21ST CENTURY MIGRATIONS: FLUXES, POLICIES AND POLITICS

**EDITED BY
SILVIA CAVASOLA AND RAFFAELE DE MUCCI**

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INTRODUCTION

SILVIA CAVASOLA

CONTEMPORARY MIGRATIONS, A VERY PLURAL PHENOMENON

It is profoundly wrong to talk about contemporary *migration* – as in singular form – as the phenomenon is inherently complex, heterogeneous and *plural*. Notwithstanding a general oversimplifying tendency after political and mediatic convenience, contemporary migrations represent an authentic puzzle of experiences that is as disparate as humanity itself.

There are many migrations: some of them feared and obstructed, while others cheered and even encouraged by individuals and institutions of different political colours. Whereas on the one side stands the group of the so called "*mass*" *migrants*, on the other one can find the relatively small but dynamic group of the "*exceptionally mobile*" (Favell, 2008, 35), that is, young and well-educated individuals who move across borders carrying along a high social capital and a strong determination to properly invest it. *Exceptionally mobile* is the group of individuals whose stories are often told and admired in the newspaper pages of Southern European countries, where the number of "highly skilled" feeing to countries that have better resources to absorb their talents has been on the rise for over a decade. It is the individuals who the European Union is counting on to create an ever more unite, integrated and competitive Europe in the current context of the *global competition for talent* (OECD, 2008; Cavasola and Vitiello, 2014).

It is interesting that the two groups, that of the "*mass*" *migrants* and of the *exceptionally mobile*, often happen to be attracted by and intersect in the very same cities. European capitals such as London, Bruxelles, Paris and Amsterdam have in the past years attracted rising numbers of both categories, as each of the two plays an equally important role in the modern mobility panorama. On the one hand, *exceptionally mobile* parents, whose life in the City allows a better job and career perspectives, create a high demand for the *mass migrant* nannies taking care of their kids while they are out properly investing their talents. The services offered by *mass migrant* nannies (or cleaners, or waiters), on the other hand, become an indispensable commodity which valued and prized much higher in cities that attract *exceptionally mobile* individuals than in cities that do not.

The substantial differences between the migratory trajectories of exceptionally mobile individuals and the other migrants is mirrored in the language that is commonly used to refer to these two categories of transnational individuals – both in aca-

demic and popular discourse. High skilled migration is most often referred to as "mobility", whereas only mass migration is conceived as migration *tout court*. Similarly, qualitative literature on the topic shows that it is very uncommon for highly skilled movers to be conceived as migrants: they most often tend to be described by themselves and others as "expats".

Still, the sometimes-sharp differences between the two groups should not lead to believe that these are internally homogeneous. The group of mass (low-skilled) migrants, for example, tends to be characterized by heavy internal stratification depending on as language, ethnicity, gender, religious beliefs etc., each of which might make some migrants *more unwanted than others*. Similarly, reasons for migration also represent a powerful factor impacting the individual migratory experiences and chances for integration. For example, whether migration is a forced or a free choice of the individual tends to have a huge impact on individual migratory trajectories, as people fleeing wars, life threats, persecutions or severe political, social and economic instability normally face different challenges and opportunities in host countries than those having moved with the intention of ameliorating their socio-economic position.

Also highly skilled movers might differ substantially depending on the reasons and circumstances of their migration. One just needs to think for example about the difference between "first-movers" and "followers", that is, typically, the ones that move after a study or career opportunity on the one hand, and those who follow their partner or family member in their enterprise. The difference that characterizes not only the migratory life experiences of these two, but also the respective formal status, rights and legal treatments they have access to, is in some cases very sharp. Furthermore, also among highly skilled movers, some are *more wanted than others*, and variations in the job offer in the destination country according to the specific economic, social and political instances determines which profiles are most welcome.

If on the one hand it appears that migration is as old as humanity (Massey et al. 2005), one the other hand it is also a fact that modernity and technology have profoundly changed the way migration happens. Global communications and modern markets transactions have caused twenty-first century migrations to lose their traditional "one way" character – with migrants being either pushed out and pulled in of countries – and to become much more "multi-directional". Indeed, with the enlargement of the horizons for participation, identification and care beyond, below and across the national level (Isin, 2002; Sassen, 2008), contemporary migrations have come to be characterised by a large extent of transnationalism.

To be sure, many of the seasonal workers of post-WW2 experienced some "multi-directionality" in their going back and forth between home and host countries. However, those kinds of "circular" migratory trajectories were generally linked to specific work arrangements and limited to a specific group of people. What is new to contemporary migrations, is indeed the extent of the transnational component which, featuring large number of migrants maintaining frequent and intense exchanges with both home and host countries, has turned these mobile individuals into new key actors onto the global arena.

The transnational component of contemporary migrations is so important that it has transformed not only the way people migrate, but also the relationship between the individual and the State. While in the past national citizenship used to be the principal form of membership to a polity – with individuals being either "members" or "aliens" – contemporary migrations have complicated the membership panorama by opening up possibilities for schemes of differential inclusion (Mezzadra and Neilson, 2012).

At the EU level, the long-term residence status (LTRs) represents an emblematic example of such differential membership, since it gives non-citizens "rights (…) as near as possible to those enjoyed by citizens" (EC, 2003, n.109), while keeping them from exercising key citizenship rights (ex. vote). Created to ensure that immigrants' access to the right of family life and other fundamental rights, the LTRs (also known as resident-alien status – for paradoxical that it may sound), has de facto contributed to the setting up of a new membership system that is parallel to that of national citizenship.

The emergence of differential membership statuses within national borders has been taken by some as the sign of the emergence of a post-national kind of membership (Sosyal, 1994). In a world in which States have ceased to be the only sources for the protection of individual rights, and new and multiple sites of claim-making have emerged above and beyond national boundaries (Sassen, 2008), some indeed argue that for immigrants nowadays "the real prize is residency, not citizenship" (Spiro, 2008). According to these authors, the new avenues for membership that have opened up for migrants have opened the way for a serious devaluation of the institution of national citizenship, turning it into an anachronistic legal status with no real practical utility.

Still, other authors argue that the rights that the new systems of "differential inclusion" provides to immigrant look more like generous *concessions* than actual *rights* (Joppke, 2010; Morris, 2002). In this view, the status of contemporary immigrants resembles that of some sort of *privileged non-citizens* (Hammar, 1989) who, while being welcomed as contributors to the productive system, are kept away from all relevant decision-making activities. What these authors seems to suggest, overall, is that being born on the lucky side of the "birthright lottery" (Shachar, 2009), and therefore holding the "right" citizenship status, still retains its traditional power to determine individual life chances.

Whether the the emergence of new, non-national forms of membership have strengthened immigrants position in host societies, or rather accrued their precariousness, is beyond the scope of this short introduction. However, it is important to underline, as some do (Mezzadra and Ricciardi, 2013), that membership is not just about a formal "status", with its included package of rights, but also and very importantly about acts, practices and – why not – individual feelings. The idea is that the weight of national citizenship cannot be measured exclusively in terms of the package of rights that it gives access to, as that represents only part of an institution which also carried deep implications at the social and cultural level. This is indeed a key point, as contemporary migrations are characterized not only by the struggle for rights, but also by the social and cultural challenges related to immigrant integration in host countries.

How does the current puzzle of memberships impact contemporary societies' ability to integrate newcomers? Are we all becoming "universal persons" (Hansen, 2009, as cited in Joppke, 2010, 84), whose lives and solidarities are no longer shaped by the boarders we happen to live in? Are twenty-first century migrants pioneers of this change? While not hoping to provide answers to all these questions, this volume offers some insights on the complexity that characterises the contemporary migratory panorama. At a time at which migration hits the very top of international political agendas, and has converted into a central concern not only of States, but also of families, enterprises and overall public opinion, this work collects contributions of a number of scholars observing various aspects of the phenomenon under the magnifying lens of political science and sociology.

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IMMIGRATION AND MULTICULTURALISM

RAFFAELE DE MUCCI

A FEW QUESTIONS TO FRAME THE ISSUE

1. How was multiculturalism born? At the beginning it was a "melting pot". It was deemed the historical foundation of American integration and it represented the society as a big mortar where all the cultural differences and origins were "crushed" and assimilated, just like in the famous "pesto" condiment. Many believed it represented a model for all multi-ethnic societies. But, over time, the "pesto" went bad. And so multiculturalism imposed itself as the new recipe to feed Western societies searching for effective and painless solutions to exit the cultural impasse of their isolated identity. Not a "pesto" sauce anymore, but a mixed and colored salad, where different ingredients coexist in the same bowl while still maintaining their individual taste (Joppke, 2004).

2. How can it be defined? Multiculturalism is a type of political management strategy for inter-ethnic relations that focuses in giving value and respecting every difference in customs, culture, religion or ethnicity. Born in the mid-eighties, multiculturalism progressively affirmed itself in the United States and then Europe, but its origins date back to at least twenty years earlier, when in the western society the matter of "difference" started to make its way into society in the context of the traditional culture advocated in the '68 and with the ethnic and nationalistic claims of the Decolonization. The intensifying of the migratory phenomena and of the globalization led to the definitive passage between a culture of uniqueness to the cult of difference (Kymlicka, 2010).

3. What are the main aspects of the concept of multiculturalism? The historian Francis Fukuyama proposed a version of "good multiculturalism": a corporate multiculturalism or "globalization multiculturalism" of sorts that by applying the economic approach used by multinational corporation focuses on the spreading of the same consumptions between the various life-styles of different social, ethnic and cultural groups (Fukuyama, 2007). Of the opposite opinion is the Italian political expert Mr. Giovanni Sartori, who believes that multiculturalism is "bad" by definition because it considers society as built on separate and segregated identities. Sartori counters the American "recipe" proposed by Fukuyama by proposing the "European model of pluralism and tolerance" understood as the "correct management of diversities" (Sartori, 2000).

4. What does the European Union do to improve the integration of immigrants? *Integration of third country nationals* is a European Union financing program for the promotion of integration of non-EU citizens in the European Union member states. Its goal is to promote the dialog in civil society, develop integration models, and spread and give value to best practices in the field of integration. The contribution made available to the 25 member states in the year 2005 was 5 million Euros. In parallel, the EU has finalized an "Handbook on integration" to spread the best practices fine-tuned in Europe to governments and public authorities dealing with integration: training, political participation and inter-religious dialog. The manual was presented at the end of 2004 and it highlights the need to involve unions, foreigners' associations and employers.

5. Which are the integration models in Europe? Europe oscillates between two types of integration models: the French "assimilation" one and the English "multicultural" one. Both are struggling. The first focused on integration founded on an exchange: granting of "republican citizenship" in exchange for a privatization of the religious creed (for example, the prohibition to wear a veil in French schools). The British multicultural policy allowed public spaces to ethnic or religious minorities under the form of "collective rights" to support the harmonious coexistence between different groups within a liberal and tolerant society. How did they fail? In France, many French citizens of second and third generation (children and grand-children of those North-African immigrants that a few decades ago chose to become French citizens) refused the old style "assimilation" under the republican concept, and the riots in the suburbs in November 2003 or the protests against the 2004 that forbid the use of the Islamic veil in schools were clear examples of this. In Great Britain, vast sectors of the Islamic world refused to recognize themselves in the laws of the country, forming a hostile and isolated minority. The British public opinion could be summarized in a sentence of the African-Arabic Labor Party's member Trevor Phillips, Chairman of the Committee for the equality of the races published in an article of the Times magazine: «Multiculturalism does not mean that everyone can do whatever he wants in the name of his own culture» (Vertovec, Wessendorf, 2010).

WHAT KIND AND HOW MUCH MULTICULTURALISM

Let's look at the following figure to understand the effective size of the problem through comparisons.

The countries were evaluated based on an official affirmation of multiculturalism: multiculturalism in school curriculum; inclusion of representation/ethnic sensitivity in public and media licenses; exemptions from dress codes in public law; acceptance of double citizenship; financing of ethnic organizations to support cultural activities; funding for bilingual and mother tongue education; and affirmative action for immigrant groups.
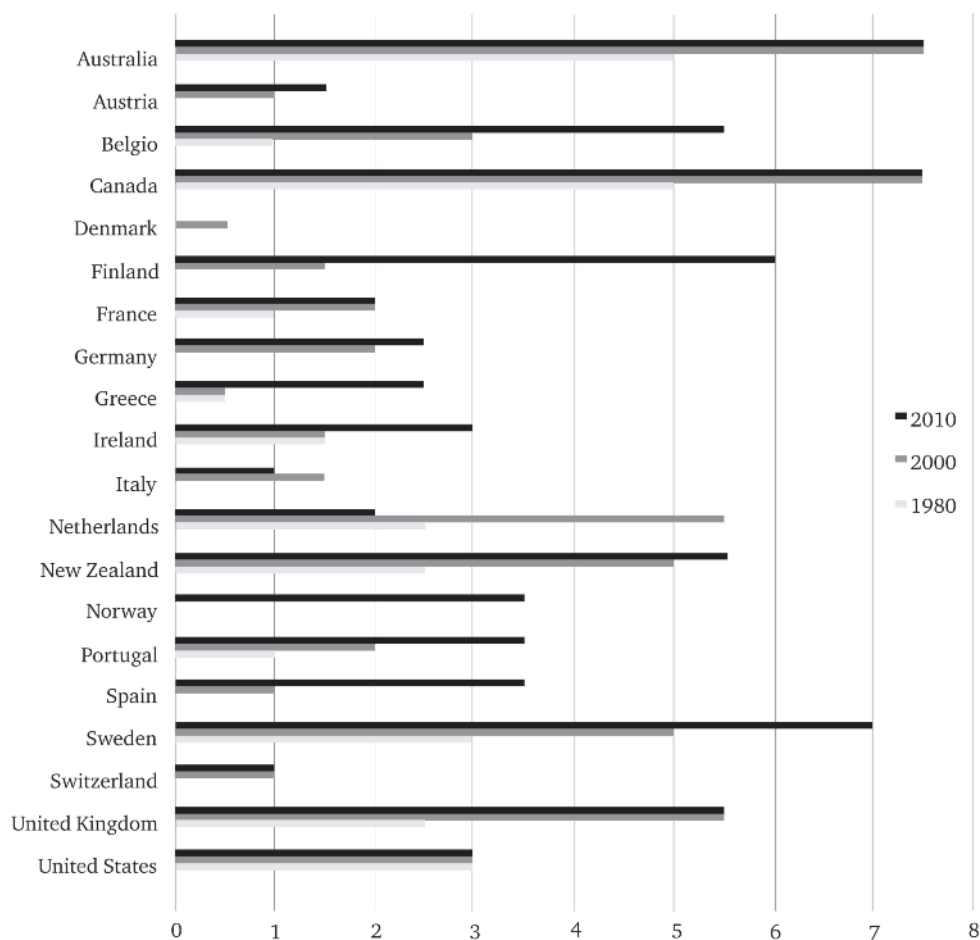
Figure 1. Multiculturalism Policy Index Scores for Selected Countries, 1980-2010.
Notes: The absence of a bar for a particular year indicates a score of zero on the multiculturalism policy index for the country that year. Source: *Multiculturalism Policy Index*. Accessed September 2011 (Available Online).

This type is similar to those of researchers using alternative measures, such as the one created by Ruud Koopmans and colleagues in 2005 or built by the *Migrant Integration Policy index* (MIPEX). The evaluations drawn indicate that, despite Chancellor Merkel's promotion of the principles of multiculturalism, Germany is not a country that practices strong multicultural policies. Indeed, Denmark, France, Germany, Norway and Switzerland are among the least multicultural among all the countries among those assessed, although Germany over time has adopted a greater number of policies inspired by multiculturalism. Belgium, New Zealand, United Kingdom, and the United States rank as moderate multicultural countries, while Canada and Australia sit at the top rank, having adopted the widest array of multicultural policies. In many of the analyzed countries, we find an increase in the number of mul-

ticultural policies over time. Sweden's multicultural policies in 1980 and 2000 can be classified as modest, for example, but by 2010 they were more widespread and significant (Koopmans, 2010). Spain and Portugal, countries with international migration flows of very little relevance in 1980 and correspondingly very weak in multicultural policies, have moved to a moderate level of multicultural policy in the developments of the migration dynamics starting from 2010. This suggests that the real policy in many countries has been affected by moving towards greater respect for the values of pluralism, despite widespread political rhetoric around the perception of diversity issues. Naturally, political developments are a moving target. While the general trend is towards a greater range of multicultural policies in most Western countries, some nations, like the United States, have not experienced any considerable change in national multiculturalism. Holland and Italy both had the lowest scores on the MCP index in 2010 and in 2000. It is unclear at this time, however, if this is the beginning of a downward trend for multicultural policies, or whether it is to be considered an abnormal datum (Bloemraad, 2006).

MULTICULTURALISM, PLURALISM, AND IMMIGRATION

How much do multiculturalism, social cohesion and the integration of immigrants have to do with the policies on multiculturalism? The promotion of pluralism and respect towards diversity stand in conflict with social cohesion and with the integration of immigrants, or is multiculturalism a path towards incorporation? The topics brought forth by the theorists of multiculturalism suggest that, recognizing and respecting the culture of minorities, the members of these communities will feel closer and more involved in the political system that hosts them. The critics say instead that an excessive emphasis on diversity exacerbates the differences, undermines a collective identity and hinders shared political projects – from supporting the armed forces, social benefits, and redistribution policies. They also fear that by promoting multiculturalism, the minorities are left to segregate in communities where they conduct "parallel lives", delaying the learning of the language of the country's official language, hindering the economy and weakening social ties and, therefore, the social capital with individuals belonging to different ethnic enclaves.

The empirical research on these issues was limited, and the conclusions on the socio-economic consequences of multiculturalism are rather varied. Certain studies state that facilitating ethnic closure – an assumed consequence of multicultural policies – prevents or discourages immigrants from competing in the broader labor market, which leads to a higher rate of unemployment and social assistance (Barry, 2002). Others state that it is precisely the maintenance of social capital, ethnic and cultural, which facilitates educational attainment by the second-generation immigrants' children and the second-generation natives (Koopmans et al., 2005). The truth could be somewhere in the middle of these two positions, as it is not clear what mechanisms link multiculturalism to outcomes such as employment or education. The policies of the job market, educational institutions, and economic integration

in the social state structures likely have a higher influence in respect to the multiculturalism policies.

As for the civic and political integration of immigrants, the consequences of multiculturalism are more pronounced. Immigrants who live in countries that adopt multicultural policies are more likely to engage in non-violent political activities toward their country of residence rather than their homeland, making more likely a relationship of trust with the government. Ultimately, the less widespread are the chances of discrimination based on their belonging of a "different" group, the higher the likelihood of becoming citizens of the host country. According to the Organization for Economic Cooperation and Development (OECD), 89% of immigrants of working age (15-64-year-old), that lived in multicultural Canada at least ten years, had adopted the Canadian citizenship in 2007 – a high amount in respect to the acquisition of citizenship of the same population of immigrants in countries with few *multicultural* policies. From 2007, only 57% of immigrants in Denmark obtained Danish citizenship, 47% in France became French citizens, and 37% in Germany obtained German citizenship. To the extent that we consider citizenship an indicator of civic "incorporation" and an additional factor facilitating integration, political or economic access to the job market, we find greater integration in countries with more developed multicultural policies.

However, although multiculturalism reinforces civic ties and the immigrants' sense of inclusion, the negative perception of multiculturalism by some politicians and right-wing parties in various European countries is based on the fact that some people are very alarmed on the issues regarding diversity. Seven out of nine studies carried out on the anti-immigrant behaviors monitored in the course of time, the researchers found stable or increasingly negative attitudes towards immigrants, especially in Western Europe, while only two studies document more positive trends. The distinction between the various meanings of multiculturalism becomes important in order to understand the potentially different answers that the social majority of a country provides to ethnic minorities in that society and how the government deals with this diversity. However, much of this opposition reflects concerns about "demographic multiculturalism", namely the growing pluralism in Western societies caused by immigration. Thus, even the politicians in *multicultural* countries manifest some ideas contrary to the idea of multiculturalism (Parekh, 2006).

CONCLUSIONS

Can multicultural policies improve the potential negative reactions from members of the majority group to demographic multiculturalism, or could such policies exacerbate them? Very few research studies examine this issue with concrete data. A study on 19 western nations found that, in societies are grappling with the problems arising from migration, multicultural policies seem to mitigate or reverse the erosion of confidence or political participation that may occur in relation to situations of demographic change (Kesler, Bloemraad, 2010). In contrast, another study found

that residents of countries with the most multicultural policies might move towards more exclusionary schemes of national identity in the past decade (Bloemraad, 2011). These findings raise difficult questions for academics and policymakers on how to evaluate the preferences of the majority against the interests of minorities. The majority of the population could express limited support for policies for the recognition of political minorities – an attitude that some politicians support and encourage. Evidence shows that multiculturalism probably facilitates the socio-political integration of immigrants and contributes to their sense of civic inclusion. It is possible that, in the medium and long term, the effects of multicultural policies could also benefit the majority of residents. If the integration of minorities is facilitated, greater civic and political cohesion could follow and prevent the negative consequences that can result from feelings of exclusion and marginalization among minority residents. Given the tone of the current debates and the political climate in some countries, however, the maintenance and expansion of multicultural policies could be in danger.

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THE OPEN SOCIETY AND THE STRANGER

SIMONA FALLOCCO

STRANGERS ARE NOT UNWELCOME IN ATHENS

«Western Europe's current demographic decline is likely to reiterate [...] the problem of workforce shortage. In the first quarter of the next century those who were born in 1945-1965 will be in age of retirement. By then, both the old-young ratio and the level of dependency of the European over-65 will reach their peak. The huge number of over-65 will still act on the market as buyers, thanks to the means provided by the social security, whether public or private. The problem will not lie in the demand, but in the supply of productive workforce. That being the case, immigration will act as a balancing force, a sort of "natural graft" encouraged by productive enterprises and families. As immigrants will inevitably come from civilizations different from ours, the problem of the preservation of our system of values will be more pressing and will increasingly draw the public attention [...]» (Baffi, 2013, pp. 90-91).

These undoubtedly forward-looking words were written on *La Stampa* by Paolo Baffi – economist, banker, and former Governor of Banca d'Italia – on 3 June 1989. Baffi was denouncing the mistakes made in the South-East of the World, both in foreign policy and economy, and was warning the highest representatives of Western economy, finance, and politics of «their duty to encourage the virtuous potentialities of the East, the South, and the West, in order to level global inequalities» (ibid.). As an advocate of liberalism – formerly he had been pupil of Lionel Robbins at the London School of Economics, and collaborator of Luigi Einaudi at Banca d'Italia[1] – he believed that, in attempting to preserve of our system of values, the problem did not reside in the open society itself but rather in the illiberal policies promoted by its enemies, convinced that those thorny issues could be solved by restricting individual liberties.

According to Karl Popper, the Open Society is «not really a sort of State nor a form of government, but rather a way in which the coexistence between human beings is built on individual liberty, non-violence, protection of minorities, and defence of the weak» (Antiseri, 2002, p. 139). The most effective instance of such conception

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1. Cf. Infantino (2013, pp. 39 & ff.).

of human society is Fifth-century-BC Athens: here, no individual was bearer of the whole truth, since all held different worldviews and cooperate with each other[2].

In Pericles' funeral speech, as reported in Thucydides' *History of the Peloponnesian War*, we read:

> «Our constitution is called a democracy because power is in the hands not of a minority but of the whole people. [...] And, just as our political life is free and open, so is our day-to-day life in our relations with each other. We do not get into a state with our next-door neighbor if he enjoys himself in his own way, nor do we give him the kind of black looks which, though they do no real harm, still do hurt people's feelings. We are free and tolerant in our private lives; but in public affairs we keep to the law. It is because it commands our deep respect. We give our obedience to those whom we put in positions of authority, and we obey the laws themselves, especially those which are for the protection of the oppressed, and those unwritten laws which it is an acknowledged shame to break» (Thucydides, II, 37-40).

In Athens, economic liberty, political development, and the growth of knowledge are tightly bound between each other: economic liberty, especially carried out through trade, requires a relationship with the Other (and the Different), the exploration of new ideas and beliefs, openness to commerce, and critical discussion, while it can only take place within a pluralistic, democratic society; and for a society to be open, there cannot be a single philosophical or religious creed imposed upon others as a legitimising source of political power. In Athens the free circulations of goods went along with the free circulation of individuals. Strangers permanently residing in the *polis* (called metics) constituted a fundamental part of society, regardless of their wealth: they participated in commercial activities and could be admitted to phratries, while they were granted the rights – which required a special public decree – to own estates, attend the *agora*, stand judgment, observe the cult of their native gods, serve in the army, etc. By granting these liberties to all strangers, Athenian society was acknowledging their contribution to the development of the *polis*, whereas an exclusivist or autarchic policy would have slowed down, if not impeded, Athens' expansive growth[3].

Clearly enough, what made possible such peaceful coexistence of different philosophical worldviews and religious creeds within the same community was the rule of law – establishing as it did the legitimate boundaries of individual action – and particularly the principle of equality before the law, which facilitated the circulation of knowledge, and granted all citizens the full liberty to pursue their own ends[4].

Ever since Solon's reform, which took place in the Sixth century b C., Athenian

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2. Another example of the sort is given by Middle-Age Toledo, where christians, jews, and muslims could leave in peace without having to renounce to their traditions. Cf. Menocal (2009).
3. Cf. in this regard Thompson (1949), where it is observed that the Solonian constitution was meant to encourage immigration as a solution to Athenian insufficient workforce.
4. Cf. Infantino (1999, pp. 28-51).

institutional history consisted in the constant growth of a normative environment favourable to social cooperation. We may thus agree with Benjamin Constant, who claimed that among all ancient states the Athenian *polis* is the closest to modern state, whose liberty «must consist of peaceful enjoyment and private independence» (Constant, 1819).

Conversely, Sparta is the clearest example of the "liberty of ancients", epitomized by the collective and direct exercise of an illimited and all-embracing sovereignty, to which all is subject and individual independence is sacrificed. There could be no liberty outside the political community. Accordingly, Sparta must be considered a "closed" society: «All private actions were submitted to a severe surveillance. No importance was given to individual independence, neither in relation to opinions, nor to labor, nor, above all, to religion. The right to choose one's own religious affiliation […] would have seemed to the ancients a crime and a sacrilege» (ivi). Tribalistic in character and ruled by a rigidly disciplined military caste (i.e. the Spartiates), Sparta refused to trade with foreign countries, fearing that imported goods could introduce new requests and new ideas; and, for the very same reason, Spartiates carefully watched over foreign visitors and frequently banished undesirable strangers[5]. In the long run, such inclination toward isolation and autarchy prevented, despite Sparta's military success, any economic, political or cultural growth, which could only have been granted by freeing individual energies.

Any closure to the Other and the Different is a missed opportunity which acts like a boomerang, impoverishing society under all respects. In the next paragraphs we will see what follows from the above considerations, with regard to the social figure of the "stranger" and especially to the problem of mass migrations.

SOCIOLOGICAL REPRESENTATIONS OF THE STRANGER

The etymology of the word "stranger" is quite straightforward: it probably comes from the ancient French word "estrangier", derived in turn from Latin "extraneous", i.e. "coming from outside", "foreigner". Moreover, Latin preposition "extra" corresponds to Greek preposition εξ, which we find in the word ξένος, with which ancient referred to "those who do not belong in a community".

Since the beginnings of sociological thought, and especially in the first half of the Twentieth century, the stranger has been described as a marginal, borderline figure[6]. According to Georg Simmel, who conceived it as the "form" of the sociology of groups, the stranger is part of the group (*ingroup*) without having a real membership (*outgroup*); the stranger is the very embodiment of ambivalence, of the boundary, of the frontier. The stranger is the emblem of a new "constellation" of human beings, simultaneously including the dimension of nearness and that of distance: «The stranger is thus being discussed here, not in the sense often touched upon in the past,

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5. Cf. Rostovcev (1926).
6. Cf. Tabboni (1990, 2006) and Pollini-Scidà (2002).

as the wanderer who comes today and goes tomorrow, but rather as the person who comes today and stays tomorrow. He is, so to speak, the potential wanderer: although he has not moved on, he has not quite overcome the freedom of coming and going. He is fixed within a particular spatial group [...]. But his position in this group is determined, essentially, by the fact that he has not belonged to it from the beginning, that he imports qualities into it, which do not and cannot stem from the group itself» (Simmel, 1950, p. 402). More specifically, the stranger is not seen as an essentially positive element: coming from a distant place, in fact, the stranger forces us to confront with the new and the different, and to redefine the limits both physical and symbolic of the group and the individual who belongs in the group, thus eliciting anxiety, fear, and a sense of uncertainty.

Obviously enough, as this figure establishes some relationship with the members of an integrated group, there can be no "stranger" without a group that considers itself as such while perceiving the newcome as extraneous: «The stranger is close to us, insofar as we feel between him and ourselves common features of a national, social, occupational, or generally human, nature. He is far from us, insofar as these common features extend beyond him or us, and connect us only because they connect a great many people» (ivi, p. 406). The social and relational condition of being a stranger is thus connected to the very concept of extraneity: from this point of view the relationship is asymmetrical, taking place on the territory where the group resides. And it can turn into a source of conflict in «all cases in which it is precisely general attributes, felt to be specifically and purely human, that are disallowed to the other. But "stranger", here, has no positive meaning; the relation to the stranger is a non-relation; the stranger is not considered a member of the group itself. Thus he is close and distant at the same time, as is characteristic of relations founded only on generally human commonness. But between nearness and distance, there arises a specific tension when the consciousness that only the quite general is common, stresses that which is not common» (ivi, p. 407).

Influenced by Simmel's reflections, the so-called "sociology of the stranger" would later focus on the role of the stranger as expression of traits which are different from those of the established group. The figure of the stranger is thus outlined as follows: an immigrant endlessly divided between two cultures, suspended between two worlds and belonging to both identities at the same time.

Later on, the school of Chicago would develop an analysis of the stranger as a social phenomenon emerging from modern migrations toward metropolitan areas. In particular, William I. Thomas and Florian Znaniecki, in their early twentieth-century work on Polish farmers in Europe and America, explored the condition of incertitude and social disorientation of immigrants moving to a new environment, characterized by behavioural models and values different from theirs and to which they find it hard to adapt[7]. Robert E. Park stressed even more the condition of marginal-

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7. Znaniecki will return on the subject in a 1931 essay dedicated to the concept of "extraneity", in so far as it is connected to the figure of the stranger and source of conflict between the integrated group and the stranger. Cf. Cipollini (2002, pp. 19 & ff.).

ity experienced by migrants as soon as they came in contact with the new society[8]. Thus he described the "marginal man" as an individual permanently in crisis, hanging in the balance between two cultures none of which he seems able to choose. But he is also a symbol of emancipation – as he severs his bonds with old norms and traditions – of secularisation, and individualism; he is reflective and self-aware, cosmopolitan, freer and thus potentially an actor of change[9]. If, however, he does not succeed in driving change, he can then provoke conflicts. The risk he is constantly running is that of ending up being even more marginalized, or eliciting aggressive and racist reactions against those features that apparently cannot be assimilated – e.g. somatic traits, language, religion. It thus emerges that predisposition toward identity crises which is frequent among members of highly differentiated societies.

The figure of the stranger as migrant has also been analyzed by Austrian sociologist Alfred Schütz. It was Schütz who explored the typical situations in which a stranger need interpret the cultural models (the "thinking as usual") of the social group he is joining. To the stranger, «the cultural pattern of the approached group does not have the authority of a tested system of recipes [...]. To the stranger the cultural pattern of his home group continues to be the outcome of an unbroken historical development and an element of his personal biography, which for this very reason has been and still is the unquestioned scheme of reference for his "relatively natural conception of the world"» (Schütz, 1944, p. 502). Yet, in approaching a group, the stranger «has to "translate" its terms into terms of the cultural pattern of his home, provided that, within the latter, interpretive equivalents exist at all. If they exist, the translated terms may be understood and remembered; they can be recognized by occurrence; they are at hand but not in hand. Yet, even then, it is obvious that the stranger cannot assume that his interpretation of the new cultural pattern coincides with that current with the members of the in-group. On the contrary, he has to reckon with fundamental discrepancies in seeing things and handling situations. [...] In other words, the cultural pattern of the approached group is to the stranger not a shelter but a field of adventure, not a matter of course but a questionable topic, not an instrument for disentangling problematic situations but a problematic situation itself and one hard to master» (ivi, pp. 504, 506). A problematic situation that could trigger a hard and lengthy process of rebuilding of one's identity, of assimilation, but also of strenuous defence of that very identity, of distinction potentially leading to discrimination.

8. Cf. Thomas and Znaniecki (1968) and Park (1928). It may be also added that some years before the "marginal" stranger had been one of the typical figures described (in his *Materialien zu einer Soziologie des Fremden*, 1925) by Roberto Michels, starting from the conditions of psychological membership and extraneity that connect the stranger, respectively, to the country of origin and that of destination. Beside the "marginal" stranger, Michels also focused on the "integrated" stranger, the "divided" stranger, and the "excluded" stranger. Cf. Cipollini (2002: 10 & ff.).

9. On the stranger as propeller of change, although with special focus on capitalistic entrepreneurship, see the fundamental early-twentieth-century contribution of Werner Sombart (1967).

It was precisely in these terms that the relationship between the the "autochthonous" and the "outsiders" was explored by Norbert Elias, who stressed how the main problem with linguistic, cultural, and racial differences is their evident asymmetry in favour of the autochthonous: on the one hand, in fact, the social and human capital of the strangers is always at risk of not being fully integrated; on the other, the autochthonous may perceive the immigrants as a threat, and react by erecting emotional barriers (e.g. they are dirty, contagious, dangerous, etc.) which further stigmatize and isolate the immigrants[10]. Group stygma is thus much more effective than any overtly discriminatory or racist policy, since «the objects of the attack are unable to hit back because, though personally innocent of the accusations or reproaches, they cannot discard, not even in their own mind, the identification with the stigmatised group» (Elias-Scotson, 1994, p. 102). There follows a sort of descent into the netherworld, as «this internalisation by the socially inferior group of the disparaging belief of the superior group as part of their own conscience and self-image powerfully reinforces the superiority and the rule of the established group» (ivi, p. 159); and this makes it even more difficult to achieve a balanced and peaceful co-existence between the two groups.

The growth of migratory movements which occurred in the late decades, and the consequent escalating perception of the cultural differences between the West and the so-called "south of the world", led sociologists to pay even more attention to the social figure of the stranger. According to Zygmunt Bauman, we live in an age of global (and globalized) uncertainty, characterized by such tremendous economic, social, and cultural transformations that have destabilized the framework which in the past help build the essential perspectives of one's own existence. Here, postmodern strangers should be seen as «indispensable signposts on the itinerary with no plan or direction – they must be as many and as protean as the successive and parallel incarnations of identity in the never ending search for itself» (Bauman, 1997, p. 30). In other words, they give us the chance to experiment new ways of living together, to enrich our social existence by confronting diversity. And yet, as the dominant trait of postmodern society is uncertainty, the diversity of which the postmodern stranger is bearer can be perceived, more than in the past, as a threat to one's own beliefs and convictions. These risks can be met in two ways: the first consists in drastically reducing or eliminating altogether the "unexpected" and unpredictable element of the stranger's behaviour; the other consists in putting at some distance that condition of contingency and unpredictability, in the attempt to make it irrelevant[11]. In brief, either the established group create the conditions for integration and/or assimilation of diversity within their own standards, or they implement forms of ex-

10. On the prejudice accompanying the encounter with the "outsider", cf. Wood (1934), which focuses on the "abyss of solitude" characterizing the condition of the stranger, judged as he is not by his unique individuality, but by his extraneity to a predefined group which perceives itself in an ephemeral and undifferentiated way, and where disapproving (if not overtly hostile) attitudes, opinions, and feelings prevail.
11. Cf. Bauman (1995).

clusion – sometimes entirely unprecedented (from neglect to indifference, under the delusion of removing a threat by simpling ignoring it) – aimed no longer at preserving the identity and the integrity of the group, but that of the individual.

In modern society, focused as it is on individual needs, systemic contradictions – despite being social products – are often perceived on a personal level, as private experiences which individuals, isolated in their "home-sanctuaries", have to face alone. As if the uncertainties regarding one's own safety, the diffidence about the future, and the lack of trust toward people and institutions, make each individual responsible for the future. In this sense the problem of personal safety becomes crucial, as the stranger (i.e. the immigrant) stands by definition for what is different, uncertain, and unpredictable, acting as a visible and tangible mirror of the precariousness of the well-being of citizens.

Safety is one of the fundamental necessities of citizens, encompassing that set of material conditions, perceptions and representations – both individual and collective – which protect the individual from all that can jeopardize his physical integrity and that of his beloved ones, his property, and his way of living. In contemporary society, however, safety is not a condition to protect, but to realize altogether, which can only happen by acting on the way citizens build their sense of safety within their social networks, and by actively providing protection and shelter to those in need.

What is still unclear, and represents one the most salient issue in current debates on immigration, is whether these solutions must be provided by respecting or by sacrificing the liberty of individuals (on both sides) and of the whole community.

IMMIGRATION AS A "NATURAL GRAFT"

To those who think that the problem of safety is to be met politically, by limiting personal liberties, it should be reminded that liberty is not simply a political issue. Human beings "have to" be free because of their ignorance and fallibility.

The condition of "anthropological ignorance" – i.e. «the necessary and irremediable ignorance on everyone's part of most the particular facts which determine the actions of all the several members of human society» (Hayek, 1973, vol. I, p. 19) – and the "postulate of scarcity", according to which «our physical existence and the satisfaction of our most ideal needs are everywhere confronted with the quantitative limits and the qualitative inadequacy of the necessary external means» (Weber, 2011, p. 64), are the fundamental premises (epistemological and economic, respectively) of social cooperation. If human beings were infallible and omniscient, and if they could rely on unlimited resources, they would always realise their projects successfully and in full autonomy. Conversely, their limited knowledge and the scarcity of the available resources force them to seek for other people's cooperation. Relying on free social cooperation means to employ our knowledge in an endless process of discovery and exploration of the unknown, correcting possible mistakes, putting under constant scrutiny our ideas, projects, and solutions to problems. There can be no cooperation without critical discussion. By acknowledging our ignorance and fal-

libility we are "forced" to live with tolerance, to accept confrontation, to facilitate the coexistence between different cultures and social statuses. More to the point, to rely on social cooperation means believing in free market and democracy. The market is in fact nothing else than a system of independent, decentralized decisions competing between each other, within an economy based on the division of labour, exchanging goods to meet their reciprocal demand[12]. This system, by protecting and allocating private property, and propelling free venture and the spontaneous mechanism of supply and demand, set the conditions for a pluralistic and democratic society. And yet, the soul of democracy is not only pluralistic but also competitive: conflicts between the parts may occur, but they are always between rivals, not enemies. In other words, democracy postulates a pluralistic arrangement of the community where private interests are not subversive but constitutive of the general interest. Democratic society is thus "polytheistic" as it welcomes a plurality of values, worldviews, and political ideas, and the conflict that may originate from such pluralism always occurs under general and abstract "rules of just conduct" (Hayek, 1973). The improvement of our standard of living is thus critically dependent on the existence of a normative and institutional framework which protects individual liberty by means of rules that define the boundaries of liberty itself.

Our very safety, too, depends on the rule of law. As Adam Ferguson wrote in 1792: «It is under just restraint only that every person is safe, and cannot be invaded, either in the freedom of his person, his property, or innocent action. If any one were unrestrained, and might do what he pleased, to the same extent also every one else must be exposed to suffer whatever the free man of this description were inclined to inflict; and the very usurpation of the most outrageous» (Ferguson, 1792, pp .458-459). Thus, the problem of peaceful coexistence with the Other is to be solved by emphasising not the right "actions" – often judged emotionally following the daily newscast – but the right "rules"[13]. Not traditions, race, skin colour, but only rules bind together society, ensuring peaceful coexistence between individuals. Only under the rule of law there can be protection of one's own identity and values.

Immigration, correlated as it is with man's endless desire for a better future, has always existed in the history of mankind. Historically, migratory flows have been more frequently directed toward countries where capitalism and democracy are more developed. This is not surprising: property rights and the market lead to economic development, democracy leads to political development, and critical discussion allows us to expand our knowledge and ability to solve problems. These institutions are beneficial to all mankind[14].

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12. For a more extensive analysis of the issue cf. Fallocco (2014).
13. On the importance of rules over actions, David Hume's *Treatise of Human Nature* (1739-40) is still unsurpassed. Cf. Hume (2000).
14. Against the anti-capitalistic prejudice of those who claim that the market can solely generate exploitation and inequality, cf. Hayek (1954). Here, with the support of data, it is shown how industrial revolution and capitalism did in fact improve the standard of living of the working class. Cf. also Hayek (1993).

Conversely, be denying rights, closing borders, and erecting barriers, we would condemn the poorer regions of the world to an ever worse future, and the richer part to an impoverishment which is not only economical but also cultural and moral. Putting safety issues aside, in the attempt to keep an high standard of living for their citizens, western countries have been recently dealing with an increasing flow of immigrants, often seen as competing with the autochthonous for jobs and welfare. Nor does the politicization of the issue help find a solution, making even more difficult to implement forward-looking policies and of wider scope.

Clearly enough, an intelligent migratory policy would benefit enormously the economy of western societies, which are witnessing a constant increase of the average age of the population. For instance, it would help restore full workforce in declining sectors, and it would sustain public social security.

As rightly put by Baffi in the opening quote of this paper, immigration could represent "a balancing force, a sort of natural graft", while being also a valuable opportunity for our cultural growth. Unfortunately, the policies that are currently being implemented are conceived to meet only short-period needs.

In conclusion, until we get rid of prejudices and stereotypes, the topical element of ambivalence, identified by sociology in the strangers' attitude towards society (their being at the same time close and distant, outside and inside the social system) will continue to belong to our society, which will be condemned to this "suspension", against its own interest, between an instinctive suspicion and timid openings.

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MIGRATION MOVEMENTS, TERRITORIAL BORDERS AND PLACES OF EXCLUSION: TOWARDS A NEW GEOPOLITICS OF POPULATION IN EUROPE

ALFONSO GIORDANO

INTRODUCTION

The definition and management of European frontiers has historically been a complex exercise in geopolitical terms. Certainly, the main scenario over the last decade has been one in which the Euro-Mediterranean frontier has been subjected to pressure from repeated so-called "migration emergencies". This cross-border geopolitical situation hinges in particular on the role of those countries situated in locations that are geographically most favourable for crossing borders. It is difficult to assess the extent to which the recurrent migration crises may be attributed to exogenous factors such as failed states, military and civil conflicts, economic collapse or environmental disasters, or endogenous ones such as border control, management of migration flows, integration policies or stagnant economies in the host countries. The increase in migration flows over recent years is certainly quite exceptional when compared to the average rate of arrivals during the previous decade, but one cannot help but question whether it is so exceptional as to justify the sequence of unilateral actions to reinforce national border controls carried out by several European countries in recent months. In other words, the question is whether the present geopolitical impasse on the Mediterranean borders of Europe is simply a migration crisis in the narrowest sense or whether it is a result of a "crisis of policy".

The principal objective pursued by European politics over the last decade has basically been to confine undesired migration movements to the fringes of Europe as far as possible, directly in countries outside Europe, or else in the Member States situated along what has now become a common border. This has been carried out both by the stipulation of a dense network of cooperation agreements with countries outside Europe and by the reinforcement of the rules of the so-called "Dublin System", in place since 1997, which places the burden of providing shelter to asylum seekers on the country of first arrival. This type of model was unsustainable from both the judicial and the geopolitical points of view, and signs of the crisis it has caused have been obvious for several years now. The dramatic humanitarian situation that has been created as much on the borders with countries outside the Schengen Agreement as on the internal borders between EU states, as well as in the many migrant centres of various different kinds, clearly expresses the sense of the inadequacy of the European political response to the present crisis.

THE BUILDING OF EUROPE BETWEEN NEW GEOPOLITICAL AREAS
AND GRADUATED FREEDOM OF MOVEMENT

The arduous evolution of the European Union as a key transnational geopolitical figure is taking place in parallel with a complex redefinition of the policies of Member States with regard to their frontiers, along their new and shared external borders. Many commentators believe that this development is exemplified above all by their policies on the control of external borders; others see the creation of the Schengen area, with the establishment of shared external borders, as the foundation of a different type of European citizenship, constructed on a new definition of belonging and of difference. At any rate, the creation of Schengen as an area of freedom, security and justice would appear to replicate at a continental level the same geopolitical dynamics produced by the creation and transformation of national spaces: a new transnational political and socio-economic unit is being created, which is at the same time marking out a boundary line that defines the rights of belonging.

In modern geopolitical theory, borders are habitually described as lines of separation between different sovereign political entities. They are seen as force fields where contrasting geopolitical factors interact with each other in search of a final equilibrium constructed around a territorial demarcation of different spheres of influence (Agnew, 1999). In this context, the new geopolitical unit that is the Nation State, being an expression of a particularistic perspective, has attributed a special and exclusive significance to the "territorialisation of identity and the conferring of identity on territories" (Encel, Thual, 2004), and has contributed to the reshaping of countries' concepts of frontiers and borders from a modern perspective. In the modern geopolitical imagination, the border appears as a line or barrier that identifies and protects national sovereignty from the outside, functioning as an institutional system attributed with prevalently politico-military functions.

On the basis of this model, the business of controlling borders is managed exclusively by national authorities and is generally the responsibility of the security forces. It is no coincidence that the areas in the immediate vicinity of the borders, more technically defined as frontiers[15], have often taken shape as places with strong military defences, fully equipped with strategic infrastructure aimed at protecting the integrity and independence of the national territory (Kolossov, 2005). Alongside this strictly military function, a further dimension in border control has been developing since

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15. For many experts in the field of Political Geography, the concepts of "boundary", as a line of separation, and "frontier", as a space for politico-spatial encounter and the superimposition of political powers, have well-established different meanings. However, in this article the two terms will be treated as synonymous, as tends to be the case in most present-day debate. Alongside the concepts of boundary and frontier as a means for the spatialisation of political power, the idea of "border" has also emerged as a tool for the social segmentation and stratification that has led to the practice of bordering. That is, a process of production and reproduction of borders regardless of their geographical situation, for the spatial creation of segregation, exclusion and restriction of mobility.

the end of the 19th Century, linked to the need to keep movements that are perceived as undesirable, in that they threaten public order or the national economy, at a distance from national territory.

Schengen has certainly been a very significant development in the recent history of the re-allocation of European borders, a stage that could be seen as having a certain continuity in the line of events that have been crucial in the territorial stabilization of Europe[16]. However, as has been opportunely pointed out (Walters, 2002), the implicit geopolitics of Schengen do not correlate with wars and conflicts between the great powers, fighting to ensure their own hegemony in Europe. Behind the creation of this European space as an area of liberty, security and justice, there is a process moving towards rendering internal borders increasingly less significant and consequently towards regional integration. At the same time, however, the de-securitization of political and socio-economic borders within Europe has in some ways created a parallel reinforcement of the border police (Campesi, 2015), who are called upon to control the movement of the so-called "irregular" transnational players.

In other words, the liberalization of borders does not automatically produce a spatiality that is free from hegemonies, powers and controls. On the contrary, Schengen is the embodiment of a complex hierarchical politico-economic spatiality constructed around a network of communications and circulation, that develops different rights to movement and graduated degrees of possibility for crossing borders through the European region. So this tension between the impetus towards the liberalization of borders, deriving from the geo-economic imperatives of global capitalism, and the apparent counterthrust towards the closing and protection of borders, deriving from the geopolitics of global insecurity, is producing a new regime for management of mobility in which freedom and security, rather than opposing each other, actually support each other (Chalfin, 2012).

Recent international events however, above all in terms of migration, have badly shaken the vision of a unified European area and the protection of its borders, bringing the European Union to an impasse, stuck half way between the responsibilities of its respective Member States and those of the European institutions themselves. A complex tangle has ensued that has produced serious consequences for national and pan-European security concerning two fundamental aspects: the management of Europe's external borders – illegal trafficking, irregular migration flows and terrorism – and reception procedures for those seeking international protection.

Two contrasting and opposing visions and needs have thus arisen: the safeguard of the European area and the protection of national interests. On the one hand, European integration has led to the elimination of internal barriers within the European Union, transcending political, social and economic borders. Freedom of movement is fundamental to the vision of a Europe without barriers and the construction of a European community and identity. On the other hand, from an intergovernmental perspective, territorial security necessarily prevails on the freedom

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16. Westphalia 1648, Vienna 1815, Berlin 1878, Versailles 1918, Potsdam 1945, Berlin 1989.

of movement; States have the right and the duty to exercise their territorial sovereignty though control of their borders and management of migration flows and it is this control that has recently led to the creation of both tangible and intangible barriers.

So what should have been guaranteed through the Schengen-Frontex combination, that is, the joint arrangement consisting of freedom of movement within a territory and control of its external borders, has not functioned as in the case of the classic Nation-States. More specifically, the Schengen Agreement focuses particularly on a pact of mutual trust and solidarity between Member States that has led to the abolition of barriers and controls along its internal borders; for all intents and purposes external borders have been "moved" to coincide almost entirely with those of the whole Schengen area. This implies that every single country, particularly those situated along the area's external frontier, assumes responsibility for the control of the Schengen borders in the interests of the other Member States to ensure the highest levels of internal security. This fundamental commitment implies the ability – and the trust of the other countries – to control borders (airport borders, land borders and maritime borders) and to cooperate with all relative State and supranational actors.

The explicit and implicit implications of the Schengen Agreement comprise a variety of positive elements, but also and above all many weaknesses. By allowing the free movement of people within its Member States, Schengen has radically changed the political geography of mobility and individual State migration policies have acquired a previously unheard of supranational dimension (Giordano, 2015). The security and management of Schengen borders in airports is relatively straightforward, as for example in Austria; land and maritime borders under significant migratory pressure are, however, much harder to control, as is the case with Poland and Italy respectively (Giordano 2016b). At the same time, checks at internal national borders have gradually been abolished, providing foreign immigrants with the same advantages as EU citizens, whether they be regular or illegal (Morehouse, Blomfield, 2011).

Essentially, the Schengen Agreement has given rise to a contradiction in terms that lies at the heart of Europe: on the one hand the Agreement claimed to establish a supranational border for the first time in the history of Europe; on the other, it handed the onus of managing that border to a limited number of States, those bordering with extra-EU countries who also had to assume responsibility for the identification and repatriation of irregular migrants from Third Countries.

What is more, the setting up of Frontex, a European agency that was to be increasingly endowed with supranational functions, led to the emergence of what is to all intents and purposes an explicit challenge to one of the cornerstones of national sovereignty: control of the external borders, traditionally the domain of the Nation State, which would now be managed in partnership with agents from other nations. This dovetailing of political functions in a way that is not yet sufficiently consistent - in the absence of a genuine European policy on immigration and in the presence of other causes of geopolitical, environmental and financial origins (Giordano, 2014),

not forgetting the heavy influence of national egoisms - has contributed to the failure of the European Union Asylum policy and the creation of genuine personal and social exclusion zones.

WALLS, BARRIERS AND EXCLUSION ZONES

Truth be told, EU States have always considered immigration an exclusively national responsibility and have therefore failed to put the provisions of the Schengen Agreement into practice in the application of the Convention. This same legislation did not stop at the straightforward abolition of borders, instead it stipulated a set of compensatory measures to stop the freedom of movement from transforming itself into an open invitation for illegal trafficking of goods or people. In fact, in this case article 17 of the Schengen Agreement speaks clearly: "with regard to the movement of persons, the Parties shall endeavour to abolish checks at common borders and transfer them to their external borders. To that end they shall endeavour first to harmonise, where necessary, the laws, regulations and administrative provisions concerning the prohibitions and restrictions on which the checks are based and to take complementary measures to safeguard internal security and prevent illegal immigration by nationals of States that are not members of the European Communities". Although some level of uniformity exists today in certain areas of the Schengen acquis, there is still a lack of consistency in the protection of external borders that represents a weakness in the system, as well as threatening the security of its internal borders. This has produced an increase in mistrust between Member States and therefore the reinstatement of controls within the area.

Even more worrying than the escalation of border controls within the Schengen area is the construction of walls, barriers and fences along borders between EU countries, an authentic step back in time that was not thought possible after the decades of free movement that have brought so many benefits to European States. The Eighties ended with a Europe proud to have dismantled the Berlin Wall, yet this barrier was an exit border designed to stop Eastern Germans from emigrating to the West; the government of East Germany forced citizens to remain within its own territory, restricting their freedom of movement. Today's walls are entry borders, that is, they are intended to stop unwanted people from entering the country, such as those born in unfortunately poor countries or persecuted in various ways by their governments.

This is particularly true in Eastern Europe where more and more anti-immigration barriers are being erected. For the first time since before the Second World War, an area once known as "the time bomb of Europe" is again marked by militarised borders. Hungary has recently finished building a wall along the border with Serbia, while both Bulgaria and Greece have erected analogous barriers along their respective borders with Turkey and Macedonia has done the same along the border with Greece. The one objective that all these States share is to stop illegal immigrants from entering their own national territories. In reality, it also involves decisions made in order to combat the growing electoral success of anti-immigration parties such as Gold-

en Dawn in Greece and, on the other side of the Channel, Nigel Farage's Ukip, whose main platform in support of Brexit was, in fact, the aversion to immigrants, although this time from the European Union.

Macedonia, one of the first stages on the so-called "Balkan route", has also begun to erect a barrier along its border with Greece to block entry to all migrants except those from Syria, Iraq and Afghanistan, three war-torn countries whose citizens have a better chance of being offered refugee status once they have entered Europe. At the moment, the barrier consists of a metal fence topped with barbed wire. This situation has ended up causing a humanitarian crisis in Greece, especially in the small village of Idomeni in the municipality of Paionia in Greek Macedonia, which unwillingly found itself to be another key geographic location for migrations, like Lampedusa. Idomeni is a border village just a few metres from the barrier, with a long history of migration and a population of about one hundred and fifty inhabitants - most of whom are elderly since the young people have emigrated. It became a focus for world news partly because its inhabitants responded to the crisis by offering help and support, even though the population had shot up from one hundred and fifty to over ten thousand. This small village was, in effect, transformed into a large refugee camp, offering shelter to more and more people every day as they sought to cross the border to the north. By March 2016, however, the situation had become unsustainable, with the refugee camp housing ten times more migrants than its actual capacity allowed. In May 2016, the Greek police began dismantling the Idomeni refugee camp. The refugees, who were living in the camp in very precarious conditions according to humanitarian organisations, were moved to reception camps in the north of the country.

At this point, we need to ask ourselves what motivates States to build barriers, returning to times of closure and opposition that have historically led to tragedy. As transit countries that do not represent the final destination of those migrating, governments often claim they are not able to sustain the cost of reception procedures. In each of these countries however, it is evident that the pressure exercised by anti-immigration movements represented in parliaments have become the thorn in the side of governments who are thus forced to respond. Clearly, statistics tell us that walls help prevent migrants trying to cross borders at specific points, sometimes reducing their number drastically. However, rather than stopping migration waves, they simply deviate them towards other less controlled or harder to control borders. Recent research shows that the construction or strengthening of walls will not change or interrupt the flows. What counts are the reasons that lie behind the decision to depart: new wars, revolts, famine and the worsening of unfavourable climactic conditions determine the scale of migration (Giordano, 2013).

What emerges from most studies and research and that weighs more heavily than any other consideration, is the European Union's basic evasion of the issue. Let it be clear: this is due to the existence of many different and in some cases contrasting national policies, as well as the national resistance of European States guided by governments afraid of antagonising their electorates. It is also clear that no single European electorate sharing the same objectives exists and that Nation States respond

to the requests of their own populations, thus creating walls, trenches and barriers between their territories.

But the issue of areas of personal and social exclusion within European territory is no less complicated. These refer to the various forms of containment and control of asylum seekers and migrants in general: reception centres, centres for asylum seekers, centres for identification and deportation, "hotspot" centres etc. In reality these are by and large case studies of administrative detention. The history of the administrative detention of foreigners differs widely from country to country and this has had a profound effect on how the judicial and social sciences have regarded the institution. In the United States and Britain, its roots extend far back in time and this has clearly fostered a tendency to consider administrative detention as an instrument of ordinary administration that does not need to be hedged around with specific guarantees (Wilsher, 2012). In these countries, the term "detention" is used in the official lexicon without any qualms, while the management of the migrant centres has been largely inspired by the model of common law prisons. It is only recently that administrative detention of foreigners has begun to attract the attention of human rights activists and social scientists, who see in them a further sign of the expansion of powers of penal control in the era of mass incarceration (Bosworth, Turnbull, 2014).

In continental Europe, the history of the administrative detention of immigrants is much more recent, however. Right from the start, the judicial and social sciences have denounced the legal scandal that this represents, forcing governments to emphasize the humanitarian nature of the migrant centres that were being opened (Fisher, Clémence, 2010). It is not by chance that the official lexis in countries such as France, Italy and Spain avoids the mention of the word "detention", preferring euphemisms such as "retention", "reception" and "internment". In response, the political and academic debate often refers to the creation of new "immigration lagers", to emphasize the contrast between the principles of the rule of law and the administrative detention of foreigners. This interpretation has also been legitimized at a theoretical level, where people have not been slow to compare the migrant centres with concentration camps. Many consider the "camps" of our own times to be places in which the principles of the rule of law have been suspended and where the exception becomes the rule.

All this fits in another criticality: the Common Asylum Policy in the EU. Facts demonstrate that over the last decade the rules set by the Dublin Regulation for a Common Asylum Policy in the EU exist on a purely formal level as the basis for an informal and tacit compromise between Mediterranean and Northern European States. Despite restrictions established by Dublin, the Mediterranean European States are substantially alone in having taken on the costly onus of receiving and guaranteeing initial assistance to asylum seekers, while maintaining a lax approach to those who refuse to register themselves because they wish to formally apply for asylum in Northern Europe.

This game of *do ut des* holds few advantages for either side and only persists because it is unanimously considered the lesser evil in comparison to the only possible alternative: a real common asylum policy. In brief, the EU states have preferred

to adopt an inefficient, badly performing system, rather than concede their respective national competences in this field. This evidently defective system puts the existence of a common good such as the freedom of movement at serious risk. Guaranteed by the Schengen Agreement, this system was feasible as long as the number of new arrivals to Europe remained at least manageable if not low. It began to show dangerous shortcomings after 2011, under the gusts of the perfect storm sparked by the Arab Spring (Giordano, 2011) and the break out of war in Syria that has upset the entire geopolitical equilibrium of the Southern shores of the Mediterranean, unleashing the most serious refugee crisis in Europe since the post war period of the Second World War (Tsourdi, De Bruycker, 2015).

The geopolitical situation has however considerably worsened over recent years. The south-eastern shore of the Mediterranean leaves us few reasons to be cheerful. While Tunisia guides its own democratic experiment among fears and shocks, Libya is in a state of total disintegration. Egypt is resigned to the repressions of Al Sisi, while Syria has sunk into another year of civil war. Post-coup Turkey seems to be in decisive disagreement with the United States and the EU, while Lebanon flounders under the weight of all its refugees. The Mediterranean is burning and there is no partner on the horizon to bring down the temperature.

This has also led to difficulties in setting up cooperation frameworks with neighbouring countries outside the EU, who should become increasingly involved in what has been defined the external dimension of migration policies or the "extra-territorialisation of control", from the Agreement with Turkey to the more recent Italian proposal known as the Migration Compact.

<center>CONCLUSION</center>

A phenomenon such as migration - a structural problem rather than an emergency, which we will be dealing with for many years to come - which has assumed global proportions, clearly requires a multi-disciplinary approach. Of all the different possible disciplines, the geographical-political, and in particular geopolitical approach - considering the migration issue within the context of a specific geographical area - opens up new perspectives for dealing with this worrying phenomenon in a rational way. The Mediterranean, with its forty-six thousand kilometres of coast and 450 million people living on its shores, may – in fact, should – be considered a very important area in geopolitical terms for the whole of Europe, and one in which the migration phenomenon of our times needs to be reconsidered, so that a suitable arrangement may be found.

Those making political decisions should have at heart the shared geopolitical interests of the countries that they govern, which, whether they like it or not, constitute a shared space rather than particularistic spaces. The various bilateral agreements aimed at containing the migration problem are not succeeding in their intentions, despite the goodwill that inspires them, because they express a basic ambiguity; an ambiguity that consists in the fact that the European drafters of agree-

ments do not have a clear European geopolitical awareness. The creation of this new European borderscape called upon to govern different mobility regimes is a perfect case study for investigating frontiers beyond the classic perspective of modern political and legal theory.

Instead, the border barriers that have been announced or constructed symbolize the political decisions of the EU Member States, willing to multiply and distribute borders throughout European territory in their attempt to limit or block the movements by means of frontiers, rather than considering opening up humanitarian corridors. Such decisions may be criticized not only from the humanitarian point of view, but also as being myopic and short-term from a geopolitical perspective. A more forward-looking vision might contemplate the comprehensive rethinking of the Dublin system, for example, and above all a different approach to the functioning and purpose of the migrant centres, which in one aspect represent places of exclusion for the person and places of humanitarian tragedy, and in another simply repeat the same old story to European citizens through the media, that the migration phenomenon is solely responsible for the socio-economic crisis in Europe.

People certainly have the right not only to refuge but also to mobility, and possibly also to the pursuit of their own hopes and expectations. And similarly, countries have a duty to control their own territory and to safeguard the well-being of their societies. In a world that is demographically shifting its centres and peripheries (Giordano, 2016a), and in a Europe that is surrounded by areas that are in crisis geopolitically, and where the European countries are largely languishing in economic stagnation and demographic slumps (Dumont, 2009), the challenge posed by these migrations presents both risks and opportunities at the same time. Only if the European countries face up to reality with a more united and continental vision on population issues, and one that is not limited to the short-term, will they be able to adopt the right measures to contain the flows within acceptable limits, to regulate them with humanity, to manage them without too much confusion, to make them more profitable for the host countries and the countries of origin, and finally, to protect their own territorial and social boundaries.

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ECONOMIC FREEDOM AS A MAGNET FOR INTRA-EU28 MIGRATION

ROSAMARIA BITETTI AND ORNELLA DAROVA

The decision to leave your home country and establish your life somewhere else is a complex one, in which personal and psychological reasons, economic and political factors, information and preferences as well and sheer luck all play a complementary role. For this very reason the study of migratory processes tends to be a multidisciplinary enterprise, in which economists, sociologists, antropologists have a say (Jansen 1969). It is also a historically and geographically changing phenomenon, from the fordist-immigrations of the last centuries to the high-skilled mobility of contemporary knowledge workers.

In literature, there are three main models of assessing drivers for immigration: (1) network-driven models, in which cultural similarities, historical affinities and the existence of a large group of migrants attract new flows of migration; (2) economic-driven migration, in which is the difference in expected salary or other economic variables, such as GDP, median income and employment opportunities attract migrants to their new country of residence (Sjaastad 1962); (3) and welfare-driven models, according to which more generous welfare state tend to attract more immigrants (Borjas 1999). While all these hypotheses are well established in literature, it is mostly the latter that gains prominence in public debates, often overemphasizing its relevance.

In this work we want to analyze the question of what drives immigration in the framework of neo-institutionalism, namely the theory that focuses on the way institutions, meant as "humanly devised constraints that structure political, economic, and social interaction" (North 1990), interact with and affect society. The whole effort of social sciences through centuries, from Plato's *Republic* and Adam Smith's *Inquiry* on the causes of social welfare to contemporary economics, sociology and political science can be summarized as a collective – and often uncoordinated – enterprise to discover what institutions can foster prosperity. Therefore, references to literature can only be partial and useful to insert this research in a general framework. Acemoglu & Robinson (2012) explains how economic growth is caused by inclusive institutions, which "require secure property rights and economic opportunities not just for the elite but for a broad cross-section of society", and nations fail to accomplish growth and prosperity "when extractive economic institutions do not create the incentives needed for people to save, invest, and innovate. Extractive political institutions support these economic institutions by cementing the power of those who benefit from the extraction". Similarly, North et al. (2009) explains how open access orders, institutional ar-

rangements in which citizens have untampered access to economic resources, are characterized by increased growth and development. In order to operationalize the quality of institutions, we will use Gwartney, Lawson, and Hall's (2012) *Economic Freedom of the World Annual Report* (EFW). The EFW index measures the consistency of a nation's policies and institutions with economic freedom on a broad range of indicators, covering five areas: 1) size of government: expenditures, taxes, and enterprises; 2) legal structure and security of property rights; 3) access to sound money; 4) freedom to trade internationally; and 5) regulation of credit, labor, and business.

EFW index is widely used in literature: Hall and Lawson (2014) survey 402 articles on journals listed in the Social Science Citation Index since 1996, finding out that 198 empirical papers use EFW index as an explanatory variable and that fewer than 4% of the articles surveyed found economic freedom to be associated with a normatively negative outcome such as income inequality or obesity. EFW is also consistently correlated with the Heritage Foundation Index of Economic Freedom.

In this framework, we are going to assess whether intra-EU28 migration is responsive to better institutions, as previously defined in terms of economic freedom. Analyzing intra-EU migration allows also to be aware of an important distinction in migration literature, i.e. that among voluntary and non-voluntary migration (Segal et al. 1993): European countries are quite homogeneous in terms of political stability, personal safety and economic development, so we can reasonably assume that EU citizens migrate in order to satisfy largely non-critical life-choice ambitions, such as better working prospects or improved quality of life.

Migrations inside EU are an interesting case-study for the Tiebout (1956) model of geographical competition: according to this model, citizens leave their home jurisdiction for a jurisdiction that has a set of institutions and policies closer to their set of preferences. This "exit" decision is affected by the expected improvement in the correspondence to one's set of preferences, and the cost of leaving.

European countries are more differentiated, in terms of language, culture and socio-economic indicators than other federal orders, e.g. US, on which most of the literature on internal migration is based. But the principle of free-movement of workers lays at the core of the European project since its foundation, therefore the EU is committed to remove legislative barriers to internal migration, so that "regulatory" cost of exit is lowered.

To sum up, intra-EU28 migration provides us with an interesting case study of voluntary migration, with medium-high cultural barriers and low regulatory barriers, and a limited variance in terms of political stability and accountability.

VISUALIZING INTRA-EUROPEAN MIGRATION

Immigration is a complex bidirectional phenomenon, and in order to better understand the complexity of flows to and from a given country it is important to watch it in a compelling format. Bidirectionality, intensity and complexity are missed in traditionally used migration maps, which show flows as stroked lines among the in-

terested geographic areas. "Effective visualisations of migration flows can substantially enhance our understanding of underlying patterns and trends. However, commonly used migration maps that show place-to-place flows as stroked lines drawn atop a geographic map fall short of conveying the complexities of human movement in a clear and compelling manner" (Sander et al, 2014:1).

Following Abel & Sander (2014) demographic visualization technique, we map the flows of immigration to/from 28 European Member state on a circular bidirectional chord chart. (Graph X.1)
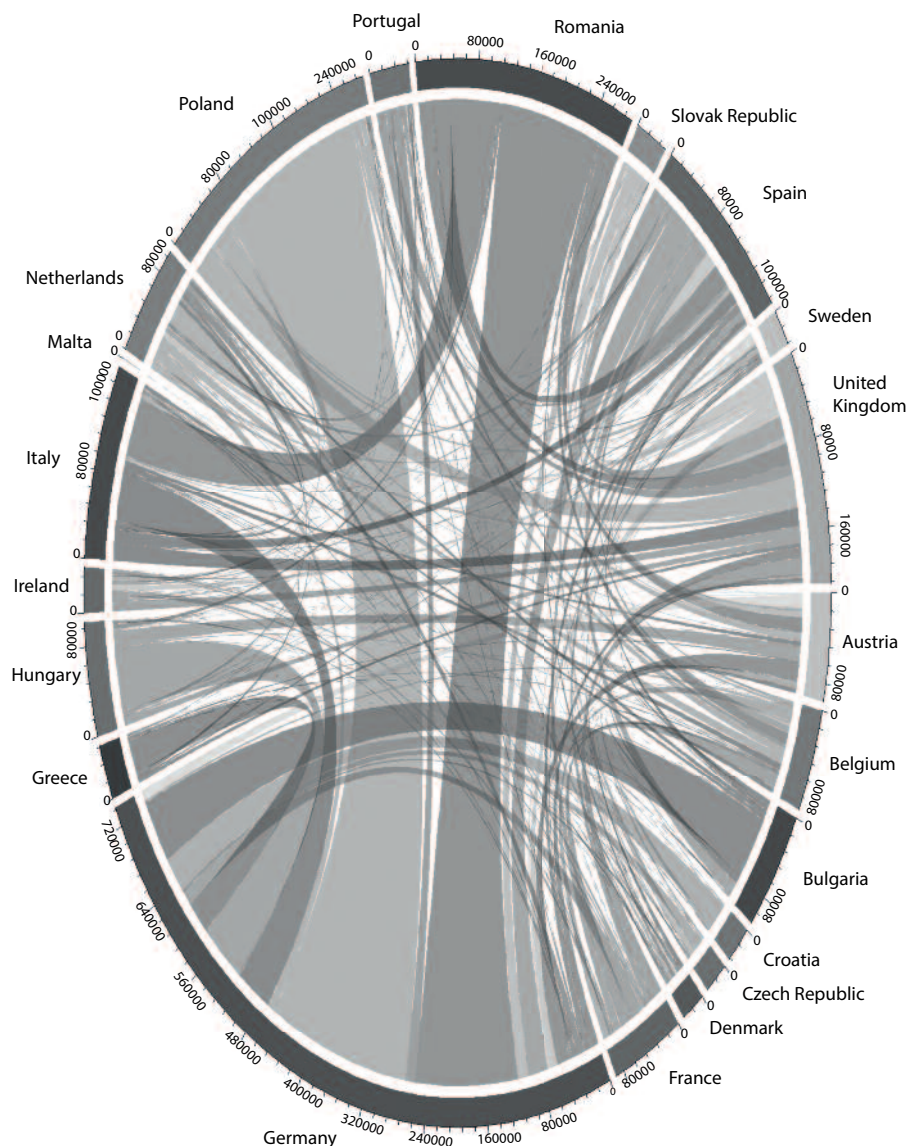
Graph 1. Bidirectional flows of intra-EU immigration. Data sources: OECD International Migration Database and the United Nation International Migration Flows to and from Selected Countries (2015 revision). Our elaboration.

This visualization helps us realize how the migratory phenomenon has multiple directions but it is clearly differentiated, so as to make possible to assess for meaningful trends.

As a further assessment of the migratory phenomenon inside the European Union, we built a fractionalization index (Alesina et al. 2003) which accounts for the diversity of local populations in European countries by using the 2012 stock of Eu28 (except reporting country) and non-Eu28 migrants over the total population aged 15-64 (Eurostat). Based on this fractionalization, we built two Lorenz curves showing the proportion of the overall population represented by European and non-European migrants that are distributed in the EU territories. In fact, the closer the curve is to the bisector, the less concentration you can observe in the population. But our curves are quite far from having a 45° angle. That means that immigrants are distributed across the European territory in a very heterogeneous manner.
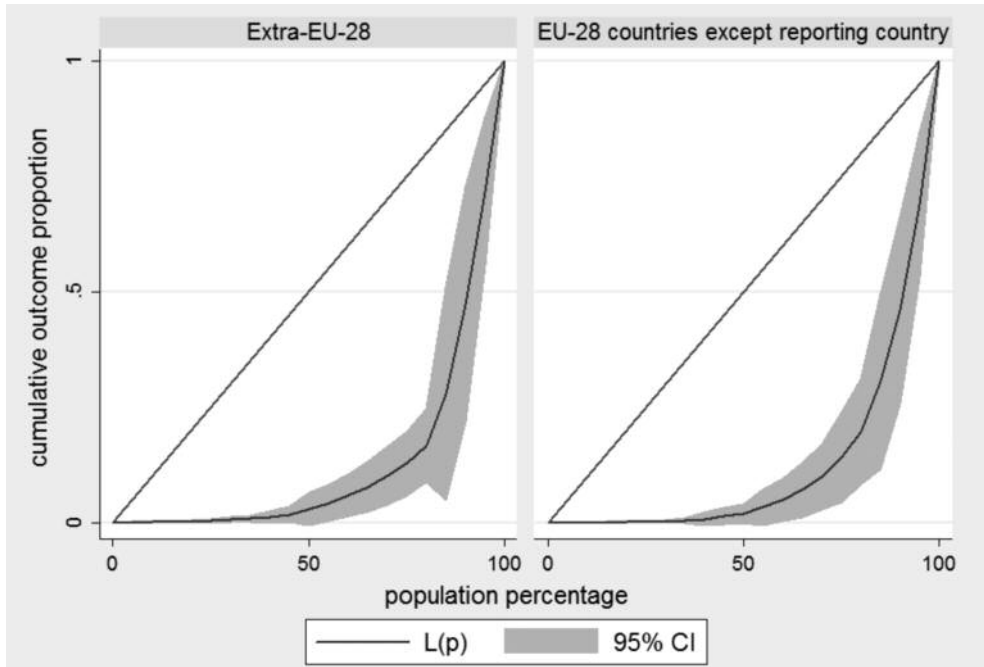
Graph 2. Lorenz curves for EU28 and non-EU28 migrant population. Data source: Eurostat.

CLUSTER ANALYSIS OF IMMIGRATION

In order to assess whether interesting trends need to be further explored, we conduct a preliminary data analysis. We firstly compare flows of European migrants in 2013 and corresponding differentials between the EFW rank of the destination country and the EFW rank of the origin country. In particular, we are referring to EU-2 migrants, aged 15-64. We can observe in Graph X.3 a strong evidence of positive correlation, with appreciable confidence interval.
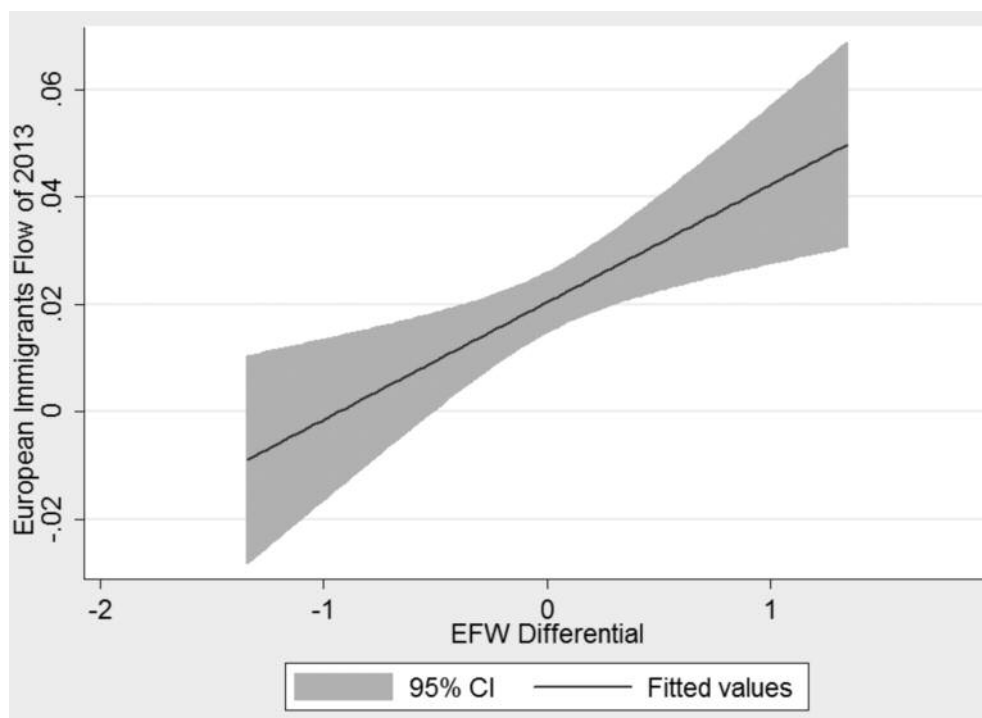
Graph 3. Relationship between EWF and stock of EU28 migrants in 2012. Data source: EFW, Eurostat.

Since European countries are quite homogeneous in terms of institutions, we start with a preliminary analysis of their relationship with our dataset of institutional and economic variables using a hierarchical method for clustering functional data.

The cluster analysis is useful to inspect data and get a general overview of the characteristics of our subjects of interest. We have included variables considered by the EFW as well as the Heritage Foundation Index of Freedom: variables in this area covers indicators of property rights protection, fiscal freedom, labour freedom, investment freedom, regulation, law enforcement, taxes, government consumption, licensing restrictions and barriers.

A second set of variables includes socio-economic variables, such as GDP, unemployment over total population, median income, and social expenditure as share of GDP, as well as two output indicators for social welfare: quality of Healthcare and quality of education; finally, we add a Social Capital indicator measuring the perceived quality of social life (sub-indicators of the Legatum Index of Prosperity).

A third set of indicators accounts for political institutions, using World Bank Governance indicators, including a rank for rule of law, voice and accountability, government effectiveness, control of corruption, political stability and regulatory quality.

We apply hierarchical clustering with Ward (1963)'s minimum variance criterion (Ward 1963), as the linkage method in order to minimize the total within-clus-

ter variance (Ferreira and Hitchcock 2009). Following this method, we identify seven groups, depicted in the dendrogram in Graph X.4, which are homogeneous within and heterogeneous between one another.
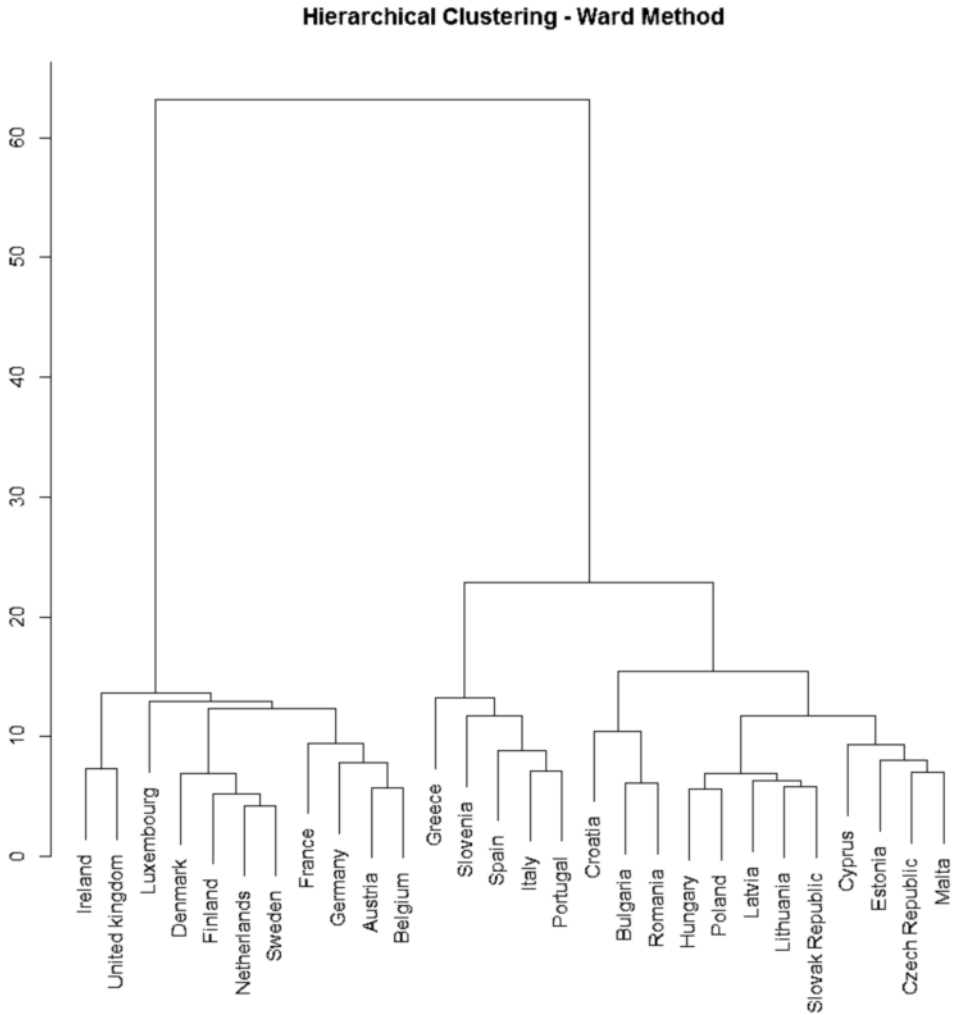
Graph 4. Clustering of institutional and socio-economic variables in EU28. Data source: Eurostat, OECD, EFW, Heritage Index of Economic Freedom; Legatum Index of Prosperity; World Bank Governance indicators.

While no distance or geographical position was used, we can easily identify a geographical order in the groups, and read them against previously used data on the stock of immigration.

On the left, the first group is the one composed by Ireland and United Kingdom, which are the top two countries in Europe for Economic Freedom: respectively, the EFW score is 7.9 and 7.83. They have a very high percentage of European immigrants over the total population: 0.569% in Ireland, 0.41% in the United Kingdom.

Luxembourg is a particular case, which we can consider an outlier based on very his peculiar scale and history. In fact, it has recorded the highest percentage of European workers when compared to the other European countries. It also has the highest GDP pro capita in Europe and very low unemployment. It has a quite high level of economic freedom, but also the highest national social expenditure per capita.

Denmark, Finland, Netherlands and Sweden are gathered in the Nordic group, with similarly medium-high positions in the economic freedom rank (in particular a very high protection of property rights), and a large stock of European migrants within their borders.

The Continental group (France, Germany, Austria, Belgium) holds a middle position in both our measures of our interest – European migration and economic freedom – although they have high levels of social expenditure.

Greece, Slovenia, Spain, Italy and Portugal (the Southern group) shows with middle-low levels of both measures, and the Eastern European group (Croatia, Bulgaria, Romania, Hungary, Poland, Latvia, Lithuania and the Slovak Republic) shows very low levels in both our measures of interest.

On the right side, we can see a very interesting group. In this case, we don't have particularly high levels of income, nor of social expenditure, but we have two of the top countries for what regards both European immigration and economic freedom – namely Cyprus and Malta. In fact, in both countries the majority of non-nationals were citizens of member countries.

A MODEL FOR ASSESSING THE IMPORTANCE OF ECONOMIC FREEDOM IN FOR INTRA-EU28 MIGRANTS

Our explanatory model of intra-EU movements is based on the assumption that the migrant decides to migrate when the expected benefit of migration exceeds the benefit of residing in his home country plus the cost of leaving. Then, the ratio between the utility of migrating (UM) minus the cost of migrating (C) and the utility of staying in the origin country must be greater than 1. Or, expressed in a more convenient way, we can take the logarithm at both sides of the inequality and get the expression of the return to migration (R) as the difference of the logarithm of the quantities previously mentioned. Of course, this must be positive.

Of course no migrant is explicitly thinking in these terms (unless they are economists), but the decision of migration is influenced by what, in light of the available knowledge, the actor thinks would be an improvement in his/her quality of life or lifestyle, comparing home and destination country, and discounting the costs of relocation (the cost of adapting to a new geographical and cultural context, as well as regulatory barriers to immigration). In our model, European citizens are expected to make their decision to move based on a comparison of institutional, economic and socio-geographical indicators between their native country and destination country in a time preceding their decision to migrate.

In order to measure this difference in expected utility between home and destination country, we built a differential database for economic and institutional variables. In this database we gather variances between origin and destination country in 2012 for the following set of indicators: 1) Economic freedom, as measured by Fraser Economic freedom of the world indicators, 2) GDP in Purchasing Power Parity (World Bank indicators), 3) Unemployment over total population (Eurostat); 4) Social expenditure in % of GDP (Eurostat).

We also add two dummy variables to account for the cost of relocation, namely Borders and Languages. These two dummies consider geographical distance (this corresponds the value 1 if the destination country and the origin country share a land or maritime border) and language distance (this corresponds the value 1 if the destination country has, between its official languages, the one spoken in the origin country).

Data availability and lack of comparability plagues research on immigration, but in order to measure our dependent variable we built an integrated database of dyadic flows among the 28 EU member states from the OECD *International Migration Database* and the United Nation *International Migration Flows to and from Selected Countries* (2015 revision). Since in our behavioral model of migration information about quality of institution and socio-economic factors precedes the decision to migrate, the dependent variable is lagged by 1 year, a reasonable timeframe to formulate and implement the decision to migrate.

We run a OLS regression on the following model:

Economic freedom is our main regressor, and we control cultural and geographic distance as well as traditional economic indicators. For the first, we built a vector made of the two dummies for borders and language.

Literature on migration highlights the importance of increased economic opportunities and the so-called welfare magnet, assuming that migrants will migrate either where there is more economic growth, labor market opportunities and a more generous welfare state. We take into account these effects by controlling for GDP in Purchasing Power Parity, national social expenditure in percentage of GDP and unemployment over the total population.

This is the output we get when we run the OLS regression[17]:

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17. We conducted the usual regression diagnostics for linearity and heteroskedasticity and obtained positive results.

TABLE 1. OLS REGRESSION OUTPUTS	
	IMMIGRATION/POPOPULATION
EFW	0.0131*
	(1.98)
BORDERS	0.0143
	(1.54)
LANGUAGE	0.0366**
	(2.63)
GDP-PPP	2.11e-14***
	(9.41)
SOCIAL EXPENDITURE	0.000819*
	(2.40)
UNEMPLOYMENT	-0.000684
	(-1.17)
_CONS	0.0168***
	(6.28)
N	677
T statistics in parentheses: * p<0.05, ** p<0.01, *** p<0.001	

Linguistic and geographical distances have an impact on the decision to move, meaning that in Europe there are still significant exit costs. As expected, GDP as a positive and significant coefficient, while the unemployment coefficient is negative (although not very significant) and social expenditure has a positive coefficient.

Our main variable of interest, Economic Freedom, has a positive and significant coefficient: one point of difference between the EFW score of the destination country and the EFW score of the origin country corresponds to an increase of 0.013 in the percentage of European immigrants in the destination country. To compare with the popular welfare magnet theory, which seems to worry so many political commentators, a percentage point of national social expenditure means adding just 0.0008 to the immigration variable. Considering that the variance range between the two variables, EFW and Social spending in EU countries, is very different, 1% improvement in the Freedom of the world index will have the same impact of a 15.98% increase in social expenditure. Economic Freedom, then, seems to be very attractive to mobile EU citizens.

CONCLUSIONS

Based on our empirical analysis, we can assess that Economic freedom act as a powerful magnet for voluntary migrants inside the European Member states. Our model of migration does not require to follow strict rational-choice, nor perfect information model assumption: the migrant might well not be perfectly informed about distances in a set of indicators between home and destination country, but it can still can ap-

preciate the effect of those through the price system, which Hayek (1945) described as "a kind of machinery for registering change". While migrants might know nothing of GDP or Economic Freedom differentials between their country and the one they're moving to, they are well aware of the increased opportunities for cooperation and thus potential welfare improvement. Thus by choosing to reside in a country with more opportunities the migrant also demonstrates, while not necessarily expressing it politically, a preference for better institutions in term of economic freedom.

If this can be interpreted as a "voting with your feet" mechanism, shed an optimistic light on the European landscape, which has been plagued by the rise of anti-european, anti-immigration and anti-economic freedom populist parties. If we consider the institutional preferences expressed by European citizens when moving, we can see that EU migrants move to countries with a smaller government, fiscal responsibility, low regulation and more freedom to trade globally. Whether this will be enough to make the Exit mechanism effective for driving EU federal order toward better institutions outside the scope of this paper, but Clark et al. (2015) find small but positive increases in institutional quality as a result of increased immigration, so while this might be a leap of faith, migrants can be a positive force driving the European union toward better institutions.

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DATA DESCRIPTION	
IMMIGRATION FLOWS	OECD International Migration database, Inflows of foreign population 2004-2014. UN International Migration Flows to and from Selected Countries: The 2015 Revision. (POP/DB/MIG/Flow/Rev.2015) for For Bulgaria, Croatia, Estonia, Ireland, Lithuania, Romania. Missing datapoints from Bulgaria, Cyprus, France, Greece, Latvia, Malta, Portugal have been integrated with emigration flows to EU28 countries. Reference year: 2013.
IMMIGRATION/POPULATION STOCK	Eurostat [lfsa_pganws] Population by sex, age, citizenship and labour status: - EU28 citizens except reporting country, age 15-64. - Non-EU28 citizens except reporting country, age 15-64. - Reporting country, age 15-64. Reference year: 2012.
ECONOMIC FREEDOM	Fraser Institute, Economic Freedom of the world. Heritage foundation, Index of Economic Freedom. Reference year: 2012.
GDP	World Bank, International Comparison Program database, GDP, PPP (current international $). Reference year: 2012.
SOCIAL EXPENDITURE	Eurostat [spr_exp_sum], Expenditure. Reference year: 2012.
HEALTH QUALITY INDICATOR	Legatum Institute Prosperity Index, HEALTH sub-index. Reference year: 2012.
EDUCATION QUALITY INDICATOR	Legatum Institute Prosperity Index. Reference year: 2012.
LANGUAGE	Matrix built on EU official languages.
BORDERS	Matrix built on public data the world.

THE DEVELOPMENT OF IMMIGRATION POLICIES IN EUROPE

LUIGI DI GREGORIO

INTRODUCTION

In this chapter, we will review the main steps of the gradual "communitarization" process related to the immigration and asylum policies in the EU. The purpose is to briefly describe about 40 years of political processes and institutional goals, trying to read them from an analytical and explanatory point of view, useful to interpret current events as well. Bearing in mind that the current institutional architecture concerning immigration and asylum comes mainly from the important changes introduced by the Amsterdam Treaty (1997) and the Lisbon Treaty (2007), one should remember that it also comes from a long and complex process of integration and negotiation between the more "Community-first" positions and the more "State member-first" ones. This process will be analyzed in this chapter.

FROM THE SINGLE EUROPEAN ACT TO THE MAASTRICHT TREATY, THROUGH THE SCHENGEN TREATY

Since its establishment, the European Economic Community aimed at the progressive creation of a Union: a customs union first, a free trade zone then, and a single market in the end. This is the implementation of the "four freedoms principle" – freedom of movement for persons, goods, services and monetary capitals – that has always represented the point of arrival of Community integration.

However, even in the early eighties of last century, accumulated delays concerning the measures that would have implemented the four freedoms were significant. On June 28 - 29 1985, an Intergovernmental Conference was held at the EU Council in Milan in order to give a decisive impulse to this process and to amend the Treaties establishing the European Community. That Intergovernmental Conference issued the Single European Act (SEA), finally approved in The Hague, on February 28, 1986.

The SEA included the essential provision of Article 8a in the Treaty of the European Community (TEC); this rule established that by the end of 1992 the single market should have been born, defined in the Treaty as "an area without internal borders ensuring the free movement of goods, persons, services and capital."

The decisive impulse to remove the internal borders was predicted in a period of strong concern for security – due to migration flows coming from Eastern Eu-

rope – and this triggered a reaction by institutions, as well as in the European public opinion. "[...] the opinion was formed that the political objective of movement in full freedom could be pursued only upon the adoption of adequate measures aimed at compensating the lack of security that would have inevitably arisen" (Pastore, 1999, p. 16). And "compensatory" measures that began to circulate in the form of proposals in international fora concerned the strengthening of external border control on the one hand, and an intensification and improvement of controls within the single area on the other. These measures could become effective only thanks to a coordinating action among national control bodies. With this regard, proposals were designed to:

a) harmonize the regulations of Member States;
b) coordinate the activities of national administrations in order to avoid dispersion and responsibility overlapping;
c) integrate and improve the flow of information to achieve effective and efficient answers to problems caused by the creation of the single area.

However, intergovernmental cooperation – external to Community legal and political system – has actually begun some years before SEA. Some of the most important inter-governmental groups were established between the seventies and the eighties, namely: the MAG (Mutual Assistance Group, founded in 1972), the TREVI Group (established on December 01, 1975), the Police Working Group on Terrorism (PW-GOT, established in 1979), the ad hoc Immigration Group (established on October 20, 1986), the Comité Européen de Lutte Anti-Drogue (CELAD, founded in December 1988), the Coordinators' Group (established by the European Council of Rhodes on December 1988, in an attempt to coordinate the plethora of thematic groups, which have already become impossible to be managed).

The most important arena of intergovernmental cooperation, concerning justice and home affairs, was of course the one that arose from the Schengen institutional plant. The Schengen Agreement was signed in 1985 by five Member States of the European Community (Belgium, France, West Germany, Luxembourg and The Netherlands). Unlike any other intergovernmental cooperation body previously mentioned, the system created by the issuance and application of the Schengen Convention had two disruptive characteristics granting it a special status: a wide and very detailed regulatory base, and the establishment of a formalized and permanent body consisting of an executive Committee and a General Secretariat.

The key-contents of the Agreement and the Convention were as follows:

a) abolition of police checks on people and decrease of checks on goods at internal borders;
b) strengthening of external border checks, especially in relation to illegal immigration and the attempts to abuse the asylum right;
c) intensification and coordination of security checks within the area of free movement.

For our purposes, the most important legacy of the "Schengen system" is that it has catalyzed some very significant amendments to the development of control policies in Europe, including those concerning immigration and asylum and others as well.

The distinguishing features of these changes are:

a) The transition from an intermittent and unstructured cooperation to a systematic cooperation among police forces;
b) The mitigation of operational constraints due to the State borders concerning the control action of national police forces (not only the observation hypothesis was introduced, the cross-border pursuit has been phased in as well);
c) The transition from a "jealously" national information system to an integrated and shared information management model;
d) The check on internal area is turned from localized and static – focused on the borders – into a widespread and dynamic process, based on the ability to constantly follow and monitor certain categories of people, as per a principle similar to the one of point b). A check on a personal basis, instead of general application, is now applied, based on an expanded concept of "border," as well as on widespread checks performed within Member States;
e) The trend to outsource some checks – a real novelty in the development of migration policies, with regard to the external borders of the single area and based on the involvement of third countries under migration pressure (through readmission agreements and cooperation to control illegal emigration), and of some categories of private subjects (e.g. through the empowerment of carriers, almost equivalent to police officers in terms of passenger checks).

The innovations introduced by the "Schengen system" were not few, and began to mark the pace of a more structured and continuous collaboration, which will produce a significant convergence in operational terms and in regulation contents likewise. These contents were obviously marked by an ideology of security and "indisputable" fear – we might say – of migrations coming from third countries, considered essentially as external threats and under no circumstances as economic resources, and therefore even less as a people to be integrated into their own social fabric.

Schengen, however, was born as a kind of experiment which had two policy objectives, instrumental to governments of countries participating the system:

a) the effective implementation of policies concerning the single area, especially on internal security;
b) the adoption of intergovernmental decision-making structures and procedures, in order to operate with the maximum political discretion, removing the debates on issues dealing with the removal of borders from the internal decision-making arenas and the Community ones, both presaging of democratic check, although to different and changeable extent.

Obviously, however, it should be noted that this experiment was designed to implement a key principle of the European Community and, in this sense, in the implementing Convention dated 1990, it was specified that the objectives of the Schengen Agreement could have been perfectly overlapped with those of the European Community Treaty and that no decision of the Schengen institutions could have been averse to the measures that would have been adopted to implement the Treaty provisions. In addition, the novelty constituted by the observer office guaranteed to the EU Commission in the meetings of Executive Committee must be pointed out.

With regards to its effectiveness, the Schengen system had a rather slow start. However, between 1990 and 1996, the real take-off of the system occurred, when – in chronological order – Italy, Spain, Portugal, Greece, Austria, Denmark, Finland and Sweden joined the 1985 signatory States. In addition, in December 1996, the other two Nordic countries outside the European Community, Norway and Iceland, signed the cooperation agreements with member states of the Schengen system, which guaranteed them the status of Associated Member of the system.

The formal membership boom and the great effort to prepare the substantial preconditions to implement the system in 13 Member States of the European Community[18] point out the great success obtained by an experiment – at the beginning hesitant and even considered as "futuristic" by some people – especially in the second half of the nineties.

Nevertheless, the experimental and temporary nature of the system did not take long time to manifest itself, just in the years where mechanisms finally became effective in all respects. The unanimous vote, at decision-making seat numerically growing with the increase of memberships, turned out to be a boomerang tool, born to protect the decision power of the states but which practically ended in cancelling it, or at least reducing it in a crucial way. In addition to this, the decision-making procedures, virtually secret and without any democratic control, started to creak the internal lawfulness of the bodies.

Finally, the crisis of the Schengen system was to a certain extent announced since its birth, as it was conceived from the beginning – as said – as a temporary experiment, with its probable "implosion" and "engulfment" in the Community legal framework. And this was in fact the announced end of the system established by the Schengen Agreement. However, the incorporation of Schengen into the Community framework took place at the end of a long process, with two main stages, marked by the Treaties of Maastricht and Amsterdam.

18. The EU had 15 Member States, excluding UK and Ireland, which were already sharing a bilateral agreement regarding free movement.

FROM MAASTRICHT TO AMSTERDAM: FORMALIZING INTERGOVERNMENTAL COOPERATION

The Treaty on the European Union signed in Maastricht on February 7, 1992, marked a topical moment in several policy sectors within the European Community. One can say, with regard to the policies under review in this document, that they formalized the cooperation on immigration and asylum policies at the European Union level, through the so called "pillarisation" of the Community structure.

The newly founded "European Union" was represented and thought out as a Greek temple, with the front supported by three columns (or pillars that is) of which only the central one represented the community in the true sense of the word, while the other two represented the newly introduced clauses of the Treaty.

Therefore, the Union had a new structure with a first pillar – traditional and consolidated – where the sovereignty shift from Member States to the EU took place over time and where the new decisional policies entered into effect following the concept of the so called "codecision"[19]. A second pillar aimed at forming the CFSP (Common Foreign and Security Policy), and a third – the one most relevant to this document – dedicated to the "cooperation in the field of justice and home affairs" (JHA sectors).

In truth, there was not much of in terms of European integration in the substance and consequences brought forth by these innovations. The two new pillars represented never seen before *policy fields* for the European Union, for which the decision was fundamentally to exclude EU competence. Actually, supranational institutions remained excluded from having any decisional power in such matters. In this sense, the Maastricht Treaty was the result of a difficult compromise between the "maximalist" positions – already favorable to a common immigration and asylum policy across the European Community – and the "minimalist" ones – which opposed the progress of integration and in favor of maintaining the intergovernamentalist method, guaranteeing power to each State on the matters under review. It is necessary to highlight the importance of the unanimity voting at the Council oh the EU as a break to integration and to the success of the maximalist positions. This does not mean that nothing changed in Maastricht – as later happened in Amsterdam – and that the maintenance of the status quo prevailed, but rather that the result of the negotiations was strongly influenced by the preferences of the few governments opposed to the integration.

The third pillar was designed as the means of implementation of the principle contained in the preface of the Treaty, related to the right of free movement of people, guaranteeing at the same time a high level of security within the European Union.

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19. The joint policy-making procedure introduced by former article 189B TCE, represents an evolution of the previous cooperation procedure. Differently from the latter, the new method establishes that the Council cannot approve an act without the previous approval of the European Parliament, which, instead, was allowed in the previous cooperation procedure.

The "matters of common interest" identified in the third pillar were the following (art. K.1):

1) Asylum policy;
2) Regulations governing the crossing of borders external to the Member States by people and the performance of related inspections and verifications;
3) The immigration policy and the policy to be followed with regard to third-country citizens:
    a) The entry and movement conditions of third-country citizens within Member States;
    b) The conditions of stay for third-country citizens in Member States, including family unification and access to the job market;
    c) The fight against illegal immigration, illegal stay and work of third-country citizens in Member States;
4) The fight against drug addiction;
5) The fight against fraud at the international level;
6) Judicial cooperation in civil matters;
7) Judicial cooperation in criminal matters;
8) Customs cooperation;
9) Cooperation with police for the prevention of terrorism, drug trafficking and other serious international crimes.

For the first time a new approach emerged – even if just in its very early stage – related to cooperation on the topic of immigration policies within the EU.Art. K.3 identified the regulatory tools and the orientation of the Council of the EU to give life to cooperation in these matters. It represented the real negative aspect of the Treaty, since this series of tools revealed itself to be, in terms of effectiveness, as the weakest point of the entire third pillar: consultations among Member States, common positions, joint actions and conventions. The serious shortcoming – calculated and intentionally sought after by the representatives of some of the countries – of the provisions contained in this article is tied to the non-binding magnitude of such acts towards Member States. Lack of certainty on the impact caused by these national political systems essentially led to the failure of the elaborate structure for the third pillar and made it such that the decision-making place for such matters would be one emerging from the evolution of the Schengen system instead of the one less formally tied to the judicial structure and institutional Community.

In addition to this, the decisional methods did not introduce any major changes compared with those that had consolidated inter-governments in the previous years. The Justice and Home Affairs Council would have decided with unanimity voting both in the cases of common positions and conventions. A majority vote was established solely for procedural matters and for the implementation of measures for common actions and conventions.

Moreover, the power of initiative was shared by the Member States with the EU Commission but not on the matters more linked to internal security, i.e. judicial co-

operation in criminal matters, Customs cooperation and Police force cooperation, where the power of initiative rests exclusively with the Member States.

The entire third pillar proved itself to be very weak in terms of enforcement and practical implementation. It was the result of a negotiation between positions rather far away from each other that led more to "good intentions" than to "good practices."

However, the system originated from Maastricht should not be completely underestimated, namely for two reasons:

1) Even without a clear legal value, the acts, but even more so, the processes and dynamics created in the after-Maastricht period certainly had a political-administrative and socio-cultural impact on the key figures of the most important sectors analyzed herein;
2) The structure that emerges from the Maastricht Treaty would, however, have acted as an "ice-breaker" for the developments reached in the Amsterdam Treaty even more so for its negative aspects than for its positive signals.

THE AMSTERDAM TREATY AND THE POST COMMUNITARISATION

The Amsterdam Treaty opens the communitarisation stage of immigration and asylum policies. According to Geddes (2000, p. 110), Amsterdam marked the communitarisation, but not the "supranationalisation" of such policies, in the sense that the intergovernmental decision-making method was still maintained to the detriment of the "Community-integration" method. And this is an important specification and a real limit that will be overcome only in the Lisbon Treaty, ten years later.

The Intergovernmental Conference that led to the Amsterdam Treaty was anticipated by the Corfu European Council in December 1994. A Reflection Group was established as a consequence of the reflections presented in the EU Commission Communication in 1994, with the aim at providing better answers to the needs related to internal security and issues that, in general, concerned the justice and internal affairs sectors.

Much of the IGC agenda was drawn up by the Reflection Group that in the meeting in Corfu identified six priorities for the discussion on the JHA sector, five of which concerned the immigration and asylum, namely:

1) ensuring that the immigration and asylum issue was considered as one of the most important challenges that the European Union should have tackled in the future years, thus pushing for a "structural" and not "temporary" and "emergency" vision of the migration phenomenon;
2) communitarizing the entire discipline, moving it from the third to the first pillar, that is from the intergovernmental pillar to the Community one;
3) opening the policy-making as much as possible, in order to gain both in terms of decision efficiency, and in legitimacy and consensus ones;

4) building a EU protecting civil rights, strengthening the protection of human rights, even trying to place the European Court within the legal framework of the Treaty;
5) applying the principle of subsidiarity to the management of immigration and asylum policies, transferring to the supranational level some aspects of these policies.

Between lights and shadows, the new compromise arisen with the Treaty of Amsterdam marked the opening of the real communitarisation stage of immigration and asylum policies. It also put a full stop to the experience of the Schengen system, ratified by the incorporation of the so-called Schengen acquis (set of regulations) within the Treaty of the European Communities.

The justice and home affairs sector was reformed in several ways, that can be summarized into three main sets of provisions:

1. the aforementioned incorporation of Schengen acquis in the EU legal framework, which led to the dismantling even of the structures linked to the Schengen system, then absorbed by EU institutions;
2. the communitarisation of certain issues of the third pillar constituted in Maastricht, namely: policies of immigration, asylum, visas and judicial cooperation in civil matters. Communitarisation, however, was planned as a gradual process over time and with abnormal outcomes compared to what established for other policies present in the first pillar, or community pillar.
3. the third pillar reform, which required a necessary reform of the institutional instruments that marked a real failure in the 5 years that divided Maastricht from Amsterdam.

The communitarisation of the immigration and asylum policies is realized in their progressive removal from the third pillar; pillar that remains alive only for judicial cooperation in criminal matters and police cooperation.

Except for the Schengen acquis, in fact, the Amsterdam Treaty established a new institutional architecture to be developed, starting from the "foundations" made by Schengen and its "derivatives."

The TEU Article 61 required that the Council of the EU could adopt within five years – in almost all cases – certain measures "with the aim at progressively establishing an area of freedom, security and justice."

Articles 62, 63, 65 and 66 aimed at providing a content to the measures mentioned above and their reading shows that the key issues on which to make law were the following:

1) definitive control abolition of internal borders, through "measures suitable to ensure, in accordance with Article 14, the absence of any controls on persons, both citizens of UE and citizens of third countries, when they cross internal borders" (article 62, paragraph 1);
2) common measures on controls at external border, through:

a) rules and procedures which must be followed by Member States to carry out control on persons at said borders;

b) rules on visas for intended stays of no more than three months, including:
  i) a list of third countries whose citizens must be in possession of visas when they cross the external borders and a list of third countries whose citizens are exempt from that requirement;
  ii) the procedures and conditions to issue visas by the Member States;
  iii) a uniform visa format;
  iv) rules related to a "uniform visa" (article 62, point 2);

3) common measures on the free movement of citizens of third countries, through "measures establishing the conditions under which citizens of third countries can freely travel within the territory of Member States for a period not exceeding three months" (article 62, point 3);

4) provisions on asylum, through "measures [...] in accordance with the Geneva Convention dated July 28, 1951 and the Protocol dated January 31, 1967 related to the status of refugees and other relevant treaties, within the following sectors:
  a) criteria and mechanisms to determine which Member State is responsible for examining the application for asylum submitted by a citizen of a third country in one of the Member States,
  b) minimum regulations concerning the reception of applicants for asylum in Member States,
  c) minimum regulations concerning qualification and status of refugees to citizens of third countries,
  d) minimum regulations concerning the applicable procedures in Member States for granting or withdrawing refugee status" (article 63, point 1);

5) provisions concerning refugees and displaced persons, through "measures applicable [...] in the following sectors:
  a) minimum regulations to temporarily protect displaced persons coming from third countries who cannot return to their country of origin and for persons who otherwise need international protection,
  b) promoting a balance of efforts between Member States that receive refugees and displaced persons and bear the consequences of their reception" (Article 63, point 2);

6) provisions concerning more generally the immigration policy, through "measures [...] in the following sectors:
  a) conditions of entry and residence, and regulations on procedures for the issue by Member States of long-term visas and residence permits, including those issued for family reunification purpose,
  b) illegal immigration and illegal residence, including repatriation of illegal residents" (article 63, point 3);

7) provisions concerning the residence conditions of third country citizens, through "measures defining the rights and conditions under which third-country citizens legally residing in a Member State may reside in other Member States" (Article 63, point 4);

8) Provisions concerning judicial cooperation in civil matters (article 65);
9) Provisions concerning administrative cooperation, between Member States and between them and the EU Commission (Article 66).

Looking through this list, the qualitative leap towards the past, even compared to the unrealized good intentions of Maastricht, is absolutely clear. And it becomes even more clear if it is considered that the extension of the sectors is added to the possibility to adopt finally binding deeds (regulations, directives, decisions) for Member States and in a period of time, namely in just five years (a term that has not been fully respected). Once this period is over, among other things, (May 01, 2004), the EU Commission became the only institution to hold the power of initiative in the matters included in Title IV.

However, also the limitations are many that could have had a (and they did so in certain cases) significant effect on the system so outlined:

1) First, some topics were excluded from the transitional five-year period, therefore their discipline could have been completed even in longer terms; these specific areas are:
   a) "promoting a balance of efforts between Member States that receive refugees and displaced persons and bear the consequences of their reception" (Article 63, point 2);
   b) "conditions of entry and residence, and regulations on procedures for the issue by Member States of long-term visas and residence permits, including those issued for family reunification purpose" (article 63, point 3, letter a);
   c) "provisions defining the rights and conditions of third country citizens, who legally reside in a Member State may reside in other Member States" (Article 63, point 4);
3) It was practically impossible to consider as urgent – therefore as peremptory - the term of five years, because any type of sanction was not established for any inertial behavior of the Council;
4) Unanimity remained the main voting method within the Council, since the qualified majority was allowed – by article 67 TEU – right after the approval of the Treaty, to regulate visas concerning residence permits up to three months; in particular, for the regulation related to the "list of third countries whose citizens must be in possession of visas when crossing the external borders and those third countries whose citizens are exempted from that requirement" and the uniform format for visas (article 63, paragraph 3). While the qualified majority voting, was established after the transitional five-year period for "the procedures and conditions for issuing visas by Member States" and for the "regulations related to a uniform visa" (article 67, paragraph 4).
5) The Commission would share - until May 01, 2004 - the power of legislative initiative with the Member States.
6) The decision-making procedure, at least for the five-year term, would have been that of the so-called "consultation", and not that of "codecision" in which the Eu-

ropean Parliament has the power to influence the final outcome of the decision;

7) Any transfer to the codecision procedure, which also will require the qualified majority voting was established by article 67, paragraph 2, but only after the transitional five-year period and after any unanimity decision of the Council of the EU, on the whole Title IV, or on its part;

8) The opting-in and opting-out clauses, through which some States (UK, Ireland and Denmark), by virtue of their previous particular link with the Schengen system, may choose from time to time to ask what issues they may take part in (or escape from) policy-making.

9) The possibility to establish some "strengthened cooperation," e.g. to allow some Member States (at least an absolute majority) to develop a common strategy and to take it forward, even against the will of the minority. Even if Title VII of the TEU, establishes many substantial limits to these possibilities.

The overall picture that emerges from the Amsterdam Treaty is therefore characterized, as always, by lights and shadows, if it is looked with the eye of a person who hopes for greater integration. Of course the lights "shine" if the post-Amsterdam is compared with the cooperation carried out in previous years. Even the shadows, however, have a logical and historical link with the past, as they are in a certain sense the institutional "parachutes" that some Member States demanded to prevent consequences difficult to be managed, especially in internal political systems.

THE LISBON TREATY AND THE "FULL" COMMUNITARISATION. FROM MINIMAL NORMS TO COMMON POLICIES.

With the Lisbon Treaty, approved in 2007 and entered into force in 2009, the three-pillar structure established with the Maastricht Treaty and then amended with the Amsterdam Treaty – which granted Police and Judiciary cooperation for crime cases to the third pillar, while the first pillar had already incorporated matters such as movement of persons, borders, visas, asylum, immigration and Judiciary cooperation on civil cases – completely disappeared.

In the Treaty, competence with regard to Justice and Home Affairs is entirely attributed to the Treaty on the Functioning of the EU, and it is further detailed that the Union develops a *common policy* with regards to borders, visas, migration and asylum, overcoming the previous structure which attributed the EU the competence of adopting *minimum common norms*.

The European Council is granted the definition of strategic general guidance for legal and operative planning concerning freedom, safety and justice, with five-year plans. Finally, a standardization of procedures is achieved as well. European Institutions shall implement common policies through legislative measures (no longer with non-binding acts then). The power of initiative is exclusive to the EU Commission (apart from Police and Judiciary cooperation in crime cases, which is attributed to single Member States as well). Legislative norms shall be adopted on the basis of or-

dinary procedures, that is, the codecision method – the EU Parliament is a joint pol-icy-maker with respect to the Council of the EU, and decision of the Council to be taken with qualified majority, two total news for issues of migration, asylum and bor-der controls.

Member States retain competence over norms concerning citizenship and maintenance of public order and internal security. Together with breaking novelties introduced with the Lisbon Treaty, it is worth recalling several initiatives and deci-sions taken so far since 2004 (end of the post-Amsterdam five-year period):

- Eurodac, SIS II and VIS: 24/7 information systems coordinated by the European agency Eu-LISA, in order to manage database on fingerprints of those filing for Asylum, on visas and on the exchange of information concerning internal security of Member States;
- The Asylum and Migration Fund, created in 2014;
- The Internal Security Fund, created in 2014;
- The Standing Committee on the evaluation and implementation of Schengen, created in 2013;
- Eurosur: European borders surveillance system, created in 2013;
- Frontex: the European Agency for the Management of Operational Cooperation at the External Borders, created in 2007;
- The European Refugee Fund, created in 2007.

These actions should be sided be a long series of guidance documents issued by the European Commission: the most important one is the 2008 Communication "A Com-mon Immigration Policy for Europe: Principles, actions and tools."

A common migration and asylum policy has then been active *de facto and de jure* since 2009; there is a binding EU set of norms for Member States; there are orga-nization, structures, programs and funds dedicated to supporting them. Still, para-doxically, the moment in which the European Union achieved a difficult and com-plex process of competences' acquisition on these matters, is the very same moment of its downward trend – a clear crisis of legitimation which has led to questioning the entire communitarian structure.

The following table summarises the entire period described up to this point, on the basis of the evolution of competences of the European Community competences and more in general of the decisional method related to the immigration and asy-lum policies.

TABLE I. EVOLUTION OF COMPETENCES OF EUROPEAN INSTITUTIONS
AND OF THE DECISION-MAKING PROCEDURE

	PRE-MAASTRICHT	MAASTRICHT	AMSTERDAM	LISBON
EUROPEAN PARLIAMENT	No role.	Limited role.	Consultation procedure.	Shared decision procedure.
EUROPEAN COURT OF JUSTICE	No jurisdiction.	No jurisdiction.	Limited jurisdiction.	Full jurisdiction.
EUROPEAN COMMISSION	No initiative power. Role of occasional observer.	Initiative power share with other Member States.	Initiative power share with other Member States.	Exclusive initiative power.
DECISION-MAKING PROCEDURE	Intragovern-mental procedure, voting method: unanimity.	Intragovern-mental procedure, voting method: unanimity.	Consultation procedure and unanimity voting method.	Shared decision procedure (codecision) and voting method with qualified majority.

Source: Author's elaboration.

CONCLUSIONS. FROM INTRAGOVERNMENTAL COOPERATION TO COMMUNITISATION: A CONSTANT PROCESS NOW AT RISK.

The evolution of the competences on the matter of immigration and asylum clearly shows a constant integration trend and gradual shift of sovereignty from the Members States to the European Community institutions. Despite they are policy sectors that are both delicate and crucial to Member States and even if in the forty-year period examined several events took place that could have slowed down this process, the upwards delegation of power process never experienced reflux or backpedaling moments. Why did this happen? Why, despite the prevalent interpretation of the main players was that of "security", of "Fortress Europe," those same main players ended up giving up always greater portions of sovereignty to the European institutions? The reason must be searched in the complexity of the sectors to be managed and in the convenience of moving the decisional seats beyond the national borders.

In other words, Member States governments – even those that historically were the most minimalistic ones in terms of transfer of sovereignty to the EU – realized over time that facing immigration and asylum issues only through the intragovernmental method would have led to great difficulties and a probable ineffectiveness in terms of policies because of constant decisional deadlock. Such ineffectiveness, in addition, ended up entering into a growing phase of dissatisfaction and fear in the public opinion which made it progressively more useful to move the focus somewhere else, towards institutions far away from the citizens, useful as an "external enemy"

to support "internal narratives." It is the narrative of the "Europe demands it" that we hear so many times by the politicians of the Member States.

The problem is that today, after years of economic crisis and in international crises still in full swing, those fears have increased exponentially and, also due to a strong growth of populist forces everywhere in the old continent, the convenience to move the attention towards Europe is not enough and does not work anymore. And what we are witnessing now is a populist contamination also in the government forces that if they do not threaten the European institutions – in various methods – risk to lose legitimate role and internal approval.

If to this we add the "Brexit effect" and that is the true and proven demonstration that it is possible to leave the EU, we can easily understand how fragile today is the European Union structure (and not only that) in the matter of common policy in immigration and asylum. A fragility that is made even more evident by the fact that the governments are no longer working to make it more effective but above all to sabotage it with the goal of acquiring internal legitimacy.

The result is that if for years communitarisation was a way to overcome intergovernmental deadlock, today it is itself experiencing an impasse. And the real risk of a reflux, from the suspension of the Schengen agreements to the loss of sovereignty quotas by the EU seems to be truly at the gates.

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MIGRATION AND DEVELOPMENT POLICIES
WITHIN THE EU MOBILITY GOVERNANCE

CHIARA CANCELLARIO

INTRODUCTION

Transnational migration implies the creation of a number of connections between countries of origin and countries of destination. In the last twenty years, those transnational linkages have attracted increasing attention, not only under a sociological perspective, but also in relation to their potential economic impact, and in relation to the ability to influence processes of strengthening of the institutions in both home and host countries.

The increase of the studies on transnational practices determined a new trend towards the "migration and development nexus", characterised by growing enthusiasm of researchers and policy makers in terms of the positive outcomes of migration on both the contexts of origin and settlement.

In this respect, the traditional dualities "optimist/pessimist" in the approach toward migration effects and in the "brain drain/brain gain" debates have turned on the positive side.

Migrants – in particular labour migrants and diasporas - are seen as agents of development because of their ability to contribute positively both to home and host countries through the engagement in cross border activities, managed on the individual level or through political and entrepreneurial networks and NGOs. This "virtuous circle" affects not only the receiving country, but the countries of origin and the migrants themselves because, as an essential part of human development, "*mobility at the individual and group level cannot be dissociated from more general processes of social and economic change which constantly alter the spatial distribution of opportunity structures and, hence, mobility patterns*". (De Haas, 2009, p.2).

Nowadays, the connection between *migration and development* moved far beyond academic debates to become a central political issue, reaching the top of the global agenda and appearing in five of the seventeen Sustainable Development Goals.

At the European Union level as well, the connection between migration and development has become one of the pillars of governance policies on migration and of the external action, and a good number of member states have decided to pursue programmes of development which engage migrants and diasporas, implementing initiatives in partnership with EU and non-EU countries likewise.

Since the entry into force of the Treaty of Amsterdam (1999), the European Union institutions and member states have strengthened reflections and discussions con-

cerning the relationship between migration, employment and development, in parallel with the development of an international dialogue on this issue. The European Union aims at defining a comprehensive and balanced approach in migration policy also including third countries in the management of migration issues.

Furthermore, with the *Global Approach to Migration* (2005), the Migration and Development nexus has become a pillar of the EU migration and mobility policy, coherently with the policy recommendations developed in occasion of the United Nations' *High Level Dialogue on Migration and Development*, held in 2006 and 2013. The international dialogue process called *Global Forum on Migration and Development*, which gives non-binding policy directions to participating institutions annually, contributes as well to the shaping of the agenda related to Migration and Development.

The present paper aims at giving account of migration management in terms of development within the European Union political framework, while attempting to understand the rationale behind the policies of mobility governance and their coherence with the global agenda.

In the first part the "transnational turn" and the raise of migration and development nexus in the academic and policy debate will be introduced, illustrating the main steps which have determined the introduction of development in migration governance at the global level.

Given those premises, the focus will be on the EU mobility policies, highlighting the relevance of the migration and development connection in the migration mobility agenda and its actual reception within member states.

THE "TRANSNATIONAL TURN",
THE MIGRATION AND DEVELOPMENT POLICIES IN THE GLOBAL AGENDA

Nowadays, there is a substantial literature on the typology of connections and relations between migrants and their context of origin and settlement, emphasising the "circularity" of mobility in a transnational perspective.

Although there are individual differences concerning the time and frequency of mobility, circular migration is generally characterised by the spending of significant periods within origin and destination countries, and the maintaining of economic ties in both contexts.

In the field of development studies, the analysis of the impact of circular migration privileges migrants whose main residence is in the country of destination, and who engage in economic and social activities in the country of origin. Several studies in fact highlight that migrants who hold a secure legal status in the country of settlement such as citizenship or long term permits of stay, are most likely to intensify their links and exchanges with the country of origin.

As a consequence, the global exchange processes, along with the possibility of a fast exchange of information have the strength to determine "*more win-win situations for mobile persons, states and societies on the different sides of the migratory process*" (Doyle, 2004, p.118).

The attention toward the economic and social changes brought by circular migration determined a new pattern in defining the migration experience and its consequences, labelled as the "transnational turn". Transnationalism in migration is defined by Bash et al. (1994) as "*the processes by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement*".

Social sciences use to refer to transnationalism as one of the main aspects of globalisation, which include social movements, labour market, technological development, international political frameworks and international relations in its spectrum of analysis. With regard to migration, the transnational practices deriving from people's mobility include all those aspects and the relations between countries of residence, transit and destination. With transnationalism, borders of any kind change their nature, become fluid and porous, and personal migration histories change as well, being now conceived as "open" and "multi directional" processes (Zanfrini, 2015). This leads to overcoming the traditional division between country of origin and settlement, because the field of action of transnational migrants may include two or more contexts.

On this aspect, "Transnational migrants" or "*transmigrants*" emerged as a new population, composed of migrants, able to build and maintain ties, networks and activities within a unique social tissue.

To further explain the concept, as Levitt and Glick Schiller (2004), the space of migrants becomes *multi-layered*, *multi sited and fluid*, allowing migrants to connect and strengthen ties with more than one society, and to "*alter the economies, values and practices of entire regions*" (Levitt, Jaworksy, 2003, p.132).

The transnational theory has highlighted the importance of self-organisation for migrants' actors, determining an ideal change in the development theory. The centrality of migrants' organised communities as grassroots actors, and the role of remittances as provider of foreign aid, took a clear liberal character, which contrasts with the idea of dependency, *brain drain* and centrality of states in the development policies.

The economic dimension of transnationalism is key in the shaping of migration and development policies. This is mainly because remittances serve as a counter balance of the negative effects of migration, constituting one of the principal sources of support to the economies of the countries of origin. It has been observed that remittances keep on flowing from host countries to homelands in spite of the global economic recession. This is supported by OECD and World Bank data, which reveal how, in a timeframe of a ten years (2004-2014), this amount has resulted to be triple, also exceeding the official aids to development.

Although private investment of remittances represents the ground driver of development (especially for human capital increase), a business-oriented utilisation of remittances is highly encouraged at governmental level, both in sending and receiving ends.

In particular, financial inclusion, foreign direct investments and the setting of affordable financial services are seen by policy makers as fundamental for the reduction of poverty and growth, representing the principal challenges to ease the process of remittances transmission.

Aside from the economic dimension, remittances also include a set of ideas, values and knowledge which diasporas "send back" to home country nationals. The so-called "social remittances" are understood as a wide and articulated concept and, just like the economic remittances, are characterised by a high impact on social, political and cultural changes. Social remittances are recognised as a vehicle of promotion of values, ideas, democratic practices and human rights. As private savings, remittances are mainly employed at household level, as in education of the youngest, training and livelihood goods and services. Social remittances have a great importance in the creation of policies as well, with a specific impact on strategic developmental sectors, such as health, business and education.

Given this framework, the management of migration, and the "sharing" of its benefits, have become a common interest for sending and receiving societies likewise. In the last ten years, a global effort has been undertaken to maximise the effects of mobility for all, in the sense of sustainable development.

Consequently, the maximization of the benefits of migration for all was included in the migration governance agenda following the key principle of "shared responsibility".

Under the guide and inspiration of the United Nations' *High Level Dialogue on Migration and Development* (2006, 2013) the global debate on migration and development involved governments and civil society worldwide. The aim of the HLD was understanding the "*multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts*"[20]. As a follow, the institutional dialogue initiative named *Global Forum on Migration and Development*, held since 2007, has the objective to collect the global issues related to migration and development, and is conceived as a non-binding, voluntary and government led process which provides action-oriented policy recommendations. In addition, the recent introduction of migration in the framework of the Sustainable Development Goals, has further stressed the importance of human mobility in the shaping of a development idea based on sustainability, and the need of cooperation for migration policy and governance.

MIGRATION AND DEVELOPMENT
WITHIN THE EUROPEAN UNION MOBILITY GOVERNANCE

The global dialogue processes concerning migration, mobility and development have actively included both the European Union and its member states. The main outcomes and principles adopted globally became a key element of the migration management external action policies of the Union, with specific reference to Africa and the MENA Region, considered as key partners in the fostering of migration and mobility poli-

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20. United Nations, International High Level Dialogue on Migration and Development, Resolution of the United Nations General Assembly, 2006.

cies. In addition, the increase of migrants which has been registered in the last decade, determined the need to foster a comprehensive and balanced approach toward migration, able to embrace emergency issues with long-term strategies of poverty reduction and growth. Statistics on migration reveal that migrants in Europe represent 3.9% of the total population, 19.5 million people – both from EU and non-EU countries – who live in a state other than their own. Furthermore, the migration flows to Europe have become highly diversified. Alongside the traditional flows, i.e. from countries that are relatively close to Europe, new flows have emerged, such as the ones from China, Pakistan, Central Asia, and East Africa.

Looking specifically at European Union Member states, the existence of diaspora and migrants' transnational networks and the development of entrepreneurial activities which those groups undertake in the country of origin are particularly relevant, particularly for migrants residing in Western Europe, representing the focal point for remittances transmission and cross border activities.

As Eurostat data reveal, Germany, France, Luxembourg and the United Kingdom represent the most important remittances sending countries, while the top five receiving countries are Nigeria, China, Morocco, India and Uzbekistan[21].

Policy guidelines on migration and mobility were defined in 1999, in occasion of the Tampere Council, and shaped an approach to migration governance still valid today. That council highlighted the need of enforcing a common approach to migration, through internal coherence of member states' policies and practices and through the building of partnerships with the countries of origin likewise. That common approach to migration included political, human rights, security, employment and development issues in both home and host countries, to be fed by cooperation and technical assistance, as well as by specific bilateral agreements between the EU and third countries.

Although the recent migration governance crisis has put at the top of the agenda policy solutions regarding security, the fight against irregular migration, human rights and asylum, the approach defined in the Tampere Council has not changed. It is particularly clear looking at the policy recommendation deriving from the European Agenda on Migration signed in 2015, and from the Khartoum Declaration, signed in 2014 during the Italian Presidency of the EU.

Before analysing the most recent documents and policy frameworks, it is worthy to give account of the progresses made concerning migration and development policies, in the framework of the European Union Mobility Governance.

Throughout the years, the European Union has developed several documents and declaration on migration: *Global Approach to Migration* (2005); *EU Pact on Immigration and Asylum* (2008); *Stockholm Programme* (2009); *Global Approach to Migration and Mobility* (2011); *European Agenda on Migration* (2015).

The "*Global Approach to Migration*" launched in 2005, and re-launched in 2011 as the "*Global Approach to Migration and Mobility*" aims to address migration through

21. Data available online at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Personal_remittances_statistics.

a comprehensive, balanced and coherent approach. The key objectives of this strategy follows:

- improving the organisation of legal migration and facilitated mobility;
- preventing and reducing irregular migration in an efficient, yet humane way;
- strengthening the synergies between migration and development;
- strengthening international protection systems and the external dimension of asylum.[22]

The core aim of the Global Approach is twofold: on the one hand, it wants to set a comprehensive strategy to address irregular migration and trafficking; on the other, it wants to manage migration and asylum through a close cooperation with third countries, both origin and transit.

The background of the Global Approach lies in the international dialogue fora[23] that the European Union has set with third countries in order to find common synergies to manage migration issues. The activities of those dialogue processes are focused on enhancing the "triple wins" of migration in both home and receiving countries, namely the promotion of circular migration, which is seen as the core mutual beneficial strategy because it both serves the EU economy – through labour migration policies – and avoids brain drain in countries of origins. In this framework, *migration and development* do not represent an isolated policy, but are an integrate part of the migration management, strictly connected with the other priorities.

The *Global Approach* of 2005 marked a turning point in the European migration management policy, given that it implemented the former intentions and policy recommendations, in order to concretely develop a comprehensive migration policy.

The *European Pact on Immigration and Asylum* (2008) is coherent with the GAMM in combining the two souls of European Migration policies: security and sustainable development. As mentioned in the preface of the document

> In the last half century, the political and civilisational project that underlay the establishment and deepening of the European Union has achieved considerable progress. One of the most remarkable benefits on this enterprise is the creation of a wide area of free movement that now covers most of Europe. This development has provided an unprecedented increase in freedom for European citizens and nationals of third countries, who travel freely across this common territory. […] (Migration) can be and opportunity, because it is a factor of human and economic

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22. Cf. European Commission, (2011), Global Approach to Migration and Mobility, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, September.
23. In particular the Rabat Process, launched in 2006 during the first Euro-African Ministerial Conference. It brings together 55 countries from Western and Central Africa. For further information on bilateral dialogue processes: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/africa/index_en.htm.

> exchange, and also enables people to achieve what they aspire to. It can contribute decisively to the economic growth of the European Union and of those member states which needs migrants because of the state of their labour markets or of their demography.[24]

The Pact, strongly supported by the French presidency of the European Union, aims to give a comprehensive, harmonious and effective management of migration, through an organization of legal migration, fighting to illegal migration and encouraging synergies between migration and development.

The *Stockholm Programme* (2009) is the EU five-year plan concerning security and justice for the period 2010-2014. The programme was set with the target of creating a safer and open Europe, where people's rights are protected and the interest of all stakeholders are pursued. In its program, the Swedish EU presidency aimed to stress the need for strengthening the cooperation with countries of origin and transit of migratory flows, as well as opening legal channels for immigrant labour, creating an equal distribution of the burden of illegal immigration among member states, and easing the access to asylum procedures. The Programme, following the policy direction of the Lisbon treaty, stressed also the importance of migration and development nexus, to be implemented in a context of shared responsibility.

In particular, the Programme implied that flexible immigration policies can make a significant contribution to economic development in the long run, and that greater coherence between migration policies and other related policies should be given to issues such as foreign, economic, employment, health and education policies. Coherently with the Stockholm Programme, the European Commission's communication *Maximising the development impact of migration* reinforces the importance of the aforementioned priorities, stressing the significance of enhancing governance through bilateral agreements and involving civil society in the development related processes. Furthermore, it highlights the importance of migration and development linkages in south-south contexts.

In this context, one of the most fundamental policy instruments identified is the creation of partnerships with third countries, seen as key actors in the management of migration flows.

The general attitude on mobility, transversal to the whole range of policy priorities, is to foster the institutional cooperation with the strategic countries at regional level, with the aim to ensure the mutuality of migration benefits. To this end, EU policies developed an external dimension composed of non-binding and voluntary agreements, carried on in compliance with the principle of conditionality. The external dimension is also evident when looking at one of the instruments of cooperation that has been developed: "*mobility partnerships*" signed with strategic countries, which represents one of the main "operating tool" of migration governance. Mobility part-

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24. Cf. Council of the European Union (2008), *EU Pact on Immigration and Asylum*, September, Brussels.

nerships, as instruments of soft law, are a combined tool for the management of migration and for the creation of a common European migration policy. Together, they feature the characteristics of economic, social, security and foreign policies.

Signatory parties have no formalised requirement to meet in order to develop their partnership, and their agreements are based on a voluntary adaption of existing mechanisms of cooperation, perceived as more efficient in tackling problems concerning migration. The main aim for Parties involved is to create a framework of cooperation, which may have different degrees and ties in adaptation, according to existing agreements and activities already developed.

As mentioned above, the policy documents elaborated in the last two years have been strongly influenced by the increase of refugees and asylum seekers from Syria and Central Africa. In this context, the main challenge has become the overcoming of the migration crisis through the cooperation of member states with strategic third countries. Both the *Declaration of the Ministerial Conference at the Khartoum Process* (2014) and the *European Agenda on Migration* (2015) see the nexus between security and protection as key, together with the prevention of irregular trafficking and the fostering of human rights. In this framework, sustainable development has become instrumental for addressing the root causes of irregular migration. The Road Map 2014-2017 signed in occasion of the EU-Africa Summit in 2014 follows this path, adding the importance of human capital development, especially in education and science.

In this regard, it is important to highlight the method of reception of European Policies within single member states.

Although there is a transversal interest in this topic in each single EU countries, the efforts toward migration and development policies appear highly diversified and recall the single experience of states, mainly in terms of external relations. A comparative analysis of the "operationalisation" of the EU migration and development principles within single member states shows that the main differences concern the providing of funding, the actors involved and the focus of interest. The ICMPD[25] report "*Migration and Development policies and practices*" (2013), highlighted a number of major differences.

The first difference concerns migration and development initiatives implemented within the development agenda: countries such as France, Germany, Italy, Netherlands, Spain and Switzerland have dedicated resources for specific projects and programmes, while other countries have proceeded mainstreaming migration into a developmental policy, or adopting a mixed approach.

Secondly, there is a difference in the actors involved in the processes: not all countries work with a direct support to migrants' associations or organisations. There are different modalities of implementation, which involve government and implementing agencies at different levels. This may cause a differentiated knowledge of the diaspora community within the country, and consequently a gap between the opportunity structure and migrants' organisation expectations.

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25. International Centre for Migration Policy Development.

The third difference concerns the involvement of the private sector, and of business oriented activities. Also in this regard, involvement modalities vary, however there is a growing attitude towards involving private subjects and chambers of commerce in all remittances related activities.

The last interesting difference highlighted by the ICMPD concerns the approach toward migration and development with reference to the areas of return and reintegration, focusing both on the voluntary return or encouraging the return of experts.

In the case of Italy, it is fundamental to stress that Migration and Development have been part of the political framework of the Presidency of the EU in 2014 and, despite the lack of a national policy, it is possible to identify some best practices of co-development implemented at local level. The Italian government has also contributed to the IOM's MIDA strategy[26], and improved the channels for remittances flows[27]. In this context, integration at all level – especially financial – and capacity building are perceived as key aspects for an effective success of migration and development initiatives.

CONCLUSION

The paper illustrated the effects of the "transnational turn" at policy level within the EU, and the modalities through which the Migration and Development policy has been shaped. In particular, it has been highlighted that the raise of the "transnationalism" and the idea of "transmigrant" at theoretical level has contributed to a shift of perception of the migration impact on development, also on the policy side. In this sense, the EU mobility governance developed a policy framework focused on the enhancement of positive impacts of remittances flows, encouraging partnerships with third countries. In spite of this fact, as for the other aspects of migration and

26. The MIDA programme is a long-term strategy of development based on the participation – through mobility - of African diaspora in development initiatives in the countries of origin. The MIDA approach has its roots in several programmes undertaken by IOM and since the '70, as the RQN (Return Qualified Nationals) and includes a broad range of actions as the transfer of technology, know-how and skills, or setting of entrepreneurial initiatives. The development of several lines of action within the strategy, and the inclusion of several African countries, have made the elaboration of a global strategy of intervention and a specific mechanism of mobilisation of human and financial resources possible, for the benefit of countries of origin, countries of destination and the migrants themselves.
Through the MIDA Programme, a certain mechanism has been elaborated which includes a wide range of development actors. This enables to draw up a clear picture of the development sectors in the countries which suffer the lack of qualified resources and skills. IOM MIDA will enable, in the long run, to promote the role of national governments and their active cooperation with diasporas in the definition of national policies and their strategies on implementation. The guidelines are elaborated in coherence with the national strategies, the Millennium Development Goals and the actions undertaken in bilateral cooperation.
27. As in the case of the initiative "*Manda soldi a casa*", implemented by IOM and financed by the Italian Development Cooperation office. Available online at http://www.mandasoldiacasa.it/it.

mobility management, there is a general lack of uniformity towards the application of EU policies in Migration and Development, which mainly derives from different conditions of integration of resident immigrants, external interests and bilateral agreements and, lastly, from a differentiated interest towards the matter itself.

Furthermore, the attention towards the security and protection duality has risen to the top of the migration governance agenda, due to the well-known difficulties that European Union is facing as well.

The main question which can be raised, with regard to the final policy objective of Migration and Development as a strategic and core element of the mobility governance: would a long term policy perspective be beneficial for the Union to focus on development as an instrument reducing inequalities in both sending and receiving contexts?. It may lead, consequently, to the activation of a "better" migration, characterised by the enhancement of economic and living conditions in the context of home countries, which consequently affects the personal empowerment of the migrant himself.

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EU AND TURKEY ON MIGRATION POLICY

DOMENICO FRACCHIOLLA

THE EU AND TURKEY ASYLUM POLICY

The refugee status is defined by international law. The right of asylum is the legal permission to stay in a country as a refugee, benefiting of a set of rights related with this status. Not every asylum seeker will be recognised as a refugee, but all refugees are initially asylum seekers. States are required to protect refugees and not send them back in the country of origin where their personal security is at risk. The current international approach to refugees dates back to the 1950s as the European answers to the plague of the Holocaust and the victims of World War Two. The theoretical scheme is that the international community intervenes to help citizens of third states when the social contract and the legal protection between them and their home country breaks down. Host states welcomed the displaced people and they receive funding and symbolic commitment by the international community (O'Nions, 2014; Lavenex - Ucarer, 2003).

The feeling of being trapped without any escape routes is common among civil population in Syria today. In the last year, the Turkish generous open-door policy of hosting millions of refugees and even complaining European Union member states' decision of "building walls" and "closing their doors" (Kahraman, 2016) has been substituted by the decision of completing the construction of a permanent wall sealing off the border between Turkey and Syria (in the first months of 2017). This project is part of Turkey's "integrated security project" aimed at reducing the risk of terrorist threats, in response to the increasing terrorist attacks in the last years. Although the implementation of this restrictions has reduced the influx of daily refugees in Turkey, the overwhelming number of refugees has peaked to 3,1 million in 2016, including Syrians (2,7 millions), Iraqi and other nationalities. This number needs to be updated due to the constant escalation of violence in the region (Kanter, 2016).

In order to help Turkey deal with this tremendous influx of desperate people, the European Commission and EU member states are financing a humanitarian and development project for 3 billion euro within the framework of the Facility for Refugees in Turkey for the years 2016-2017. Since 2011, the Turkish government has organised 26 camps hosting 250000 refugees for a total expenditure of 12 billion euro. Moreover, the European Commission, in partnership with the Turkish authorities and the World Food Programme, has designed the Emergency Social Safe-

ty Net, a single card of social assistance scheme meant to transfer electronically a monthly cash grant to the most vulnerable refugees, to cover their basic daily needs. The measure will support up to 1 million of refugees, with an initial budget of 348 millions Euro, the biggest humanitarian project in the history of the European Commission. This project comes after a string of humanitarian aid projects launched in 2016 for a total value of 164 million (Collett, 2016).

Despite the significant effort of the European Institutions, the Turkish government and the International Community, the numbers suggest that the situation is almost out of control. More than 90% of Syrian refugees in Turkey - the largest community of refugees in the country- live outside the camps settings, with difficult access to basic services. Notwithstanding the efforts of the European Commission to target exactly this part of the refugees with its programmes, the refugees are paying rent and food expenses with their depleted resources. Moreover, they are fighting to have access to information, registration and, most importantly to public services such as education and healthcare.

The inadequateness of the combined measures adopted is confirmed by the decision taken by the Turkish government of buildinga wall, or better, a reinforced fence to close 900 km border with Syria with the aim to stop illegal crossing and smuggling. Over the 19 official crossings along the Turkish-Syrian border only 2 remain open (with some restrictions) as a legal option for refugees. In this way, only 200 people, mainly severely wounded ones, have the permission to cross the border legally each day (Kanter, 2016).

The EU approach to asylum entails an internal and an external dimension. Since 1999, the EU has committed to developing a Common European Asylum system. This can be deemed the internal level. The main legislative initiatives in this field have been so far the 2001 Directive on Temporary Protection, the institution of a European Refugee Fund, the establishment of the European Asylum Support Office, FRONTEX, EURODAC, EUROSUR, the revision of the Dublin Agreement, and more recently, the Common European Asylum System (CEAS), which is composed of five main documents that revise the previous system of norms and procedures. In the aftermath of the adoption of CEAS, several NGOs and the UN High Commissioner for Refugee have raised concerns over the weakness of the constructed legal framework – detention, legal assistance, procedural safeguards, the impact of Dublin Regulation on the fundamental rights of the asylum seekers (European Commission 2012; Joint NGOs Statement 2013; UNCHR 2013).

At the external level, the EU foreign and security policy comprehensively covers asylum and migration . Thus 'Asylum' is part of the "Global approach to migration and mobility" adopted in 2005 and renewed in 2011. Since 2005, the EU has created a number of Regional Protection Programmes (RPPs) and in 2012 the EU adopted a Joint Resettlement Programme to involve member states more in resettlement of refugees. However, many criticisms exist on the gaps that persist between the EU's capability of funding projects and the realization of said projects. , especially t those addressed at asylum seekers (Tolay, 2014; Collett, 2016; Shaheen, Wintour, Rankin, 2016).

In April 2013 Turkey adopted the "Law on Foreigners and International Protection" and in June 2013 the European Parliament endorsed the "Common European Asylum System", which was expected to be implemented in April 2014 and fall 2015. Between June 2011 and March 2013, Turkey welcomed more than 600.000 Syrian refugees, while the EU was criticized for the slow-paced move towards standardizing asylum policies to assist Syrian refugees. In 2013 Juliette Tolay commented the surprising state of affairs saying that "Turkey has long been seen as having a relatively poor asylum policy, in comparison to the higher standards of the EU (as repeatedly highlighted in the yearly Progress report of the European Commission). (…) There seems to be a deeper change in approach towards the issue of asylum and refugees, with Turkey turning towards a more humanitarian approach, while the EU is paralyzed by the security approach privileged by member states" (Tolay, 2014).

THE SYRIAN FAILURE AND THE EU'S DEMOCRACY PROMOTION IN THE MEDITERRANEAN. A MARSHALL PLAN FOR REFUGEES AND A FREE MARKET SYSTEM AS A VIABLE SOLUTION

Some 54% of world's refugees have lived in exile for more than 5 years, with significant restriction in their freedom of movement and the right to work. The average length of the exile is a long period of 17 years, during which the refugees wait to see if they can return home or if they can settle in a new country, being reintegrated in a peaceful society (Betts-Collier, 2015).

A different and useful approach to solve the problem of the Syrian refugees is to consider them not only as a humanitarian challenge, but also as an opportunity for development for the host countries. In this way, also the social tensions and the often-difficult relationship that hosting societies establish with refugees could be easily overcome. If the integration of refugees in the socioeconomic structure of the host country becomes the solution for national economic problems, refugees will be welcomed with enthusiasm. In this prospect, refugees should show their promptness and contribute to the cost of their own care. The government of the host country, in this case Turkey, should give refugees autonomy and opportunities. The first can be obtained with the creation of Development zones, the latter with the implementation of a market economy that is also open for the refugees (Fracchiolla, 2015; Kanter, 2016; Shaheen, Wintour, Rankin 2016).

The international community could boast the economic integration of Syrian refugees through financial incentives and trade concessions, for example establishing incentives for employing Syrians and conceiving urban areas as industrial incubator zones, where Syrian refugees can have access to education and training (Betts - Collier, 2015). This solution, proposed for the Syrian refugees in Jordan can easily be applied also to the Syrian refugees in Turkey. Many of the displaced Syrians are well educated, have technical skills and share a proxy language with their host country, whose interest in implementing this virtuous process can be fed with a new version of a Marshall Plan for the refugees with a conditionality mechanism for the

access. By backing similar projects, the European Union could recover some of its lost soft power and regain its reputational influence as a magnet of security and stability (Collett, 2016).

Beside the case of Syrian refugees in Turkey, there are several examples of the collapse of the current system: Rohingya refugees in Myanmar and Bangladesh, Afghani, Iraqi and Eritrea refugees in Papua New Guinea and Naru, Syrian, Iraqi and Afghani refugee in Hungary. On the other hand, there are at least three relevant examples of success that can be mentioned whereby as refugees contribute to the economic development of hosting societies. The first case was the policy of Greece during the 1920s, when the country reintegrated 1.5 million refugees fleeing from Turkey by employing them in the economic transformation of the underdeveloped areas of the country (Betts – Collier, 2015).

The second example is the case of sub-Saharan Africa in 1960s. In Western Uganda, Oxfam helped the development of the Kyangwaly settlement, having Rwandan refugees contributing to the growth of a previously underdeveloped region. The third case is that of Central America after the Cold War. The Yucatan Peninsula, in Mexico, benefited from the work of Guatemalan refugees in modernising the economy of the region. All these examples can be deemed to be success stories, implying an involvement in the agricultural sector. The case of the Syrian refugees regards industrial rather than agricultural development but it can be considered even better in terms of positive externalities for the socio-economic system of the host country (Betts – Collier, 2015).

The agreement between Turkey and the EU of 29 November 2015 regarding the alleviation of refugee crisis has been harshly criticized from different perspectives. Human rights organizations, some European member states, the European public opinion and Turkish intellectuals are blaming the agreement. For example, Human Rights Watch (2016) deems that "the EU spins the deportations from Greece as breaking the cruel business model of smugglers, even though many refugees see smugglers as a lifeline to safety". This approach has been criticized, considering that the problem concerns the conflicts in the regions where people are fleeing from as well as the inadequateness of EU policies to handle the situation. On the contrary, refugees are more and more using alternative and more dangerous routes to Europe, for example between Libya and Italy. All the different points of view between Turkey and the Eu date back to the interruption of the democratization process in Turkey.

Since the popular uprising in the Arab world the EU has stepped up its efforts in relation to democracy promotion. In relation to Turkey, it has devised a Positive Agenda, continuing the tradition of emphasizing the importance of democracy in its neighbourhood policy, ENP (*Strengthening the European Neighbourhood Policy*, European Commission, 2006; *A Strong European Neighbourhood Policy,* European Commission, 2007; *A partnership for democracy and shared prosperity with the Southern Mediterranean* and *a new response to a changing neighbourhood,* European Commission/High Representative of the Union for Foreign Affairs and Security Policy, 2011).

The vision of the EU includes "closer economic integration and stronger political cooperation" (European Commission/High Representative of the Union for For-

eign Affairs and Security Policy, 2011). In 2012, the EU declared to be satisfied with the New Response, as the Council was welcoming the good progress made (Council of the European Union, 2012). The new approach has broadened the definition of democracy, including a deeper and more sustainable democracy. The failure of Turkey's Positive Agenda shows that what counts is the eventual real change on the ground. Though Turkey ha s been ideologically oriented towards the EU, the pace of reforms has stopped in the last years and the perception of democracy embraced by the Turkish government is distant from the European one, considering at least the issue related to minorities, freedom of expression and more recently even to secularism.

As an EU accession candidate Turkey must accomplish the Copenhagen criteria in relation to political conditionality and thus on democracy. Setting the priorities for the democratization process is a prerogative of the EU, while the implementation rests in the hands of the national authorities that have deviated quite substantially form the priorities set. Thus, there is a stalemate in negotiations. To what extent does the EU listen to different social segments representing the major political opponents to governmental and non-governmental organizations? The answer is that the dialogue is quite poor. This also mines the credibility of the EU's democratic promotion process, that have been primary reflecting the EU economic and political interests, not its professed democratic values. If the EU will continue to prioritize other interests over democratic values its legitimacy and credibility will be lost for a long period and this could represent the end of the EU magnetic soft power.

The Eu use of the concept "*common values*" is highly contested. Even the member states themselves differ on how to conceptualize democracy. The common definition of democracy adopted by the EU agrees on emphasizing human rights and fundamental freedoms. It is built on the importance of institutions and processes, according with Dahl's definition of Polyarchy (1989) with distinct liberal traits. In this definition, elected representatives, political parties, independent institutions, independent media and a strong civil society are fundamental. The principle of non discrimination and the rights of people belonging to minorities are preserved, as well as the gender equality, the women's rights, the principle of solidarity and justice (Counciul of European Union, 2009).

The essential question is whether the liberal democratic model of democracy is suitable or compatible with Turkish settings. Some scholars argue that liberalism and political ideology has little success in regions where values are more infused by Islam (Pace and Hassan, 2012). In addition to this, liberal democracy has strong connection with economic liberalism, not necessary in line with local ideals (Tocci, 2012). Liberal outlook on civil society is often disconnected by the local context (Ketola, 2011).

There is often an inherent contradiction between interests on common values and common interest. When these dimensions are in tension, it is usually the common interests of energy, migration or trade preferences that trump declared values (Dimitrova, 2010). The difference between promoting liberal democratic values and promoting liberal democratic institutions and processes is immense. Introducing a democratic process in which people can vote for their government based on currently

held Islamist vision is far easier than promoting liberal values in a population culturally mainly far from them. If Turkey would be allowed to formulate its own vision of democracy the risk of compromising the liberal democratic model of democracy is consistent for the EU. In order to address the issue of values, a possible solution is a deeper dialogue with the Turkish society. In the EU's late response to the Arab Spring more emphasis was put on human rights and economic, cultural and social rights, which indicates a step towards a broader definition of democracy (Council of European Union, 2012).

THE EU – TURKEY DEAL ON REFUGEES AND ITS IMPLEMENTATION

The agreement between Turkey and the EU on refugees has been negotiated in March 2016 to stop the influx of refugees - mainly from Syria - in Europe. All the asylum seekers landing in Greece are being sent back to Turkey. In turn, the EU is giving 6 billion euro to help the 2.7 million Syrians now stuck on Turkish soil. Moreover, it should be easier for Turks to obtain a European visa. This clause has not been fulfilled yet. Finally, Europe has promised to accept another Syrian living in a Turkish camp for each refugee expelled (Collett, 2016).

However, this mechanism is not likely to see much use if the Aegean flow stop. Though this deal has reduced the number of migrants, it has opened or just reinforced other routes to Europe and it presents a number of problems from a political, humanitarian and legal point of view. Turkey has not signed the UN refugee convention, it has broken international law by sending back refugees to Syria and it does not offer working permits to Syrians, who oblige their children to work as a result.

Turkey's President Erdogan has been using the deal as a tool to sway the EU negotiation over the enlargement. The political relations between Ankara and Brussels are tense due to the uptake of violent actions by the Turkish government following the failed coup d'état in July (Collett, 2016; Shaheen - Wintour - Rankin, 2016).

Despite all difficulties, the agreement is functioning at staggering numbers. 2.75 million Syrians are registered in Turkey, around the 3.5 per cent of the population. For the refuges, challenges include vulnerability to exploitation and a complicated bureaucracy. The implementation of progressive integration policies needs time and a holistic and coherent strategy in order to gain the needed coordination between public institutions. The continuing upheavals of this year have retarded the solution of the crisis (Shaheen - Wintour – Rankin, 2016).

An example of the bureaucratic scramble created by the size of the immigrant flux is the establishment and the rapid growth of the Directorate General of Migration Management (DGMM) up to 3000 staff members in one year, in charge of registering the asylum seekers as well as handling all issues concerning foreigners. There are growing suspicions over the real AKP's refugee agenda, regarding the possibility that Erdogan is using the refugees to transform national identity, consolidating its power and reframing Turkey's hegemonic ambition in the Middle East. Indeed, the refugees are overwhelmingly Sunni Arabs and this feature raises concerns over

the possibility of future persecutions among some minority groups in Turkey, like Alevis, Kurds and some Turkish nationalists (Kanter, 2016). Opposition parties blame Erdogan for using to his advantage the refugee crisis. He could prospect the possibility to offer them the citizenship and make them part of his electoral constituency (International Crisis Group, 2016).

In the last weeks Erdogan has threatened to tear up the deal a day after the European Parliament urged governments to freeze EU accession talks with Ankara. Indeed, the European Parliament has made a symbolic, non-binding vote demanding an end to the decade-long accession negotiations with Turkey. Turkish officials blame the EU for not showing sufficient support in the aftermath of the putsch and even NATO partners for not understanding the scale of the threat posed to stability by the Gulenists and Kurds in Turkey (Shaheen, Wintour, Rankin 2016). Brussels' officials are questioning over the Turkish commitment to EU values, repeatedly criticising Erdogan for the purge of thousands of civil servants accused of links to Fethullah Gulen, and for the crackdown on media outlets and Kurdish politicians. The European parliament's vote does not bind EU foreign ministers, who will meet in December to discuss EU relations with Turkey (Shaheen, Wintour, Rankin 2016). Notwithstanding the expressed willingness of Germany, France, Italy and all the main EU member states to continue institutional relations with Turkey - with regards to the negotiation talks on accession, the EU will be obliged to interrupt said dialogue if Erdogan succeeds in reintroducing the death penalty.

On the other hand, Erdogan is playing the card of putting pressure on the EU by approaching the Energy Club of Shanghai Cooperation Organization, established by Russia and China in 2001 as an alternative to the EU. Turkey has a negotiating status and it has become the Chairman of the organization just a few weeks ago. The deputy prime minister Kutulmus, speaking at Chatham House, underlined that Turkey was an island of stability in a region of chaos, highlighting the Turkish commitment to Syrian refugees' cause (Chatham House, 2016).

The break down of the traditional relationship between states and refugees calls for a policy that reconciles the interests of host states with the needs of the displaced. As considered in the previous paragraph, the economic integration of refugees in the economic system of the host country would be the only real solution to the economic, social and political problems faced by the host country. In order to achieve this goal, Turkey should revive the promise of exerting its soft power for overcoming rather than feeding the conflicting dichotomies of the Middle East. This approach recalls the fundamental role of diplomacy and politics, implying the direct benefit for the stalemate of the relationship between Turkey and the EU (Fracchiolla, 2015b; Fracchiolla, 2012).

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SHALL INTEGRATION TESTS TRUMP THE RIGHT TO FAMILY REUNIFICATION?

SILVIA CAVASOLA AND DANIELE SANTORO

INTRODUCTION

The dramatic expansion of the number of third-country nationals (TCNs) in the EU over the past twenty years has presented society with fresh dilemmas regarding the balance of non-absolute fundamental rights, specifically the conflict between the rights to non-discrimination and family life for non-EU residents on the one hand, and the right of States to decide who enters their national territory on the other. In this context, this article analyses the recent case of an ECJ ruling concerning Member States' possibility to require TCNs to pass a civic integration examination prior to family reunification.

Following a description of the content of the rights to non-discrimination and to family life for non-EU citizens residing in the EU, the article discusses the case, the implications, as well as the controversies surrounding the ECJ's ruling, especially in light of the general EU objective to enhance TCNs chances of integration in the host countries. We argue that, while the Court's decision is in line with the European Directive on Family Reunification, the ruling does not consider the positive role that family life and unity can play in enabling integration.

THE PROTECTION OF FAMILY LIFE IN EUROPEAN LAW

The right to family life has long been at the core of European legislation. The issue is dealt with by both the fundamental treaties of the European Union and Council of Europe, as well as in more specific EU regulations. However, the rapid social transformations produced by immigration and the progressive stabilisation of immigrants in EU countries requires European law to constantly readapt its legal framework to grant the right to family life and unity to all the individuals residing within EU borders, whilst at the same time still granting Member States the possibility to autonomously manage their national borders in accordance with their national priorities.

Within this framework, the right to family life was originally enshrined within the European Convention of Human Rights (ECHR), under Article 8, which establishes the right to respect for private and family life. Under EU primary law, family life acquired the status of a fundamental right under Article 7 of the Charter of Fundamental Rights of the European Union (2000/C 364/01). The two treaties also equal-

ly introduce a fundamental right to non-discrimination (Article 14 of the ECHR and Article 21 of the Charter), which is importantly related to, although distinct from, the right to family life. The link between the two rights represents a primary legal source for the assertion of a right to family life for non-EU legal residents. However, the social transformation produced by immigration especially since the 1990s has produced specific challenges with respect to the material conditions for granting the right to family life to non-EU legal residents, therefore generating a need for more specific conventions.

The first EU Council meeting that specifically dealt with this issue took place on the 15-16 October 1999 in Tampere. In the presidency conclusions of that meeting, the importance of ensuring that TCNs legally residing within EU border are granted fair treatment is clearly stressed. In particular, the document underlines that TCNs should be granted "rights and obligations comparable to those of EU citizens" (EC 1999, par.18), and that discrimination in all aspects of their lives should be fought against. The Council calls for the fair treatment and non-discrimination objectives to be achieved through a "vigorous integration policy" to be implemented at the national level. The same objectives were then reasserted at the 2001 Laeken meeting, where the Council called for the establishment of anti-discrimination programs, together with a set of "common standard procedures"(EC 2001, par. 40) for family reunification. These two meetings set the guidelines for the translation of a right to family life for non-EU legal residents into more specific directives.

The main EU instrument of secondary law concerning the protection of the right to family life for TCNs, and the one that lies at the core of this case, is the Family Reunification Directive (2003/86/EC). Introduced in 2003, the Directive establishes a set of common criteria to grant the right to family reunification across Europe, which Member States are then responsible for implementing at the national level. The 2003 Family Reunification Directive provides TCNs with a strong right over the possibility to have their spouses and children join them in their country of residence, provided that the sponsor holds a residence permit of validity of at least one year (Art. 3). In the Directive, making family life possible is not only good *per se*, but also in as far as "it helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty" (point 4). The Family Reunification Directive does however foresee the possibility for Member States to require TCNs to comply with "integration measures," in case national law requires it (Art. 7, 2).

The right to family life and unity is also to be found in Directives 2003/109/EC concerning the status of TCNs who are long-term residents and Directive 2009/50/EC concerning the conditions of entry and residence of TCNs for highly qualified employment. Directive 2003/109/EC provides for the preservation of the family unit in case the TCN who is a long-term residence moves to a second Member State (Art. 16). Directive 2009/50/EC grants EU Blue Card holders the possibility to be reunited with their family members independently of a minimum period of residence (Art. 15, 2) — which is instead required for all other TCNs.

CASE DESCRIPTION AND RULING

Notwithstanding the existence of a legal framework that safeguards the right to family life of all individuals residing in the EU, there exist cases in which Member States have imposed specific conditions for family reunification applications to be accepted. In the case under analysis, the Kingdom of the Netherlands rejected a family reunification application by the spouse of a TCN legally residing in the territory of that State. The rejection of the Dutch Ministry of Foreign Affairs was based on the fact that the applicants had not fulfilled the requirement of passing an "integration test" in the country of origin. The applicants, Ms. K and Ms. A. respectively, had requested exemption from the test based on health problems for which they provided a medical certificate. However, based on Dutch law, exemption from taking the integration test can only be granted in case of "very special individual circumstances" in which a TCNs is "permanently unable" to pass the examination (ECJ Judgment, Case C-153/14, point 23) – a condition was deemed not applicable to the case under analysis.

Although the applicants lodged an objection against the rejection of their application, the Ministry of Foreign Affairs declared the challenges unfounded on the basis that their health problems did not justify exemption. The question was then referred to the national district court (*Rechtbank's-Gravenhage*), which declared the appeals lodged by respective Ms. K and Ms. A. to be instead both well founded. But as the Ministry of Foreign Affairs appealed against the judgment of the national district court, the Council of State (*Raad van State*) referred to the European Court of Justice (ECJ) for a preliminary ruling.

The ECJ was consulted regarding the interpretation of the Family Reunification directive, and in particular of Article 7, section 2 of the text, which foresees the possibility for Member States to require TCNs to fulfil "integration measures" for the purpose of their residence permit. The ECJ was asked to rule on whether: (1) The Dutch integration test is consistent with the "integration measures" mentioned by Article 7, section 2 of the Family Reunification Directive; (2) The "very special individual circumstances" mentioned by Dutch law as the only possible circumstances for granting exemption to the test should be interpreted as being excessively narrow in a way that infringes with the general purpose of the Family Reunification Directive; (3) The costs of the Dutch examination (350 Euros per attempt for the examination, plus 110 for the preparation pack) are consistent with the purpose of the Family Reunification Directive.

In its judgment, the ECJ upheld the right of Member States to "require third country nationals to pass a civic integration examination prior to family reunification (authorising…) before authorising that national's entry into and residence in the territory of the Member State for the purposes of family reunification". Integration measures like the Dutch test are considered to be acceptable in as far as they are meant to facilitate the integration of the sponsor's family members.

For this conclusion to be reached, the ruling recognised that the Dutch regulation that subjects the granting of the authorisation of entry into its territory of individuals applying for a residence permit based on the family reunification could be interpreted as being consistent with the terminology of "integration measures" fore-

seen by Article 7, section 2 of the Family Reunification Directive, in as far as holding a basic knowledge of Dutch language and society does encourage integration by facilitating interactions, social exchanges and, ultimately, access to the labour market and vocational training. The Court ruled that if the conditions of application of the test do not exceed what is necessary to achieve the aim of integration, the test might well be considered a useful measure of integration. Similarly, regarding the fees, the Court ruled that Member States are free to require TCNs to pay fees related to integration measures in as far as the level of those fees does not make it impossible or excessively difficult to exercise the right to family reunification.

Moreover, the Court did not raise any issue regarding non-discrimination. Partly the reason seems to be that the Dutch policy was discussed with regards to the European Directive on family reunification, which does not refer to the articles on non-discrimination. We will discuss in next section whether a link should have indeed been established.

After the closing of the case, in 2014, a Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification was published (COM 2014, 2010 final). The purpose of the Communication was to provide Member States with guidance on how to apply the directive, clarifying some of the "grey zones" – including that of the possible inclusion of "integration measures" as a requirement for TCNs – also based on precedent rulings of the ECJ on the matter.

POLICY ANALYSIS AND CONSIDERATIONS

The case under analysis features a conflict between two sets of fundamental social values, namely, the right to family life and family reunification on the one hand, and the objective of promoting integration of immigrants into society on the other. Such conflict of values poses serious challenges to the possibility of TCNs to exercise their right to family reunification in some Member States countries. In each country, the reasons accounting for the prioritisation of family life over immigrant integration stretches far beyond the legal sphere to comprise the country's historical, cultural and social roots.

All EU initiatives on the matter of the right to family reunification pertain to a policy area that the Treaty of Lisbon refers to as one of "shared competence" (Treaty on Functioning of the EU 2010, 51-2). National policymaking should be restricted to areas in which the Union has not previously exercised its competence, meaning that, at least in theory, the EU has a large room for manoeuvre in this field. However, due to the interpretability of some of the wording of the 2003/86 Directive on the right to family reunification, States are left in practice with ample autonomy in deciding how to balance the objective of protecting family life with that of promoting integration.

A 2008 Commission report on the implementation of the Directive (COM 2008/610) had already rightly highlighted the problems generated by some of the uncertain boundaries created by the "optional clauses" in the Directive, and in par-

ticular, that of Article 7 (2) regarding States' possibility to require TCNs to comply with "integration measures". In a 2011 document aimed at providing some guidelines on this issue, the admissibility of integration measures was made to depend on an evaluation of whether the measures "serve the purpose of facilitating integration" (COM 2011/735, sect. 2.1). The ECJ ruling of the Minister van Buitenlandse Zaken vs. K and A case does indeed make repeated references to such document.

The Court's final ruling declared the pre-arrival integration test as admissible on the grounds that it facilitates integration while at the same time not undermining the broader purpose of the family reunification Directive. However, the ruling still does not solve the issue of the overall lack of clarity surrounding the "right to family life" and the conditions at which the latter can be rightfully claimed by TCNs wishing to reunite with their family members in the host country. Not specifying what does (not) constitute an acceptable "integration measure" that a state can introduce to restrict family reunification, the Court's ruling seems to prioritise – rather than balance – integration over family life. More stringent guidelines concerning the interpretation of the concept of acceptable "integration measures" would be necessary if the objective is that of reducing Member States' ability to use integration tests as instruments for immigrant selection or border management.

Furthermore, the ECJ's ruling about the usefulness of integration measures can be contested on the grounds that those measures might actually be counter-productive with regard to the purpose they are meant to serve. In recent years, several researches have challenged governments' assumptions that mandatory language and civic test significantly ameliorates immigrants' chances for integration (Bocker and Stik, 2011; Groenendijk, 2011; Goodman, 2011; Goodman and Wright, 2015; HRW, 2008; Permoser, 2012; Scholten et al., 2012). In a report on the impact of family reunification tests in several EU countries (MPG, 2011), the Migration Policy Group argues that pre-entry language tests do not carry long term positive effects on linguistic and cultural integration. The report indicates that language-learning benefits are only transitory, as applicants tend to forget what they learned as soon as the test is passed. Similarly, in other researches, interviewed teachers and officials deny the existence of noticeable language skills differences between applicants having being required to pass a test and the others (Groenendijk, 2011, 25).

More in general, the question of the impact of these tests on ameliorating chances for economic and socio-cultural integration is difficult to be addressed satisfactorily, according to an evidence-based approach (Schweitzer, 2014, 18). To be sure, pioneer studies on the topic have been far from optimistic (Scholten et al., 2012; Goodman and Wright, 2015). At the same time, while the relation between the passing of the test appears and individuals' potential (or willingness) to integrate is far from straightforward, considerable risks exist that not passing the test – and being refused a family reunification visa on those grounds – might reduce the psychological and material resources necessary for the applicants' and their family to seek integration in the future (Groenendijk, 2011, 26-7; HRW, 2008; Permoser 2012).

The ECJ ruling on the case rightly underlines that integration and family reunification are both top priorities at the level of the EU. What it does not seem to suffi-

ciently consider, however, is the difference in status that characterizes the two objectives. Indeed, while family life represents a fundamental right of individuals and therefore carries an intrinsic value, the same cannot be said of integration, whose desirability relies instead on the fact of it being an instrument to achieve some other goods (for example social cohesion, as spelled out clearly in EU documents[28]). Adding to this, the ruling of the Court also does not seem to take in sufficient account the significant positive role that family life and reunification can play in enabling individuals' integration into society, through the creation of the conditions for individuals to enjoy a more stable and fulfilling life.

Integration and family unity are indeed strictly related. However, since their relationship is mainly unidirectional – as family life can foster integration, but integration does not foster family life – it seems reasonable to expect that policies aimed at achieving integration be dependent on the encouragement and facilitation of family life and reunification. Based on this, the decision of the Court to declare the admissibility of an "integration measure" which denies family reunification on the grounds of promoting integration can appear short-sighted and paradoxical. For this reason, policy-makers in the EU might be interested in considering alternative "integration measures" that, instead of making family reunification more difficult on the grounds by imposing ex ante integration measures, facilitate family reunification on the grounds that it represents a key to immigrant integration. What this implies, in practice, is for member states to consider requiring TCNs to attend language and culture courses only after reaching the country of destination, in order to motivate and facilitate the integration of the reunified spouses. To be effective, such courses should be accessible, well-organised and designed around the real needs of those who attend them.

INTEGRATION AND FAMILY LIFE: SHOULD WE STRIKE A BALANCE?

Is the ECJ ruling in the Dutch case consistent with the right to family life as stated in both the Charter and the European Convention?

Before digging into the details of the Court's ruling, we should first address a general issue concerning immigration policies. Specifically, it should be noticed that Member States still retain within the legal framework of the European Union their traditional legal power to grant access to foreigners. The recent limitation of the "Schengen area" free movement by Denmark and Sweden are an example of this ultimate power. In the context of the current refugee crisis, States are indeed called upon by their own citizens to prevent an uncontrolled flow of immigration that is thought to be destabilising the peace and security, the alternative being social and political chaos. Containment policies of immigration flows seem to have then a presumptive legitimacy in citizens' constitutional rights to a peaceful and secure existence. Thus, while

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28. See European Council, Presidency Conclusions, Tampere, 15-16 October 1999. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm.

the European Convention on Human Rights provides a ground for asylum rights[29], it also seems to justify some containment claims. For instance, Article 2 of the Convention, after stating that everyone (EU nationals and aliens alike) have a right to liberty and security, specifies that that exceptions to unconditional rights are yet admitted in several cases, including "noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law" (section b), "reasonable suspicion of having committed an offence" (section c), and especially "the lawful arrest or detention... to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition"(section f). The term law refers here to national legislations. Since many of the EU Member States have recently adopted restrictive measures on this matter, containment seems to fall within the scope of Article 2, especially under section f.[30] Moreover, Article 8 of the Convention restricts the right to family life in cases of "interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." (section 2). Finally, Article 15 admits derogations from the obligations under the Convention to the extent strictly required by the exigencies of the situation.

The European Charter of Fundamental Rights, while granting to right to asylum (Article 18), and prohibits collective explosions (Article 19, sub 1), also allows States to deport aliens seeking asylum in those cases where no serious risk of death penalty, torture or inhuman treatment is envisaged (Art. 19, sub 2).

Since fundamental rights are subject to limitation and balance against interests of public safety or security, it follows that also more specific rights, such as that to family reunification, should be balanced against those interests. In the Dutch case, the legitimacy of containment policies seems to be even more urgent, given the demographic pressure caused by the number of reunification requests in a Country which

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29. See also Art. 3 of the Protocol No. 4 to the Convention.
30. Notice that many have criticised the introduction of such measures as punishing the mere condition of being an irregular alien subject. See, for instance the statement issued by Italian Democratic Party Senator Luigi Manconi in a recent press release from January 8, 2016 (available at: http://www.senatoripd.it/giustizia/manconi-cancellare-reato-di-clandestinit/). In Italy the crime of illegal immigration is regulated by the Law 94/2009, "Disposizioni in materia di sicurezza pubblica". In Germany ("Siebtes Gesetz zur Änderung des Bundesvertriebenengesetzes", May 16, 2007), United Kingdom (Immigration, Asylum and Nationality Act 2006) and France (Loi n. 2007-1631, relative à la maîtrise de l'immigration, à l'intégration et à l'asile, November 20, 2007) illegal entrance can also be punished by imprisonment. For an overview on other EU Country Members, see *Laws for Legal Immigration in the 27 EU Member States For an overview on the European Law - Edition 2009* edited by the International Organization for Migration (IOM), available at: http://publications.iom.int/system/files/pdf/iml_16.pdf. For a survey on the European Law on immigration, see *The Handbook on European Law relating to Asylum, Borders, and Immigration - Edition 2014*, edited by the European Union Agency for Fundamental Rights, and the Council of Europe, available at: http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf.

already host large communities of foreigners. If containment policies – we may add – are de facto enacted in the case of asylum requests as the recent crisis shows, even more they are in the case of family reunification.[31]

The legitimacy argument has important consequences for our understanding of the legal status of the European citizenship, especially with regards to the non-discrimination principle that we mentioned in the first section. There are at least two issues that need a brief discussion. First, does the legitimate prerogative of the Member States to control their borders imply the power to unilaterally contain immigration flows? Despite the general argument that unrestricted flow would destabilise peaceful living, other considerations run against it unrestricted power of States. One consideration concerns the rights of those affected by containment policies. It must be noticed in fact those who apply for reunification are already legal residents of the country where they submit their request. Therefore, a justification of the containment policy should explain why only foreign residents should suffer from a potential curbing of rights, whereas the same containment does not apply to nationals. To give an example: why is it the case that a Dutch national can marry a foreigner and ask for family reunification without passing any civic integration test, whereas legal residents are required to take it?

Of course legal residents and nationals are not equal in many regards. Residents do not usually have voting rights, which is certainly true for Parliamentary or European elections. However, in many other respects, they do enjoy a right to equal treatment before the law. Why is it then that in the case of family reunification equal treatment does not apply? The arbitrariness of the test does not consist in discriminating between nationals and TCNs, but in the lack of a justification for this discrimination.

The argument again, cannot not be inferred from the status of the joining spouse or relative, for again in the case of the Dutch resident the joining party does not have to pass any test. Absent a justification for such differential treatment, we are left with two options: either the right to family reunification holds equally both for nationals and TCNs when they submit a request of reunification with a non-EU citizen; or it does not. On one hand, if we argue that all aliens – regardless of the nationality of their spouses or relatives – should pass the test, a further question arise: wouldn't the national law after all discriminate against aliens *qua* aliens, regardless of their family or marital status? On the other hand, if we argue that there should be a differential treatment, the ground for a justified discrimination should be made clearer. To this purpose, we propose to analyse more in detail the arguments provided by the Court.

Within the framework of this general argument, the Court's ruling seems to fall within the presumptive legitimacy of States to retain control of their borders. As we

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31. Notice however that, strictly speaking, containment policies are not allowed in the case of asylum, since when an asylum seeker has accessed one of the countries of Refugee Convention, authorities are legally obliged to provide temporary shelter until the request is assessed. We owe this point to Jackson Oldfield.

just saw, the Court judged the term "measure" was sufficiently broad to be considered both as a measure of "integration" as specified by Article 7, section 2 of the Family Reunification Directive. The Court also ruled that the test did not exceed what is necessary to achieve the aim of integration – for example by systematically preventing family reunification in the case of an applicant showing willingness to pass the examination despite repeated failed attempts to do so due to specific individual circumstances. Since failed attempts (unless due to specific circumstances, which the Court didn't envisage in the *Buitenlandse Zaken vs. K and A* case) would prove the insufficient motivation of the applicant, they were not prejudicial to her.

Therefore, the integration test might well be considered a reasonable requirement that falls within the scope of integration and it is proportionate to the right of family reunification. Similarly, with regard to the fees, the Court ruled that Member States are free to require TCNs to pay fees related to integration measures in as far as the level of those fees does not make it impossible or excessively difficult to exercise that same right. The Court concluded that the measure could be legitimately demanded for before the applicant can enter the Country.

SOME NORMATIVE ARGUMENTS AGAINST THE COURT'S RULING

Given the above premises, we may now raise some normative arguments against the Court's ruling. First, the test puts an undue burden on the migrant for a condition he/she is not responsible for. Such burden consists — inter alia — in the costs carried by the prospective migrant to take the test. Although the Court judged this burden not to be excessive in this particular case, Article 7(2) of Directive 2003/86 explicitly states that the integration measures must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States. Yet, as the test is provided ex ante, failing to pass the test acts as a de facto filter. This is even more so if we consider that the Advocate General, in his opinion on this case, stated that failing to pass the test did not imply automatic refusal of the family reunification request. The Court did not find the applicant to be "permanently unable to pass that examination" (point 19, c), which is the main condition when the hardship clause applies. Since hardship applies only to permanent inability, the Court reasoned that the right to family reunification was just conditional on the requirement to pass the civic integration examination even in all those possible cases where maintaining that requirement would make family reunification impossible or excessively difficult (point 63).

The same general reasoning that excludes non-permanent hardship applied in the further question posed to the Court, that is whether the costs relating to the civic integration examination should be considered as a sufficient ground for exemption from the test. The Court stated that "the fact remains that, in accordance with the principle of proportionality, the level at which those costs are determined must not aim, nor have the effect of, making family reunification impossible or excessively diffi-

cult", yet leaving competence to the national authorities to determine the fee costs without considering the particular circumstances of TCNs from countries where 350 euros can often correspond to several months' salary.

Second, it is dubious whether the test is a suitable proxy for evaluating willingness to integrate, as it contradicts straightforwardly the aim of facilitating the integration of the applicant. One may argue that integration should be taken as a general policy towards the community as a whole. Admittedly, both the Directive and the Court's decisions do utilise the term integration as a general term, but the right to family life on which the Directive is based is an individual, not a communal or collective right. In other words, if integration is value that should pursued, it seems quite unreasonable to deny access to applicants whose integration we seek on the basis that they would not further this aim. We should keep in mind that failing the test has more far reaching negative consequences for migrants than any upholding of an abstract value of integration.

Third, valuing integration in general seems to underline a view of the societies we live in as culturally defined by a set of values prospective immigrants should be assimilated into. This point is shown by the phrasing of the Court's decision referring to the integration test as a civic measure meant to evaluate the knowledge of the hosting country. But European societies are now far from being closed communities defined by one unique set of values. The very criteria for granting citizenship (whether based on birth or parent's nationality) does not imply the citizen should share any particular value of the community she is part of. Of course being a lawful citizen of a country comes with the possession of rights and the duty to respect the laws and abide by the fundamental principles entrenched in the constitutions. Yet, rights and duties are not values in the sense we are discussing here. Rights and duties empower people with the capacity to make choices according to their moral and personal aims, and their limit comes – as it is usually recalled – with the equal rights and duties of other members of that community. The language of rights does not overlap, and sometimes clearly diverges, from the language of values. Values have rather strong moral connotations, in that they constitute beliefs that provide a foundation for our personal lives, not public life. Thus, if we want to say that integration is a value, it cannot be that sort of moral value that we associate with our strongest moral convictions, whether religious, ethnic or cultural. We must think of integration along different lines, more closely to which rights integration furthers.

We argued above that we may think of integration not as a value per se, but as an instrumental value aimed at enhancing autonomy, recognition and respect for newcomers. We can certainly express autonomy, recognition and respect as values, but what they consist in are claims of rights individuals have. They are part of what being a citizen means, quite apart from what moral convictions she or he may have.

An important consequence of the previous argument is that balancing between integration and the right to family life is an ill-posed issue, because we can hardly weigh-up abstract values or general policies with specific right claims or requests. The Court's very decision is indecisive in this sense, referring to the authority of the

Member States to set measures that would not contradict the general aim of the Long Term Residents Directive. The consequence is that, when the right to family life is made conditional on the general value of integration or the manifest willingness to integrate, authorities can more easily find a way around to couch otherwise political measures in moral language.

To sum up: abiding by the moral values of a given community cannot be the aim of integration because current European societies are all more or less multicultural, so no set of defined values would be a good criterion of inclusion.

In conclusion, all things considered, the *entry* test per se is either insufficient to establish a proper capacity for integration (for whatever reason integration is upheld) or it can represent in some cases an undue burden against migrants for a condition they are not responsible for. A culture of integration should not be *selective* in the sense required by the test as set out by the Dutch legislation.

However, we do not want to claim that integration measures should be abolished, neither that language abilities are unnecessary to the aim of integration. Language abilities do have positive consequences overall in favouring subjects' autonomy and a richer social life, and a politics of inclusion should adopt measures that would facilitate the legitimate aims of integration such as autonomy, respect and recognition. However, strengthening these abilities should not (a) require the imposition of *entry* tests before arrival; (b) be evaluated in the form of *selective* examinations.

CONCLUSION

In this paper, we have argued that the Court's Decision in the van *Buitenlandse Zaken vs. K and A* case addresses focal issues in the present European legislation on immigration policies, rights to family life, and non-discrimination. We have argued that the practice of employing civic tests as selective measures of integration does not further the proper aims of integration, conflicts with fundamental rights to family life and non-discrimination, and does not take into due consideration the proportionality principle required for the adoption of these selective measures.

We have also defended the idea that the right to family life is a fundamental right which should trump considerations of balancing it with unspecified values of integration. Yet, as we have said, integration has the instrumental value of facilitating the promotion of other values, such as autonomy, recognition and respect, which can be translated in actionable rights. This is indeed not a new idea. Jean Jacques Rousseau (1755) thought of recognition as the sentiment of being an equal among equals.

A society of equals is one in which the standards of acceptance depend on participation in public life, and participation is an expression of freedom, for it grants collective self-government. In this sense, integration has an important function, as it favours the recognition and respect of migrants as political subjects, and indeed as citizens in the sense of potential participants in the public life of the community they live in. We did not argue however that immigration policies should be unre-

strained. Conflicts of rights may arise at such a level when unrestrained access compromises the welfare entitlements of nationals. But such considerations cannot be taken as presumptive arguments in favour of selective measures based on civic integration.

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THE IMPORTANCE OF BEING RECOGNISED AS WORKERS.
IRREGULAR IMMIGRANTS
AND ACCESS TO THE ITALIAN WELFARE STATE

MATTIA VITIELLO

WHAT ARE WE TALKING ABOUT?
DEFINITION, SIZE AND DETERMINANTS OF IRREGULAR IMMIGRANTS IN ITALY.

A quota of the foreign population In recent years migration flows in Europe seem to be charaterised in Europe has an irregular legal status. Over the years, this population has become a priority issue for At the same time, irregular migration has become a priority issue for European Union migration policy (Triandafyllidou 2010).migration policy (Triandafyllidou 2010).In Italy the undocumented immigration has also become one of the main electoral issue in recent election campaigns.The debate over undocumented immigration has ended up taking an ideological value that transcends largely its numerical and economic impact. It is therefore important to define the actual scope of irregular immigration, starting with a clear definition. The immigrant population may be broken down roughly on the basis of their legal status. There are regular immigrants who hold residence permits; regular immigrants who are registered in the municipal population registers; and irregular immigrants who do not hold residence permits.

Irregular immigrants may in turn be broken down into those who enter Italy without authorisation, that is, without visas, and those who enter Italy with visas, but stay after visa expiration without converting their visas into residence permits The illegal part is in turn formed by immigrants entered Italy without authorization, namely without visas, or staying without permit.(overstayers).Here we define as undocumented immigrants, both the unauthorized component and Overstayers one. In this paper, irregular immigrants refer to both undocumented immigrants and overstayers.They represent the part of the immigrant population that will be analyzed. Both groups account for the portion of the immigrant population that will be investigated in this paper. Immigrants can obviously change their status. Regular immigrants may, in fact, lose their residence permits, and thus become irregular, which Obviously the immigrants during their stay may change their legal status. In particular, they can move from legal to illegal component of immigration if they loss the permit to staywould entail worse living conditions. Conversely, irregular immigrants who become regular immigrants will see their living conditions improved. Our analysis will focus on the latter case. This last path is the process that will be analyzed.

When it comes to .irregular immigration, the size of the phenomenon is a crucial issue. Eiven the nature of this population, stimates obviously have error margins;

in Italy, however,As shown Strozza (2004 p. 325), the estimates produced in Italy while following different methodologies have always given more or less similar values and they have never reached exorbitant amount. estimates made with different methodologies have produced broadly similar results, which are not disproportionate to the total foreign population (Strozza 2004; ISMU 2016).Moreover, in the last decade the incidence of undocumented component on the total of immigrant population has experienced a significant decrease. In addition, the incidence of irregular immigration has significantly decreased over the past decade. Certainly, the most significant contribution to this decrease is given by the considerable increase in foreign population legally present.This is, for the most part, due to the considerable increase in the foreign population that is in Italy legally, mainly following regularisation programmes. Alongside this trend, it acted, especially in the last two years, also a decline of undocumented immigrant population.Alongside this trend, the population of irregular immigrants has fallen, especially over the past few years (Bonifazi 2007; Bonifazi, Heins, Strozza, Vitiello 2009). In general, the current trend of the irregular immigrant stock may be explained by the effects of regularisation programmes, with only a small portion of immigrants remaining in an irregular situation. In the years following the regularisation, the initial quota is restored by new entries.If we cConsidering the estimates of the illegal component of immigrant population presents in Italy produced from 1980 forwards, and the effects of regularization programs have occurred in recent years, one can suppose that illegal component of immigration has a close relationship with the legal component.onsider the estimated number of the immigrant population that has been in Italy legally from 1980 onwards and the effects of the regularisation programmes implemented over the years, we may argue that the regular component of the immigrant population may only partly be accounted for by regular entries. In other words, regularisations have brought about a population increase, either directly or indirectly (because of family reunions)According to Bonifazi, if we consider the total number of immigrants regularized, we get that they represent more than half of immigrants legally present (2007, p. 116).. Therefore, we may assume that being irregular is a transient and not a structural condition. Hence, it is virtually impossible to make a distinction between the regular and irregular components of the immigrant population as if there were no interplay between two separate sets of population. The spread of undocumented immigration among immigrant population is not uniform but it varies according to nationalities.

The distribution of the irregular immigrant population is not even: it varies depending on nationalities. On this, it should be noted that enlargement of the European Union has affected the composition of illegal immigrant population. Interestingly, the enlargement of the European Union affected the composition of the irregular immigrant population first, and of the regular one later. After 2008, for immigrants from Romania and Poland, the distinction between documented and undocumented has lost meaning.After 2008, the distinction between legal and illegal lost its meaning for immigrants coming from Romania and Poland. Beyond those changes, the immigrant population with a more ancient presence in Italy, such as Albania, Morocco, China, Philippines, Senegal, have relatively small shares of illegal presence,

as opposed to those coming from Eastern Europe, as Ukraine, Moldova and countries of former Yugoslavia, which have the highest incidence of illegal presence, as shown by (Blangiardo 2009, p. 62). Certainly, one of the main reasons accounting for this variety is that the nationalities that have been present the longest have reached a more advanced stage of the integration process. Now, they have a greater and more stable presence among regular immigrants, which makes illegal entries unnecessary and the proportion of the irregular immigrant stock increasingly less significant. They now have a larger legal and stable presence, which makes very small proportion of illegal one.

Geographical factors should be taken into account when considering the possible determinants of undocumented migration flows towards Italy. The proximity of The proximity of Italy with less developed areas has fostered the beginning of important migration flows. Italy to less developed countries has encouraged major migration flows. Moreover, the length and the accessibility of the borders with the The length and accessibility of the borders with the Mediterranean Sea and its position with respect to other destination countries, has played a crucial role especially at the beginning of Italian immigrant experience.Mediterranean Sea and Italy's position with respect to other destination countries played a key role, especially at the beginning of the Italian immigration experience.Furthermore, when Italy started to witness immigration in the early 1970s, the country was open to immigration flows because of the absence of any particular rules controlling the entry and the stay of foreign workers. When Italy began experiencing immigration during the 1970s, the country was more open to migration flows, due to a relative lack of rules for checking foreign workers' entries and stays.Nevertheless, in the subsequent years the immigrants population is increased while Italy has begun to develop increasingly restrictive immigration policies. However, the immigrant population grew in the following years, during which Italy started developing increasingly restrictive immigration legislation. This paradox is explained by the labour demand dynamics in Italy, with a significant and structural demand for immigrant workers in the economic sectors that have been abandoned by Italian workers.So, the presence of an informal economic sector contributes to explain the social reproduction of illegal immigrants area, Reyneri (2003). Italian labour market segmentation and a significant labour demand in the industrial sector (Pugliese 1991) help explain the existence and persistence of irregular employment.Last, we have to stress the role of immigration policies adopted by Italy in the last years. Finally, the role should be highlighted of the immigration policies adopted by Italy in recent years. In The issues regarding immigration in Italy are regulated by the Consolidation act on immigration and status of foreigners amended by Law 189/2002, 125/2008 and law 94/2009.Italy, immigration matters are regulated by the Consolidated Act on Immigration.Regarding the ways of entering, the Consolidation act rules that it is possible enter in Italy only through two channels: visa system and for payroll employment, which can also be seasonal. Under this legislation, it is possible to enter Italy only though two channels: either an entry visa or a quota system for paid employment (including seasonal work). A foreign national who enters the country with an entry visa and wants to extend their stay beyond nine-

ty days must apply for a The persons that want to extend their stay to more than 90 days must apply for a permit to stay. Residence permit.In the case of permit for working reasons, it states that the permit shall be issued only after the work contract has been stipulated. A residence permit for work reasons may be granted only after an employment contract has been entered into. This rule has considerably worsened the living conditions of immigrants, as we will see below.In this way, the permit to stay is tied to having a work contract and to the length of the period of employment.The second legal channel of entering is for payroll employment. The second channel of regular entry is based on a quota system, based on the estimated need for foreign labour. Setting quotas usually aims at severely limiting the (legal) entry channels for new immigration flows. Therefore, available options for entering the country legally are characterised by increasingly restrictive measures. Finally, the adoption of a quota system for regulating the entry of immigrant workers has never been sufficient to make up for the lack of other legal entry channels.

THE BASIC MECHANISMS FOR INTEGRATING IRREGULAR IMMIGRANTS INTO THE LABOUR MARKET

Work gives irregular immigrants (just like anyone else, for that matter) not only income opportunities, but also the possibility to build relationships and socialise in host societies. Interactions and relationships in the work place make it easier to learn values, rules, habits and behaviour.The interactions and relationships within the working environment favour the learning and the incorporation of values, norms, habits and behaviours. This socialisation process at work helps immigrants develop a This process of socialization on the work place helps to develop a new social identity for undocumented immigrants in terms of desire to camouflage in the new social environment. new social identity that makes them blend into the new social environment. Additionally, being employed and carrying out a working activity leads the undocumented immigrants to a recognition of a precise position and role within the economic system by the host society. Having a job gives irregular immigrants the recognition of having a place within the economic system of the host society.This identification removes the stigma of clandestinity and move undocumented immigrants to a level of normality. The identification with their role and this admission of usefulness remove the stigma of being irregular and bring immigrants to a level of normalcy: they can thus be considered just like other workers.The working dimension as a fundamental and favourable element of immigration on behalf of the Italian legislation is particularly evident in the law n. The emphasis on the work dimension as a fundamental and positive element of immigration is common to all immigration countries and all migration history. This is a good starting point of the process of recognising the immigrant as a person.

In Italian legislation, however, immigration is reduced to the work dimension alone. First, it aims to link the admission of immigrants to the actual demand for foreign labour through a quota system. In Italy, entry for economic reasons is allowed

only if the person has an employment contract. Furthermore, the stay is linked to employment status. In particular, we refer to Law No. 189/2002 that introduces the legal figure of the "contract to stay for employment".189/2002, introducing the legal instrument of the "residence contract for paid employment".This kind of permit consists of a employment contract between an employer and an immigrant employee. Basically, this kind of permit consists in a work contract between an Italian employer or a foreign employer who stays in Italy legally, and a non-EU employee. In particular, Article5 comma 3, states that the permit to stay for working reasons is issued following the signing of the "contract to stay for employment" and the length is the one stated in the contract itself. 5(3) establishes that a residence permit for work reasons is issued following the signature of a "residence contract for paid employment", and its duration is the same as that indicated in the contract. Consequently, the the permit to stay and employment contract are closely linked. residence permit and the work contract are closely tied. One cannot have one without the other. Within this regulatory framework, irregular immigrants may only have irregular work.The table 1 shows the volume of irregular jobs, particularly for undocumented immigrants. For "irregular" we mean the work not complying with existing legislation about tax and social security contributions, thus they are unobservable directly from companies, institutions and administrative sources."Irregular" work refers to work in which existing tax and social security legislation is not complied with. We cannot therefore gather information on these workers from companies, institutions, or administrative sources. There are three different kinds of iThe irregular work includes three different types of job performance: of irregular residents (that is persons employed both Italians and foreigners enrolled in the Municipal Population Registers); of multiple positions (that is working activities as secondary activities carried out by both residents and non-residents); of non resident and undocumented foreigners who, as such, are not visible to the tax authorities.rregular work. Irregular work may be carried out by regular residents (that is, Italian and foreign employees who are registered in the population registry). Moreover, there may be "multiple positions" (that is, secondary working activities) held by residents and non-residents. Finally, irregular work may be carried out by irregular non-resident foreign nationals who, as such, are not visible to the revenue authorities. Within the volume of irregular work recorded in Italy over the past decade, immigrants account for the smallest share (ISTAT 2010; 2016). Their weight over non regular work units moves therefore from 22% in 2001 to almost 13% in 200Their weight on irregular work units went down from 22 per cent in 2001 to almost 13 per cent in 2014.This indicates that there was a reduction in the incidence of undocumented immigrants in the informal sector of the Italian labour market. In the last decade, a marked increase has been recorded in regular immigrants' employment, partly due to the 2002 In sum, during recent years, we have registered a strong growth in immigrant regular occupation, part of which coming from the latter regularisation in favour of irregular immigrant workers.regularisation, which was meant exclusively for immigrants with irregular employment relationships. Once again, data confirms that most immigrant workers in Once more again, the data confirm that most of immigrant workers present in Italy have known

irregular situations with respect to presence and employment status before passing to the legality in all respects.Italy experienced illegal situations, in terms of their immigration and employment status, before acquiring a legal status in all respects.

Available data from Through the available data of regularization programs and those provided by some specific surveys, it is to possible to detect that undocumented immigrants workers are mainly concentrated in the agriculture, domestic, and construction sector, as showed by Anastasia, Bragato, Rasera (2004); Zucchetti (2004); Conti, Strozza (2006); Ambrosini (2013).regularisation programmes and some specific surveys suggests that irregular immigrants are mainly employed in the agricultural, domestic and building sectors, as indicated by Anastasia, Bragato, Rasera (2004); Zucchetti (2004), Conti, Strozza (2006), Chiuri, Coniglio, Ferri (2007), Ambrosini (2013).The agricultural, building and sole traders are the traditional working activities of entering into Italian labour market for immigrants. Agriculture and construction are the traditional sectors in which immigrants enter the Italian labour market, as pointed out in the first surveys on this phenomenon (Calvanese, Pugliese 1990).This relative facility is due to the characteristics of labour demand in these sectors. This is essentially due to the features of labour demand in these production sectors. First, there are only a few requirements to enter these sectors, which do not usually include being in the country legally. Second, working activities in these economic sectors require limited skills. Therefore, Additionally, the typical working activities of these economic sectors need limited skills. an immigrant who has just arrived and does not speak Italian can work at a construction site or in a farm as a labourer. When immigrants learn the language and basic skills at work, they are more likely to move to better jobs. This work mobility takes place both within the same sector or between different sectors, and is often related to geographical mobilitySo, even a newly arrived immigrant who does not speak Italian can make the labourer on a construction site or he can work in a farm.This labour mobility that can be both intra-sectoral and intersectoral and it has often matched with geographical mobility, that is the working improvement also involves a shift from south to north Italy, as shown by Ambrosini (2001).. Irregular immigrant workers generally find themselves in working situations that range from something almost similar to regular employment (in terms of wages, working hours, and tasks), toUndocumented immigrants generally have an intermediate working situation between that of irregular work in which the wage conditions, working time and pace of work are not very dissimilar from those of legal work, and that of severely exploited labour. seriously exploitative employment (characterised by job insecurity, lack of a job description, and having to live in the working place). This entails no distinction between life and work, and an employment relationship in which the employer has greater decision-making power on working conditions. Irregular immigrants who experience a great deal of social isolation run a significant risk of slipping into seriously exploitative work conditions. The rebalancing of market forces for undocumented immigrants requires a process of de-reification of their labour. This implies giving them access to the welfare system.

THE POSSIBILITIES, LIMITATIONS AND BARRIERS.
AVAILABLE RIGHTS AND LEGAL STATUS

We mentioned above that the change in legal status brings about an improvement in the living conditions of immigrants. The most important change concerns the possibility to access to a wider area of entitlements. In particular, it gives them the possibility to access a wider area of rights and social services. Acquiring a regular legal status is the gateway to becoming eligible for the welfare benefits that are provided for immigrants, even though eligibility is mediated by integration policies. The part of the Consolidated Act on Immigration that regulates immigrants' rights and that identifies integration policies is contained in Articles 34 to 46. All regular immigrants in Italy with permits to stay will benefit from social policies. Moreover, under Article 2(1), a foreign national at the border or on Italian soil is afforded the fundamental human rights provided for in domestic law, international conventions in force, and the generally recognised principles of international law. Consequently, urgent hospital or other medical treatment is also available for foreigners without permits to stay, as is the right to compulsory schooling for foreign minors who are, in any case, living in Italy. As a consequence, foreign nationals who live in Italy illegally are entitled to emergency care (treatments that cannot be delayed without risks to life or health). They also have the right to essential treatment (treatment for conditions that are not immediately dangerous but which could, over time, cause greater damage to health or death), and to continued treatment (complete treatment and rehabilitation programmes). Health facilities are forbidden to report the presence of illegal immigrants requesting treatment to the police authorities in order not to discourage access to care. In addition, hospitals are not allowed to report the presence of irregular immigrants requesting treatment to police authorities in order not to discourage access to health care. The same applies to the school education of foreign minors, and the additional benefits that are intrinsically part of the right to education. Foreign minors and their parents, in fact, should not be asked for a residence permit, and they should not be reported, not even indirectly, to the police and/or to law enforcement authorities. Hence, Italian legislation on immigration guarantees a set of fundamental rights to foreigners present in Italy who do not comply with entry and stay rules. Access to social inclusion programmes is instead provided only for third country nationals who prove that they comply with regulations governing their stay in Italy.

In the last decade, the number of immigrants receiving welfare services in Italy has been gradually increasing. However, this seems to be due to the increase in the resident foreign population and its stabilization, rather than to the implementation of more social services for immigrant citizens. Between 2003 and 2012, according to the ISTAT survey on *Interventions and Social Services of Individual and Groups of Municipalities*, the average per capita spending for foreigners dropped from 67 euros a year in 2003 to about 46 euros in 2012 (ISTAT 2015: 10). From both a legislative and implementation viewpoint, this does not mean that no effort was made to generate an adequate supply of services for immigrants. However, such effort proved to

be insufficient because of its inherent limitations and the numerous obstacles encountered during its implementation, in particular a substantial funding reduction. In an essentially unchanged legislative and institutional framework, the implementation deficit was therefore remarkable (Morris 2002; Pugliese 2006).

As to the intrinsic limitations, in Italy, the statements of principle established by the Consolidated Act on Immigration reflect a "situation where services are subject to an often complex classification of one's legal status, in which rights differ according to the legal status of a person: regular with a residence permit, regular with a residence document, stable regular, asylum seeker, refugee, irregular, illegal immigrant" (Spinelli 2005; 87). Based on this ranking in the exercise of citizenship rights in Italy, an analytical scheme can be proposed for identifying the mechanisms of inclusion of the immigrant population in Italy's welfare state. Here, we refer to the concept of civic stratification as proposed by Lydia Morris (1997) for immigration analysis and subsequently applied to Italy (2002). Morris applied the term to the construction of varied immigration statuses with differential access to civil, economic, and social rights, depending on the mode of entry, residence, and employment.

MECHANISMS FOR INCLUDING IRREGULAR IMMIGRANTS IN ITALY'S WELFARE SYSTEM

Analysis of the relationship between immigrants and the social services provided by welfare systems has traditionally focused on the economic consequences of the use of the latter by immigrants (Simon 1989). However, the findings of such a large number of studies do not establish unequivocally if immigrants are net contributors or if they consume more than natives (Borjas 1999; Isbister 1996; Nannestad 2007; Palivos 2009). Too many factors influence the relationship between immigrants and the use of services in order to identify a single pattern; among these, mention should be made of the length of their stay in the host country (Borjas 2001 p. 106).

In recent years, social research has paid more attention to the processes of inclusion of immigrants in welfare systems (Baldwin-Edwards 2004; Bommes, Geddes 2000, Koopmans 2010; Sciortino 2004; Sainsbury 2006; Zincone 2009). Within the framework of such research, analytical efforts focused on irregular immigrants are far less common (Bommes, Sciortino 2011; Liu, 2010; Van der Leun 2003). However, the literature seems to move within a merely economic perspective, as explained above, or within a political analysis of the issue; in other words, access to the welfare system by immigrants seems to be regarded as an "immigration policy regime" (Faist, 1995) defined as the set of rules governing immigrants' inclusion in or exclusion from the host society. This approach appears to be insufficient for the purposes of this paper. While it is undoubtedly true that the rules governing immigration have a significant impact on immigrants' access to social rights, it is necessary to include the various forms of migration that are associated with specific rights, having an impact on immigrants' access to citizenship rights (Morris 2002: 19). Finally, other than considering integration policies for immigrants as such, we should also take into account the social policies that affect immigrants, just as any other citizen, as Hammar

(1985) put it. In other words, we should consider both direct and indirect policies.

Generally speaking, access to the welfare state for immigrants with an irregular legal status is very limited. Even when their access to basic health care, for example, is provided as a fundamental human right, the national implementing regulations are often in conflict with the humanitarian rules established by international treaties (Biswas, Toebes, Hjern, Ascher, Norredam 2012). By any measure, irregular immigrants make a very modest use of basic social services in Italy (Devillanova 2008), even when they are aware that such services are available (Amaturo, de Filippo, Strozza, 2010). Some have observed that the Consolidated Act on Immigration grants all foreigners on national territory, even those without a residence permit, a core of fundamental rights provided for the human person under international conventions in force and the generally acknowledged principles of international law, such as the right to health and the right to free compulsory education for all foreign minors (Biondi Dal Monte, 2013). Similarly, based on the ratification of international treaties, Article 18 of the Consolidated Act on Immigration provides for a residence permit for the social protection of victims of human trafficking. This rule identifies a number of mechanisms for inclusion in the Italian welfare state of irregular immigrants who are victims of human trafficking, allowing them to access social services and work. Thanks to Decree-Law No. 300 of 2006, Article 18 extends its validity and becomes a positive expression of the State's duty to provide care, protection, and social inclusion for irregular immigrants who could be exposed to a serious and imminent danger due to their statements to judicial authorities. In addition, this rule contains a reference to situations of "severe exploitation" that would allow its application to cases of severe labour exploitation even when they are not specifically related to trafficking. The combination of these two legislative provisions opens the possibility of enforcing Article 18 upon irregular immigrant workers, too. In particular, it might cover undocumented immigrant workers, who are extremely vulnerable and are exposed to severe forms of labour exploitation undermining human dignity and physical survival.

These first two mechanisms of social inclusion, however, stem from recognition of the fundamental rights of immigrants. These can be identified under one general umbrella, namely a humanitarian one, in which the recognition of rights is based *on the simple condition of human being*. At any rate, we can identify other social inclusion mechanisms that arise from the status of worker of irregular immigrants.

The Consolidated Act on Immigration, Article 2, establishes the principle of equal treatment between foreign and Italian workers. This principle implies that the same labour law and social protection mechanisms guaranteed to Italian workers are applicable to foreign workers. Nevertheless, this does not prevent labour law entitlements from being applicable to immigrants without a residence permit or in possession of an expired residence permit. Any employee is entitled to be paid for and protected as established by an important provision contained in Article 2126 of the Civil Code, which applies also to the employment of immigrants without permission. This provision recognizes the employee's right to receive a salary and any other benefits under the employment contract, thereby protecting the rights arising from the work

done. This ruling, issued after illegal immigration was sanctioned as a crime, is extremely important. According to the Supreme Court, the payment of contributions is a consequence of the obligation to pay a salary, and such an obligation is valid even if a foreign employee is unlawfully present in the country.

The above reasoning results from a joint reading of Article 2126 of the Civil Code and Article 22 of the Consolidated Act on Immigration. In addition, this obligation extends to accident, disability, and occupational disease insurance. Therefore, the status of worker gives irregular immigrants an entitlement to the rights associated with such status, giving them a special place in the Italian welfare system.

The rights arising from this inclusion are associated with the immigrant's economic function in the host society. In other words, integration into the labour market attributes an economic position to irregular immigrants; it gives them a status and a role, albeit purely economic, legitimizing their presence. However, this position is particularly vulnerable for immigrants because it does not amount to legal recognition. Until a few years ago, there was no warranty with respect to deportation, even when an irregular immigrant was awarded a case in a labour court. This helps explain the low number of court appeals by immigrant workers. The inclusion of irregular immigrants in the Italian welfare system, achieved through their integration into the labour market, mainly results from a significant economic benefit to the host country. At the same time, it gives immigrants the dignity attached to being a worker or an employee: in a nutshell, the social legitimacy of their presence. The launch and implementation of regularisation programmes for irregular immigrants were explicitly based on these considerations. The widespread perception of a growing number of illegally employed foreigners led to enactment of the first significant regularisation measure, implemented in accordance with the provisions contained in the first legislative text on the entry, stay and employment of immigrants (Law 943 of 1986 and subsequent amendments). Later, more regularisation measures were promoted and introduced (Bonifazi, Heins, Strozza, Vitiello 2009 p. 24). The main objective of such programmes was to regularise illegally employed foreigners. Even when the regularisation measure was aimed at disclosing the actual number of foreigners present in Italy without a residence permit, as in 1990, workers accounted for the majority of regularised immigrants. The regularisation associated with Law No. 189 of 2002 was the largest measure ever adopted in a European country to correct the status of irregular foreign workers. The number of regularised persons is even more remarkable, considering that the eligibility requirements were more restrictive than in any previous measure. Regularisation programmes can be considered as the main mechanism for including irregular immigrants in the Italian welfare system, through the granting of a residence permit. Likewise, the quota system for selecting entries, as a substitute for regularisation, can be considered as a mechanism for the inclusion of irregular immigrants in the Italian welfare system.

The quota system as a mechanism to let new foreign workers enter Italy was established by Law No. 943 of 1986. This mechanism soon turned out to be too restrictive to manage migration flows effectively. No type of quotas for new entries was established until 1995. This system had its peak with two decrees on migration flows, both is-

sued in 2006; they allowed regular immigration for work reasons to 600,000 applicants. Right from the outset, employers, trade unions, associations, and foreign workers considered the quota mechanism as an opportunity for regularising irregular immigrants. Indeed, the majority of workers included in such quotas did not come from abroad, but were already living in Italy, and employers were the ones who used such a system the most in order to regularise their foreign employees. Hence, even if the annual programming of migration flows through quotas established by special decrees was intended for the entry of new arrivals, these provisions have actually operated as regularisations. As a consequence, a proportion of irregular immigrants have settled their legal status through the quota system. In this respect, so far Italy seems to have experienced a situation similar to that of northern European countries in the Fordist era of migration, when the labour market demand was so high that quite a considerable proportion of foreign workers who had entered outside the regular channels was subsequently regularised (Lemaitre 2003). Actually, Italian immigration policies create a system in which the possibility of having a legal residence is closely linked to the availability of a job rather than to the existence of channels for legal entry. In this system of entry characterised by insufficient and uncertain conditions to acquire a "regular" status, the transient state of "irregularity" and/or "illegality" is likely to continue indefinitely, generating a progressive existential insecurity for those immigrants who have entered the country illegally.

FROM "CAMOUFLAGE" TO EMANCIPATION THROUGH WORK.
THE RECOGNITION OF IRREGULAR IMMIGRANTS

If we agree that emancipation is the act of allowing a person to take on responsibilities and freedoms originally precluded, then by emancipation we mean the act of setting free an immigrant from the control mechanisms of immigration policies and the taking on of the responsibilities and freedoms of a citizen. Thus, emancipation is the integration process of irregular immigrants into the citizenship rights system.

As regards the processes of inclusion in the Italian welfare state, it is possible to identify three mechanisms for the inclusion of irregular immigrants. First, they are granted access to basic social services such as health care and compulsory schooling. In this case, access to Italian welfare is based on a recognition of their fundamental rights. This mechanism of inclusion can be defined as a humanitarian one. Granting a residence permit on the grounds of social protection, through the procedures laid down in Article 18, can be compared to this mechanism. Second, irregular immigrants have access to social security benefits, provided that they have a job. In addition to their salary, they are entitled to social security contributions, unemployment benefits, and accident insurance. This second mechanism is related to integration into the labour market, to workers' rights, and to the immigrants' ability to demonstrate their worker status.

The irregular status of an undocumented immigrant does not allow any further progress in integration into the Italian welfare system. This is due to the complex in-

terplay between Italy's immigration policy and social policies. In actuality, access to social services is filtered out through a strict ranking of the legal status of immigrants, with irregular immigrants ranking at the lowest level. Therefore, the combined action of these two mechanisms of inclusion in the Italian welfare state limits irregular immigrants' access to basic social benefits. Moreover, the second mechanism practically operates ex post only; in other words, social security rights and wages are guaranteed only when irregular immigrants are able to get rid of the condition of subordination linked to the particular nature of their legal status. Their emancipation is allowed only by the possibility of regularising their legal status.

Regularisation is the third mechanism of inclusion in the Italian welfare system for irregular immigrants. Having a residence permit allows an immigrant, who is no longer irregular, to move up the civic stratification ladder built by immigration policies. From this point of view, the quota entry system may be considered as a surrogate of the regularisation programme and, ultimately, as a mechanism to include irregular immigrants in the Italian welfare state. These latter mechanisms are effective only if the irregular immigrant is a worker.

All the above mechanisms start with the recognition and evaluation of immigrants' integration into the labour market. If an irregular immigrant retains the status of worker on an on-going basis and such status can be verified for a period of time, they have the opportunity to extend their rights through a residence permit that is granted to them. In short, irregular immigrants who have worked for a certain period and have been socially classified as workers are allowed to apply for a residence permit and move forward along the path of integration into Italian society. At this point, it is possible to theorise a hypothetical path for irregular immigrants, towards their full inclusion in the system of citizenship rights, in which the recognition of their integration into the labour market represents a real turning point, that is, a different direction in the life of irregular immigrants. The shift to the status of recognized worker generates a change in their role and expectations, and in the definition of their situation, contributing to the recognition of irregular immigrants. During this stage, recognition is seen as a social esteem, namely "recognition of individual performance, the value of which is measured by the extent to which it is perceived as significant by a society" (Honneth, 2002, p. 136). This gives rise to self-esteem (that is, a mutual esteem), or acknowledging other people's skills since they are deemed to be valuable for collective life. The institutional framework within which the process of social recognition of irregular immigrants is shaped characterizes the immigrant as a person "whose sole reason for existence is work and whose presence is not regular, authorised, and legitimate unless they work" (Sayad, 1999: 82).

Italian institutions grant legal recognition to irregular immigrants after assessing existing shortages and the demand (economic, demographic, and social) they can meet. In this respect, regularised former irregular immigrants have represented a most effective, efficient, and practical response to the shortages caused by the demographic, social, and economic changes that have occurred in Italy. The social dimension of recognition is added, therefore, to the legal one. Specifically, legal recognition is "a relationship in which the parties respect each other as legal subjects, be-

cause they both have a common understanding of the social norms governing the legitimate allocation of their rights and duties within the community" (Honneth, 2002: 133). In addition, when someone feels legally recognised, "the subject tends to act freely because he or she knows that their actions are legally recognised and respected by the other members: in such an environment, the subject gains self-respect" (Honneth, 2002, p. 144).

Legal recognition confers equal dignity; it therefore precedes the process of emancipation of irregular immigrants. On the part of immigrants, recognition encourages them to learn and adopt the "normal" behaviours of Italians, and to gain their acceptance. Therefore, during this stage, the recognition strategy can be defined as a camouflage, and it is pursued in order to experience the phase of being irregular without being perceived as such. By means of camouflage, immigrants blend in with Italians, adopting their behaviours, lifestyle, and social practices. As in Edgar Allan Poe's story *The Purloined Letter*, the best way to hide an object is to put it in plain sight; similarly, camouflage is the best way to go unnoticed. Camouflage works like training; in other words, at this stage irregular immigrants are recognised by Italian society, while they get accustomed to it.

Now, it may happen that the juridical recognition of irregular immigrants is used by the State as a control mechanism for better managing those who enter and those who are inside its territory, rather than as a means of social inclusion. In this case, it is more about the legalisation of the relationship between the Italian State and the irregular immigrant than legal recognition. Such legalisation is meant as a legal framework aimed at irregular immigrants, through a proliferation of repressive and control measures - think of the so-called 'security package'. Hence, it is rather a denial of the legal recognition of irregular immigrants. The lack of legal recognition, or legal mis-recognition, ends up having a negative impact on the self-esteem of irregular immigrants, which they had previously gained in the positive process of social recognition. As unrecognised members of the community under the law, irregular immigrants realise they have a high chance of losing their social esteem and they introject a feeling of inferiority.

The segregation of immigrants into a legal status with no certainty of rights entails a loss of dignity as workers; even worse, the working segregation into degraded and degrading tasks contributes to the loss of self-esteem and to social isolation. In extreme cases of severely exploitative labour, this process of marginalization as a result of mis-recognition can lead irregular migrants to their reification, intended as a forgetfulness of recognition (Honneth, 2007: 55). According to Honneth, reification is the process by which in our knowledge of other people and the knowledge of ourselves we lose awareness of how both of them are in debt to a previous disposition at participation and recognition (Honneth, 2007: 55). The core of each instance of reification thus consists in a forgetfulness of recognition, and its social causes are to be sought in practices or mechanisms that systematically enable or strengthen such forgetfulness. One can take a reifying attitude toward other individuals for two basic reasons: either because one is tied by a social practice where the observation of others takes place just for the sake of it, leading to the denial of any awareness of a

previous social relationship, or when people's actions are driven by a belief system that causes them to deny the original recognition. It is evident, therefore, that the legal recognition of irregular immigrants through regularisation of their legal status is the main tool both to let them access citizenship rights and to reverse the inferiority process they may be victims of.

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AFRICAN AND ASIAN MIGRATION IN ITALY:
FEATURES, FLOWS AND ROUTES

ANTONIETTA PAGANO AND GIUSEPPE TERRANOVA[32]

POPULATION MOVEMENTS AND DEMOGRAPHIC TRENDS IN XXI CENTURY

Decades between XX and XXI has been characterized by deep transformations at global level, that produced several repercussions on international migration processes. From the political point of view, for example, the end of decolonization and real socialism – which gave rise to new States and, in some cases, to the outbreak of conflicts, especially on ethnic grounds - as well as the increased free movement of persons in regional contexts such as Europe, played a propulsive function on migration flows. On the economic side, instead, the globalization process, whose most evident effects are the progressive markets integration and the growing international division of labor, is affecting the demand and supply of labor, including foreigners. As a matter of fact, in the international labor market can be observed a strong labor mobility, both qualified and unskilled, aiming at filling employment gaps in destination countries.

In this regard, international demographic trends are fundamental, particularly when differences in population growth rates between advanced and developing areas are taken into account. A large number of industrialized countries is experiencing a "demographic deficit", meaning an increasing share of older persons (65 years old and over) interacting with a fertility rates reduction[33] (Giordano, 2015). By contrast, emerging and developing countries are facing positive demographic trends, as observed in the working age population, which between 1995-2015 grew by 45%, while more developed countries achieved a 5.6% increase (United Nations, 2016).

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32. Although this article is the result of the authors' shared ideas, the following paragraph is attributable to Antonietta Pagano: "Population movements and demographic trends in XXI century" and "The migration of Asian origin in Italy: features and flows", while the paragraph "The migration of African origin in Italy: features, flows and routes" is attributable to Giuseppe Terranova. Conclusions can be considered the work of both authors.
33. The replacement fertility rate is 2.1 children per family, however many societies are experiencing far lower levels, such as the European Union (where the fertility rate is equal to 1.5) and in Japan (1.4) (World Bank, 2016b).

TAB. 1 - WORKING AGE POPULATION (THOUSANDS)[34]					
YEAR	WORLD POPULATION		SUM OF WORKING AGE POPULATION		
		WOLD	MORE DEVELOPED	LESS DEVELOPED	
1975	4,061,399	2,336,316	681,181	1,655,135	
1995	5,735,123	3,537,108	782,038	2,755,069	
2015	7,349,472	4,825,484	825,886	3,999,599	
Source: United Nations, 2016					

International migration is, therefore, a useful tool for rebalancing international labor markets, especially in reality such as the Italian one, where without foreigners there would be a contraction in local population (ISTAT, 2011), with severe consequent at economic and welfare level. For example, during the Nineties, despite the 745,000 foreigners, Italian workforce decreased, on the contrary between 2001-2011 with 2.1 million migrants it grew by 0.12% (Bonifazi, 2013).

Beside to unbalance into the labor market, many advanced economies are suffering from high old-age dependency ratio, which rose from 16.6% in 1975 to 26% in 2015 (World Bank, 2016a), although some countries stood around 32%, as Finland Germany, or even beyond 34% as in Italy (ISTAT, 2016a), in other words three working age people for every person aged 65 or over.

The Italian migration scenario is quite complex, however for the purpose of this paper, it can be divided in two groups: the first arrived during the Eighties and Nineties with the first immigration waves and currently are well established and have a balanced gender composition; the second one correspond to the recent migration flow and, therefore, has a strong gender polarization.

## THE MIGRATION OF ASIAN ORIGIN IN ITALY: FEATURES AND FLOWS

The Italian geography of non-European migration has some well-defined characteristics, with a minimal prevalence of Africans (31%), followed by Europeans (29.3%) and, finally, Asians (29%) (ISTAT, 2016a).

In last ten years, Asian migratory trend has been particularly active considering the average annual growth rate of 10%, in the same period Bangladeshi group distinguished with a 16% average annual growth, compared with the 13% of China, Philippines and India (ISTAT, 2016a).

The majority (almost 96%) of the Asian community in Italy comes from Central, Southern and Eastern Asia, among which emerge migrants from China (29.27%), India (14.85%), Philippines (14.65%), Bangladesh (12.48%) and Pakistan (10.77%) (ISTAT, 2016b).

| | % VARIATION | | | PERCENTAGE OF WORKING AGE POPULATION | |
	WOLD	MORE DEVELOPED	LESS DEVELOPED	MORE DEVELOPED COUNTRIES	LESS DEVELOPED COUNTRIES
				29.2%	70.8%
	51.4%	14.8%	66.5%	22.1%	77.9%
	36.4%	5.6%	45.2%	17.1%	82.9%

Currently is not possible to identify a sort of homogeneity within this group, as it results quite diverse, especially on gender composition. China, the Philippines, Sri Lanka and Iran have a balanced structure in terms of female and male community; while Bangladesh, Pakistan and Afghanistan present a strong male polarization, as well Georgians that, instead, gave a wide share of female migrants. Such a difference is due to segmentation in the labor market, as well as, the distinctive migration patterns of each community. As a matter of fact, Philippines – one of the first non-EU groups to settle, as a result of migratory networks and religious factors as well – and Chinese currently have a family based migration system; while the remaining groups are characterized by a strong labor specialization, which is one of the explanation for the differences in their internal composition.
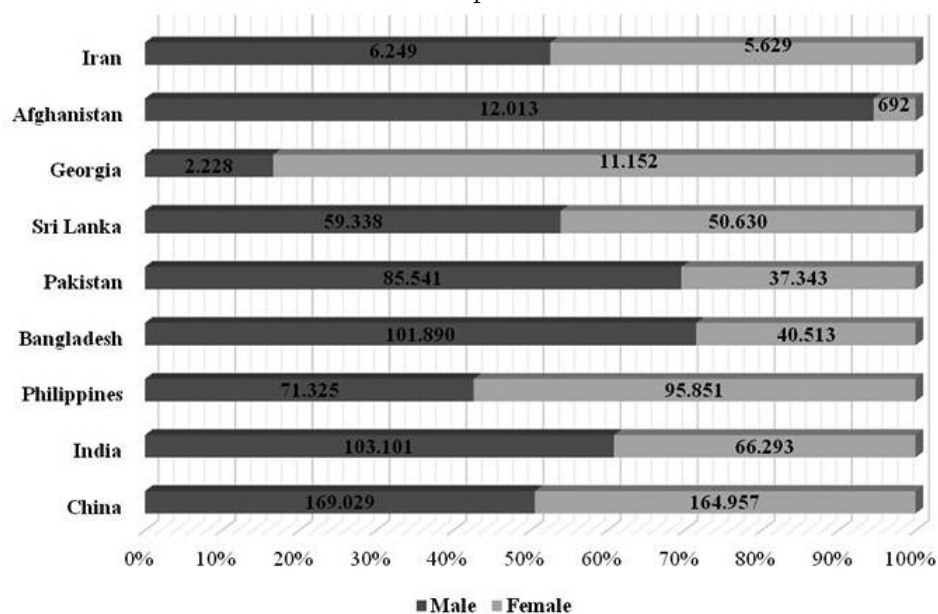
Graph. 1 – Breakdown of main Asian communities by gender (2016). Source: ISTAT, 2016

According to 2014 data concerning the employees of the nine considered nationalities, the majority works in the tertiary and industrial sectors (65%), followed by the house and family care sector (27%) and, finally, just 7% in the agricultural sector. More than two-thirds of domestic workers are Filipino and Sri Lankan (respectively 55% and 21%), however, the Georgians, who in this area represent a small percentage, are concentrated for 90% in the household service. A similar specialization characterizes the Indian community but in the agricultural sector, where they represent 76% of employed workforce from the nine analyzed nationalities. This two information can help in understanding the gender polarization characterizing the Georgian and Indian migration scheme in Italy (INPS, 2016).

The industrial sector is the least representative[35], unlike the service sector where the majority of Asian workforce is employed. Except for house service, in the tertiary works 91% of Sri Lankan, more than two-thirds of Chinese and Bangladeshi, more than half of Pakistanis and 35.5% of Indians, with a strong specialization in the receptive, hotel and restaurant areas, as well as, in trade. In this latter sector, moreover, ethnic entrepreneurship is particularly dynamic, especially in Chinese, Bangladeshi and Pakistani communities (Ministero del Lavoro e delle Politiche Sociali, 2015b). In relation to 2014 non-European enterprises is interesting to note that most of Asian ones ranked among the top ten countries. Indeed, Chinese companies were second, followed by Bangladesh (fourth), Pakistani (none) and finally, the Indian (twelfth) (Ministero del Lavoro e delle Politiche Sociali, 2015a).

Migrant contribution to Italian economy is, therefore, significant, although Asian community represents only 1.9% of resident population. However, inflow is increasing over the years, despite the negative economic trends. Not only the numbers are growing, but most importantly, former communities are becoming permanent, as proven by the increasing visas released for long permanence (at the expense of short-term ones). In this regard, family reunification and study visas are rising as well (ISTAT, 2016b).

TAB. 2A – SHORT-TERM VISA VARIATION (2012-2016)					
	2012	2013	2014	2015	2016
BANGLADESH	-4%	5%	16%	12%	-3%
CHINA	-10%	10%	3%	0%	-6%
PHILIPPINES	2%	0%	1%	-1%	-8%
INDIA	-10%	1%	8%	3%	-5%
PAKISTAN	-16%	10%	14%	19%	7%
SRI LANKA	-5%	1%	4%	0%	-3%
Source: ISTAT, 2016					

35. In 2014 Pakistani, Indian and Chinese employed workforce represented respectively 43.2%, 32.5% and 28% of each ethnic group (Ministero del Lavoro e delle Politiche Sociali, 2015).

TAB. 2B − LONG-TERM VISA VARIATION (2012-2016)					
	2012	2013	2014	2015	2016
BANGLADESH	11%	8%	10%	6%	8%
CHINA	27%	9%	10%	9%	10%
PHILIPPINES	25%	8%	8%	5%	5%
INDIA	17%	6%	5%	5%	8%
PAKISTAN	14%	8%	5%	2%	5%
SRI LANKA	21%	7%	7%	5%	7%
Source: ISTAT, 2016					

Family and study visas have been the main tools to access regularly in Italy, but recently have increased the number of requests for political asylum, especially from Pakistani and Bangladeshi migrants[36] (in 2015 this latter has more than doubled).

In addition, several are the Asian migrants trying to enter irregularly in Italy. Unfortunately, the system lacks of reliable and detailed information. According to Frontex (2016), three are the main Asian migratory routes. Some of them arrives through the Eastern borders of the Schengen area - trying to cross the Baltic or Scandinavia countries, Hungary, Poland and Slovakia. The second route is the Eastern Mediterranean, once arrived in Turkey, migrants attempt to arrive in Greece, Balkan countries or Apulia. The third one is the Western Balkan routes, particularly used by Afghan and Pakistani which, rather than staying in Greece, prefer to achieve the Balkans, cross non-Schengen countries, such as Macedonia and Serbia, and get as fast as possible in Hungary and Croatia. However, these countries represent just a transit route fundamental to access to Western Europe.

THE MIGRATION OF AFRICAN ORIGIN IN ITALY: FEATURES, FLOWS AND ROUTES

Among the top ten countries hosting the largest number of refugees in the world, five are African: Ethiopia, Kenya, Uganda, Chad and the Democratic Republic of Congo. The last mentioned is on the top of the world ranking of the countries that in accordance with the size of the national economy shelter more refugees: 471 for each dollar of the GDP per capita measured at purchasing power parity (UNHCR, 2016). If we pass from forced migration to voluntary migration we notice that in 2015,

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36. Besides from political and religious issues, is increasing the number of migrants escaping from Southern Asia, especially Bangladesh, due to environmental crisis and hazards. Although the environmental refugee status has not been receipted under the International Law, this type of emergency might help understanding the growing exodus from Asia. (Giordano, Pagano, 2013).

244 million global migrants came mostly from 10 countries, none of which are African. The preferred destination of 75% of the original immigrants from Sub-Saharan Africa is still Sub-Saharan Africa. Only 25% actually decide to leave their homeland to move out of boundaries of Africa (OECD-AFD, 2015).

Perhaps, these numbers are useful to analyze with greater scientific clarity the migration routes, the data and the composition of African immigration to Europe, and Italy in particular.

According to Frontex (which since October 6, 2016 has been replaced with a mandate and wider powers of the European Border and Coast Guard), there are eight "highways" trodden by illegal immigrants and asylum seekers to reach the Old World (Frontex, 2016). Three following ways are connecting Africa to Europe across the Mediterranean.

The first, Western Mediterranean Route: a route between Morocco and Spain, separated by 14km of sea in the Strait of Gibraltar. This route, together with the Spanish enclaves of Ceuta and Melilla on Moroccan territory, has been for a long time, the subject of a strong migratory pressure. This route has been utilized much less by migrants in recent years for at least two reasons: efficiency of Madrid-Rabat bilateral agreements against illegal immigration and geopolitical revolution of the Maghreb as a result of the Arab Spring that from the point of view of human traffickers has left Libya without the most desirable Government of Morocco (where, on the contrary to the Gaddafi regime, the monarchy of Mohammed VI has withstood the shocks to the popular movements) as the point of departure of their "clients". For these reasons, only 6,090 migrants have taken this path in the first nine months of 2016 – mostly coming from Guinea (1,403), Ivory Coast (1,137) and Algeria (909).

The second, Central Mediterranean Route: the most direct route from Libya and Tunisia to Malta and Italy, an area of 400 km that has never been trodden so much in the history of modern international migration. In 2014, 170,760 migrants have arrived by this route – 153,946 throughout 2015 and 127,599 in the first nine months of 2016.

The third, Eastern Mediterranean Route. The Turkey-Greece route, a maritime border of about ten kilometers, which after recording the transit of 50,830 migrants in 2014, 2015 marked a record of 885,386 people and in the first 9 months of 2016 has stopped at 172,982 migrants. This drastic fall compared with the previous year is justified by the achievement of an agreement between the EU and Turkey. In March 2016, Brussels agreed to pay Ankara with a guarantee of more strict controls of the border with Syria and an additional responsibility of the reception of Syrian asylum seekers from Athens (Terranova, 2016).

If it is true that the western route, thanks to the political stability of Morocco and the partnership with Spain, has little traffic; the eastern route is even less likely to be a successful journey because of the euro-Turkish agreement; for the potential African migrants – and especially for the crime that manages the traffic – the Central Mediterranean Route is not only the last option, but the preferable one. Because it is quite evident, the fact that Libya is the "*plaque tournante de l'émigration dans le Nord de l'Afrique*" (Melki, 2016). It is now a transit land, which until a few years ago was, in

fact, a welcoming destination for significant migration flows. In the second half of the '90s, Muammar Gaddafi, in the name of his Pan-Africanism (Terranova, 2010), had promoted an open-door policy towards economic migrants from Sub-Saharan Africa, primarily Nigeria, Senegal, Mali, to be used in the rich and prolific oil sector. A scenario that had changed radically and permanently in October 2011 with the fall of the Colonel, his regime and 42 years of absolute power. Since that time, Libya has progressively transformed into a free zone for international human traffickers and a springboard for African population movements towards the European fortress, through the Italian door.

We must ask what are the main migratory routes from southern-central Africa that lead in the former kingdom of Gaddafi? We will try to answer this question before to dwell on the composition and the main nationalities of the newcomers to Italy.

Comparing information that is already known (Reitano, 2014) with those that have emerged from a recent study presented in Rome on September 13, 2016 by the organization "Medici per i Diritti Umani" (MEDU), it is possible to trace five migratory routes from the African continent that lead to our country. Of all that are crossing the Sahara, many of them pass by the "Carrefour d'Agadez" (Denninger, 2015), a town in the heart of Niger, before arriving in Libyan territory.

The first migration route is Western-West route that is used only by a minor amount of the candidates for immigration from Western and Central Africa. After reaching important transit cities in Mali (Gao) and Nigeria (Agadez), they move to Algeria passing through Tamanrasset. The next step in Libya is going through the towns of Deb Deb and Ghadames near the border that unites Algeria, Tunisia and Libya.

The second is Western-East route that is among the most trodden by candidates from Senegal, Gambia, Guinea, Ivory Coast. The people begin the first part of their journey from the motherland in Bamako, Mali, and travel directly east, crossing through Ouagadougou to reach Niger. An alternative route goes from Bamako to Gao in Mali, and then to Niamey in Niger. It must be said, that many Nigerians prefer to reach the Niger through Kano, while Cameroonians cross Chad to reach Madama in Niger. In the end all come together in Niger, mostly in Agadez, from where a part of the journey in the desert called "the road to hell" begins, leading to Sabah in the heart of Libya. Here migrants are waiting to be transferred in the major ports of departure, first Zuwara, not far from Tripoli.

The third is Eastern-Center route: in order to follow it, a part of future migrants from the Horn of Africa chooses to reach Libya through Sudan and Chad.

The fourth is Eastern-Center route: The most widely travelled route by immigrants and asylum seekers from the Horn of Africa. Migrants along this route arrive in the Libyan oasis in Kufra via Khartoum, Sudan from Kassal, Sudan or the refugee camp of Shagrab, Sudan or Mai Aini, Ethiopia. There is also a shorter path from the Sudanese city of Dongola instead of Khartoum that allows migrants to reach Kufra or the Libyan city of Al Uweinat. In any case, once they arrive on Libyan territory, the majority of migrants wait to be transferred to the North, to Ajdabiya. From there, a minority try to sail towards Italy through the port of Benghazi in the North-East but the majority continue their journey through the ports of Zuwara and Sabratha (west of Tripoli).

The fifth is East-East route and is the least use route for EU immigration candidates. To follow it, a small residual minority of migrants from the Horn of Africa that arrive in Kharthoum instead of taking the more common routes through Libya, opt going to Egypt through Aswan, and Cairo is the chosen location to embark from the port of Alexandria to Italy. This is the longest and the most dangerous route across water that lasts for an average of 8-10 days of sailing.

Regardless of the route, the country of origin, and the destination country, migrants from sub-Saharan Africa, with rare exceptions, have to deal with the racket of traffickers. It is they, who dictate the time, the route, and of course the costs of a journey. A journey paved with unforeseen, abuses of power and countless violations of basic human rights.

To prove that this network of international criminals is successful in their enterprises, it is appropriate to recall that in 2015 over one million men, women and children crossed the Mediterranean (mainly using routes defined in this paper as Central and Eastern Mediterranean Route) into southern Europe. Staggering figures such as these have never been recorded. In 2014, there were around 216 thousand people, 2013 brought around 60 thousand, and in 2012 there were only around 22 thousand who decided to make the dangerous journey from Africa to Europe across the Mediterranean.

Looking closely at the number of newcomers in 2015 we see that 885,386 of them have come through Turkey to Greece. Among these, 90% of people came from three countries: Afghanistan, Syria and Iraq. The geographic provenance of migrants is completely different in Italy, in fact, approximately 153,946 migrants landed in the same year in Italy: Eritrea (26%), Nigeria (14%), Somalia (8%), Sudan, Gambia, Syria (just 7,500 people), Mali and Senegal (F. Colombo, 2015). Summing up, Greece received a major proportion of potential asylum seekers from three major international wars of recent years. Italy has more complex and diverse African audience, which is composed of candidates with refugee status or humanitarian protection status, but also includes illegal immigrants. A panorama of newcomers, almost exclusively Africans, is also confirmed by data analysis of the first nine months of 2016. Out of more than 127,000 arrivals in 2016, 15% are from Nigeria, 10% from Gambia, 9% from Somalia, 8% from Guinea, Eritrea and Ivory Coast, the remaining 58% originate from Senegal and Mali. Numbers like these only certify an extraordinary humanitarian commitment of Italy in the reception of African migrants. Moreover, in 2015 the number of permits for asylum and humanitarian protection submitted in Italy has come to represent 28.2% of new entries (compared to 19.3% in 2014 and 7.5% in 2013), 43.8% of which are given to citizens of Nigeria, Pakistan and Gambia (ISTAT, 2016). Providing analysis of the types of residence permits given by Italy, there is a decisive and progressive increase in forced migration and, at the same time, decrease in the voluntary migration caused by economic reasons. According to the latest ISTAT figures we find that in 2015, in comparison with the previous year, the number of residence permits for work decreased by 35,312 (-62%). Among the total number of residence permits granted for different reasons, those for reasons of work have gone down to 9% compared with 23% in 2014.

At this point, a clarification is obligatory. The decline of economic immigration to Italy in favor of humanitarian immigration has prompted some observers to a different interpretation of the facts. In their view, many economic migrants, therefore illegal, have used, with the decisive role of international human traffickers, the general atmosphere of emergency and welcoming of Syrian refugees as a "Trojan horse" to get into Europe, but especially in Italy, asking for asylum or humanitarian protection. This idea is confirmed further by the fact that even after signing the agreement between Turkey and Greece last spring, a majority of Syrians still not prefer the Central Mediterranean Route. As we have seen, especially in the last three years, citizens of African states with different levels of political and social stability keep coming to Italy and not always aim to justify the recognition of refugee status (or humanitarian protection status) in accordance with the Geneva Convention of 1951.

In any case, if we stick to the official data of the Ministry of Interior in Italy, it is possible to argue that there is a revolution in the composition of migration flows to Italy (the more sub-Saharan Africans, the more asylum and humanitarian protection seekers). As a consequence, it intends to alter the composition of the stock of immigrants in Italy in the medium to longer term. Until a short time ago was noticed a predominance of economic immigrants from African community, consisted of a distinct presence of individuals from Morocco, Egypt and Tunisia, not sub-Saharan Africa. Out of 3,931,133 non-EU citizens resident in Italy on January 1, 2016 (ISTAT, 2016), the largest community[37] with over half a million admissions is, in fact, Moroccan. Arrived since the second half of the '70s of the last century in the South Italy, today they are geographically concentrated (approximately 70%) in the North, concentrated mostly in Lombardia. Most are employed in retail trade sectors (many are hawkers), industry, construction and agriculture. The unemployment rate is close to 30% (www.integrazionemigranti.gov.it, 2016), also due to the fact that the participation of Moroccan women in the Italian labor market is very low. Their incidence among employed is just 22%, almost twenty percentage points less than figures recorded on average between foreigners employed in Italy (40%).

The second largest African community in Italy with more than 140 thousand visitors is Egyptian. Even more than the Moroccan community, it is geographically concentrated in the regions of Northern Italy (80%), mostly located in Lombardy. Three out of four Egyptian workers are employed in the tertiary sector. A feature of this community is the high employment in the hotel and restaurant industry, where 33.4% of the Egyptian labor is occupied, against an average of 10% among the non-EU foreigners residing in Italy. Among Egyptian workers, contrary to the Moroccans, the unemployment rate, according to the latest available data, went down from 22% in 2013 to 19.4% in 2014, the lowest value among all other African migrants . Note that from 2008 to 2015, the number of Egyptian citizens that are legally residing in Italy has doubled from 70,000 to more than 140,000 that are today in Italy. A boom that

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37 To this number should be added 1.5 million of EU citizens (more than a million are Romanians).

may be at least partly explained by the fact that, contrary to Morocco, Egypt, as re-sult of the fall of Mubarak's regime due to the Arab Spring, is in a complex phase of political instability that prompted a part (also residual) of the population to leave their homeland.

In third place, finally we find the Tunisian community with about 120 thousand members. Compared to other foreign communities, Tunisian Maghreb in particular, recorded one of the most homogeneous geographical distribution on the peninsu-la. That proof the fact, if it's true that about 61% of this community is living in the North and is equitably distributed between Emilia-Romagna and Lombardy here is a significant presence in the South, peaking at 13% in Sicily, where the first gener-ations settled since 1972. Many have found employment in the fishery sector, especially in Mazara del Vallo. Today, on the national level, the primary sector for job place-ment of Tunisian Workers is industry, with an incidence of 42% against 28% of the same sector of the whole non-EU labor's market. In particular, 23% of Tunisian work-ers are employed in the construction sector, while 19% are employed in industry in particular. The unemployment rate is actually around 24%.

<div align="center">CONCLUSION</div>

Italy within few decades has turned into an important immigration country, due to the synergy produced by several national and international factors – i.e. aging so-ciety, mismatch in the labor market, refugee crisis – but currently appears unprepared to wisely manage recent immigration phenomena. Considering the Italian structural difficulties, immigration can represent an opportunity to rebalance both the de-mographical and economic system, particularly in a long run perspective. To this end, Italy should implement policies aiming at valorizing and promoting the integration of migrant communities, not only with regard to economic migrants but asylum seek-ers too, as in most cases these are skilled foreigners that can actively contribute to the economic development of the receiving country (Pagano, 2016). Therefore, au-thorities should focus on how to benefit from migration flow rather than prevent-ing it, especially when comparing the Italian scenario with other European countries. For example, while foreigners in Italy represent 9.7% of total population, Germany, Austria and Belgium has larger migrant communities (respectively 14.9%, 17.5% and 12.3%) (World Bank, 2016c). A discrepancy confirmed by the refugee issue as well, since Italy is far from having the numbers characterizing the other UE mem-ber States (Giordano, 2015), for example, Italy registers an average of 1.9 refugees per thousand inhabitants, against 3.9 in Germany, 4.1 in France, 5.2 in Holland, 8.4 in Austria and 17.4 in Sweden.

Asylum seekers represent one of the biggest challenge for Italian authorities, as is the only country in EU that lacks a ordinary law on asylum. A political and legal anomaly that among its few contraindications it has also spoiled terms, manner and quality of the refugee reception system in our country and even the geography and the distribution of centers for refugees on national territory.

A *vacatio legis* that is more difficult to understand and justify because it represents a failure to implement the art. 10, paragraph 3, of the Italian Constitution, which since 1948 declaim: "A foreigner who is denied the effective exercise of the democratic liberties guaranteed by the Italian Constitution in his or her own country has the right of asylum in the territory of the Italian Republic, in accordance with the conditions established by law" (Senato della Repubblica, 2016) . That statute has never been approved and is the original sin of Italy's asylum policies – perhaps not the only one. However, one sins leads to another; in 1954, because of ratification of the Geneva Convention on refugee status, Italy invokes so-called geographical reservation. It should guarantee refugee status in accordance with the guidelines of the Convention, but only for women, children and men of European origin, excluding those of the other continents. It gives the right of reception to a limited range of subjects, like those who many years ago were escaping the communist regimes of the Soviet Union. This narrow filter has been in force for almost forty years until 1990 when it was abolished by law n. 39/1990, better known as Martelli, named after the Vice-President of the Council. He was the one who signed and promoted the first regulation about the migratory phenomenon in Italy. It had the merit of overcoming the principle of "geographical limitation", but the failure of this law comes from not implementing article 10 paragraph 3 of the Constitution on the right of asylum. So today, operating conditions depend on myriad of legal provisions and decisions of courts.

Legislative chaos has begun, with the suddenness and violence of an earthquake. In 2011, following years of international emergencies, beginning with Albanian and then Yugoslavian refugees, then with the explosion of the Arab Spring, Italy becomes a permanent land of asylum and immigration. For example, it is enough to remember that only in that year the number of asylum requests in Italy had reached 38 thousand. That is a threefold increase of the annual average of 13,000 that was recorded in the previous twenty years. Italy turned out to be unprepared to this revolution of geography and migration of asylum seekers on a global level. That is happening for a reason of a regulatory and domestic policy deficit in Italy that is enlarged with similar deficits of other EU's countries. The EU in this particular and delicate international situation had stimulated movements of population but was not been able to regulate them (Giordano, 2015) because of nationalistic impulses that some EU's states have (Bolaffi, Terranova, 2014).

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