto* crucial institutional factor in order for the individuals to increase (but sometimes even simply to implement) their possibility of choice among differing life options and their capability to govern the social-political domain, by changing their place of residence. It is possible to argue that as much as at the domestic level the right to movement over the national territory has proved crucial in the self-realization of one’s personal projects, an equivalent international right would be equally beneficial to the welfare of the individual, in terms of choice opportunities and political control of one’s own life (Nett 1971, 218).

Nonetheless, for this to be consistent with the multilevel dimensionality of political life, an impartial weighing mechanism between the claims of migrants and those of local citizens has to be simultaneously envisaged. Having argued for a universal right to movement, it is here necessary to point out again that such a right has to be inserted into a wider institutional political framework, in which other different kinds of rights also have legitimate claims. While migrants and residents are equal on the basis of a fundamental right to the protection of possibility of choice, they may

nonetheless differ in that the social performance of their relative institutional entitlements—i.e. national citizenship—may become unbalanced. In this vein, the institution of national primary citizenship is only warranted to the extent that its long-term social performance consistently matches with the demands of the institution of cosmopolitan citizenship. Accordingly, different associative ties of the kind of national citizenship may gain a definitive legitimacy only through a comparative assessment with the migrants' conflicting entitlement. Such a comparative assessment between different citizenship-related entitlements is based on the expected capacity of each set of rights to contribute to the maximization of personal autonomy, intended as individual possibility of choice.

Open or Closed Borders?

A number of theoretical consequences pertaining to the status of the citizen are generated by the re-balancing of the notion of citizenship according to an impartial, global caliber of membership claims. The multilayered notion of cosmopolitan citizenship by definition entails political membership at different levels. While state membership would still remain inevitably subject to some constraints (e.g. not all can be American citizens), second order, global citizenship is characterized by all-inclusiveness (e.g. all can be world citizens). In this way, consequentialist cosmopolitanism grants to individuals civil, social and political rights in more than one country, and the complete parity of rights related to residency between local people and migrants (Goodin 1996, 357-62; Carter 2001, 109).

Accordingly, the state-centric point of view should be rejected for at least two reasons, which in different ways concern the principle of non-discrimination. Firstly, in conceding an almost absolute privilege to original residents, state-centric policies unequally weigh the fundamentally universal claims of individuals to equal choice opportunity. Secondly, the nationalist orientation should be rejected for the way it intentionally discriminates among would-be migrants, admitting only those who satisfy entry requirements shaped on the needs of the receiving countries. In fact, it is very often the case that current policies of admission filter the in-flow of would-be migrants in accordance with one-sided considerations based either on economy (their potential to contribute to domestic economy) or politics (the cultural, social or religious affinities to national society), leaving the remaining vast majority of would-be migrants unjustly excluded, without the right to appeal.

The radical alternative of completely opening-borders 3 here and now should equally be refused for a number of distinct reasons related both to migrants and to receiving populations. Concerning the former, a policy of open borders would be most likely self-defeating, in so far as it would subvert the expectations of would-be migrants themselves. The motivations to move of the would-be migrants in fact include the possibility to reach a specific country with its distinctive cultural, social, and economic context.

However, an unlimited inflow of foreign people would probably not be sustained by the destination country without a radical reshaping of its fundamental characteristics, thus disappointing the original objectives of the migrants themselves. As for local residents, their expectations should also be taken into account and with equal weight. At the moment, it is plausible to assert that most citizens of the potential receiving countries are not willing to accept such a universalistic policy, nor are their politicians. Where borders suddenly and completely open, the likely result would be a disruption of social identity and political institutions, with potentially huge social costs. The possibly most evident case of socio-political disruption caused by open borders was the in-flow of Jews in Palestine after WWII. With that, Arab Palestinian context was wiped away and the new state of Israel created on completely different grounds without much consultation of local residents. In this respect, the communitarian stance is partially right in claiming the importance of social identity and institutional traditions (Ackerman 1980, 95; Perry 1995, 110-24).

Since fully closed and fully open border policies are not viable in the near future and yet the right to movement is universal in principle, the subsequent problem then becomes, how to distribute a scarce good equally (i.e. the right of residency in a any state). The constraints, which, drawing on Humean terminology, I call the 'circumstances of migratory justice', consist in the fact that many want to enjoy the relevant good (i.e. right of residency), and yet such a good is not infinite at the national level. This situation is further aggravated by the current "win-or-lose all" process that continues to haunt the lives of many migrants everyday. Migrants refused at the border lose everything, while those who make it through (by chance or illicit means) win the 'gamble'. Those migrants refused (who may well have greater ethical grounds for wanting admittance) are excluded by a jungle system, where physical force and social power very often decide the result, beyond any moral constraints. The sacrifice of a few migrants (actually many lives) represents then the tragic cost of sustaining an unjust system: a cost which includes that of the other would-be migrants who remain at home, the legal migrants who have already been accepted, and the local population.

The response of cosmopolitanism to the arbitrariness of the present mechanisms for entering consists in a moralized and impartial treatment of the distribution of the permits of residency based on a universal right to movement embedded in an impartial global weighing mechanism. According to this cosmo-political interpretation of citizenship, the only viable solution to the distributive problem of admission consists in a kind of 'regulated openness' (Ghosh 2000, 25) or 'fairly open borders' (Bader 1997a) to be managed by an all-inclusive global institutions in charge of balancing the conflicting claims of residents and migrants. As argued elsewhere (Marchetti 2008b), since the issue at stake is global in kind, an adequate response cannot be other than equally global. In this regard, the establishment of international institutional framework of migratory cosmopolitanism, migration forms an essential component of the cosmopolitan model here envisaged.

Conclusions

To the original point of contention represented by the moral unaccountability of state migratory policies, this paper has suggested a cosmopolitan answer. The arbitrariness of the admission criteria has been criticized through the adoption of a radical change in political perspective, whereby migration and citizenship has been re-interpreted as global moral issues. The core of this cosmopolitan argument resides in a particular interpretation of the idea of a universal right to free passage, which takes into account the “circumstances of migratory justice”. In arguing for such a view, the key step consists in the recognition of the necessity of ‘framing’ the political responsibility for migratory regulation in full global terms. The political recommendations deriving from this recognition suggest the creation of a new system of international cooperation. The latter in particular, entailing the adoption of a convention on migrants and the establishment of a supra-national cooperative agency to manage migratory fluxes.

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Notes

¹ For a very recent attempt to deal collectively with this issue see (Global Commission on International Migration 2005; United Nations 2006). However, an effective implementation of such a proposal still seems far in the future.

² The UN Charter; the Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (1966); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and the Geneva Refugee Convention (1951) all impose some limits on state sovereignty, according to the principle of non-discrimination. So do, other recommendations and non-binding documents from diverse international organisations related to the issue of migration such as the UNHCR; ILO; IOM, and WTO. The EU system is a *sui generis* institution, for while granting complete freedom of movement to its members, it is increasingly exclusionary toward non-members. It is important to remark, however, that these international agreements represent exceptional and external constraints on the original state entitlement to administer membership rights. In particular, they require the equal treatment of the aliens once they are in the national territory. Yet, only very rarely do they comment on the admission itself, except in the case of reunion of minors to parents and refugees.

³ (Carens 1987; Wihtol de Wenden 1999; Bhagwati 2003; Winters *et al.* 2003; Hayter 2004; Kukathas 2005; Pécoud & de Guchteneire 2005)

