The Area of Freedom, Security and Justice and the Political Morality of Migration and Integration

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Abstract

Notwithstanding the uncertainty surrounding the process of ratification of the Treaty of Lisbon, and the echo of the Constitutional Treaty and constitutional debates, the European Council adopted the European Pact on Immigration and Asylum in Brussels on 16 October 2008. In this, European leaders undertake to implement five political commitments, thereby laying down the foundations of a common European migration and asylum policy. Although the rationale of the Pact is to institutionalize a better, in the sense of more efficient, management of (-selective) migration, it reflects the legacy of 'Schegenland' and the prevailing definition of migration as a security threat and a problem. There exists little reflection on the connections between principled policies and practices in the domain, robust democracy and harmonious community relations and healthy civil societies, and the much broader socio-economic and political canvas that the Commission has sought to paint over the last five years is missing. In this chapter, I review the institutional development of justice and home affairs cooperation in the EU and the evolving doctrine of migration control and argue that the paradigm of the securitization of migration is tired and unlikely to be beneficial in the short and long term. I seek to make the case for rethinking migration and integration at the EU and national levels and for the articulation of a principled and non-restrictive migration paradigm which promotes peoples' engagement in co-

operative practices, embraces the idea of open and relaxed communities, provides opportunities and promotes inclusion.

Notwithstanding the uncertainty surrounding the process of ratification of the Treaty of Lisbon, and the echo of the Constitutional Treaty and constitutional debates,[1] the European Council adopted the European Pact on Immigration and Asylum in Brussels on 16 October 2008. In this, European leaders undertake to implement five political commitments, thereby laying down the foundations of a common European migration and asylum policy. Although the rationale of the Pact is to institutionalize a better, in the sense of more efficient, management of (-selective) migration, it reflects the legacy of 'Schegenland' and the prevailing definition of migration as a security threat and a problem. There exists little reflection on the connections between principled policies and practices in the domain, robust democracy and harmonious community relations and healthy civil societies, and the much broader socio-economic and political canvas that the Commission has sought to paint over the last five years is missing. In this chapter, I review the institutional development of justice and home affairs cooperation in the EU and the evolving doctrine of migration control and argue that the paradigm of the securitization of migration is tired and unlikely to be beneficial in the short and long term. I seek to make the case for rethinking migration and integration at the EU and national levels and for the articulation of a principled and non-restrictive migration paradigm which promotes peoples' engagement in co-operative practices, embraces the idea of open and relaxed communities, provides opportunities and promotes inclusion. Although liberal democratic theory by and large accommodates restrictive migration policies and upholds states' sovereign power to exclude, I argue that democracy works best if it accompanied by not only flexible membership[2] and a constructive model of citizenship,[3] but also porous boundaries and a more liberal migration policy.[4] By the

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[1] On the importance of constitutional symbolism, see N. Walker, *After the Constitutional Moment*, Federal Trust Online Constitutional Essay, (2003).

[2] R. Rubio-Marin, *Immigration as a Democratic Challenge* (2000, Cambridge: Cambridge University Press)

[3] T. Kostakopoulou, 'Towards a theory of Constructive Citizenship in Europe', 4(4) *Journal of Political Philosophy* (1996) 337-58.

latter, I do not mean one which simply complies with international law norms by admitting all those having rights of admission under bilateral agreements concluded by the Member states and third states or by the Community and third states; refraining from introducing arbitrary distinctions; respecting the right to family life; defending the humanitarian admission of displaced persons and refugees as an integral part of constitutional traditions and democratic political cultures; and by providing a system of effective appeal remedies and procedural safeguards against arbitrary expulsions. For such norms are deeply embedded in international law and national constitutional traditions - notwithstanding the Member States' deficient implementation records. What is more difficult to establish is how the vast majority of applicants who have no *prima facie* right to be admitted into a country because they do not belong in any of the above categories should be treated. I argue that the EU and European polities have a positive obligation to design a liberal migration policy and to refrain from imposing hurdles on their entry, residence, settlement and, eventually, naturalization by imposing integration tests, but not out of a universal right to migration or concerns about distributive justice[5] or even charity. They have a duty to admit out of concern about the 'costs of restriction', that is, about the profound effects that closure and the present law-enforcement migration regime have upon admission applicants, the principles on which they profess to be based, and upon the identity of European citizens. After all, admission and belonging are issues relating to 'what kind of polity we wish to have' and 'who we choose to become'- not simple correlatives of the state's power to exclude. In this sense, migration and integration confront the EU with questions of what I will call political morality.

2. Migration and integration within the institutional architecture of the area of freedom, security and justice

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[4] The argument here draws on chapter 6 of my book, *Citizenship, Identity and Immigration in the EU: Between Past and Future* (2001, Manchester: MUP).
[5] For an excellent discussion on this, see V. Bader, 'The Ethics of Immigration', 12(3) *Constellations* (2005) 331-361.

Justice and Home Affairs, which is now known as the Area of Freedom, Security and Justice (AFSJ), has developed in an incremental, and not always predictable, way. Ad hoc and loose intergovernmental cooperation in order to tackle terrorism, drugs trafficking and organized crime in the 1970s precipitated a more advanced intergovernmental cooperation in the mid-1980s which culminated in the Schengen project. France, Germany and the Benelux countries signed the Schengen agreement on the abolition of border controls in 1985 and agreed its implementing measures in 1990. These included an external frontiers policy, the harmonization of visa policies, common rules on asylum and migration-related issues, forms of operational cooperation by police and customs authorities and the establishment of a central information database which would allow national law-enforcement officers to obtain, and to exchange data on people and stolen objects. The Treaty on European Union (in force in November 1993) brought nine areas of justice and home affairs co-operation, including rules on the crossing of external borders, asylum, migration and the policy regarding nationals of third countries, within the Community's formal structure, by designing a separate intergovernmental pillar (the so-called third pillar). Participation in such a framework of 'diluted' intergovernmentalism prompted national executives to reflect upon larger contexts and transnational challenges, be they terrorism, drugs trafficking, international crime and human mobility, to interrogate the doctrine of sovereignty, to learn to trust each other and to search for improved institutional arrangements. Consequently, they agreed to the partial Communitarisation of the third pillar at the 1996 Intergovernmental Conference, that is, of the transfer of migration related issues and judicial civil cooperation from the third pillar into the EC Treaty.[6]

At Amsterdam, justice and home affairs cooperation was also replaced by the notion of 'an area of freedom, security and justice'. This is defined as an area 'in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border

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[6] The Amsterdam Treaty entered into force on 1 May 1999.

controls, asylum, immigration and the prevention and combating of crime'. Article 29 EU further

elaborates on this objective by stating that the Union's objective is to provide citizens with a high

level of safety within an area of freedom, security and justice by developing common action

among the MS in the fields of police and judicial cooperation in criminal matters and by

preventing and combating racism and xenophobia. This objective is to be achieved by preventing

and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and

offences against children, illicit drugs trafficking and illicit arms trafficking, corruption and fraud.

The association of the concept of freedom with security and justice was neither accidental

nor purely conjunctive. Since the 1980s, official discourses had constructed a chain of

equivalence between the single market project, free movement of persons and security and the

assumption that a security problem exists in a Europe without internal border controls was well-

embedded within policy circles.[7] The area of freedom, security and justice reflected the

securitization ethos[8] that characterised justice and home affairs cooperation since the 1970s and

gave police and customs agencies the opportunity to craft a new role for themselves within an

enlarged Europe, by identifying specific categories of security risk.[9] As the Council and the

Commission's Action Plan on how best to implement these provisions of the Amsterdam Treaty

stated,[10]

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[7]S. Lavenex, 'The Europeanisation of Refugee Policies: Normative Challenges and Institutional Legacies', 39(5) *Journal of Common Market Studies* (2002) 851; P. Boeles, 'Introduction: Freedom, Security and Justice for All', in E. Guild and C. Harlow (eds.), *Implementing Amsterdam* (2001); A, Geddes, *Immigration and European Integration: Towards Fortress Europe* (2000).

[8]The term securitization refers to the removal of an issue from the normal political arena and to its articulation as an issue of national security and/or as an existential threat justifying measures outside the normal bounds of political procedure; on this, sees B. Buzan, O. Waever and J. de Wilde, *Security. A New Framework for Analysis* (1998); O. Waever, Securitisation and Desecuritisation, Working Paper 5/1993, Centre for Peace and Conflict Research. Also published in Lipschutz (ed.), *On Security* (1995). When the agenda is dominated by security concerns, then the range of policy options becomes quite narrow.

[9] Risk analysis found a clear expression in the Presidency conclusions of the Seville European Council in June 2002. On this and on the subsequent project on Common Integrated Risk Analysis model (CIRAM), see E. Guild, *The Legal Elements of a European Identity; EU Citizenship and Migration Law* (2004), at 179.

[10] European Council and European Commission, *Action Plan on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice*, 12 July 2008, at 1-2.

'Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator - people - and one cannot be achieved in full without the other two. Maintaining the right balance between them must be the guiding thread for Union action. It should be noted in this context that the treaty instituting the European Communities (article 61 ex article 73I a), makes a direct link between measures establishing freedom of movement of persons and the specific measures seeking to combat and prevent crime (article 31 e EU), thus creating a conditional link between the two areas'.

Although the 'freedom, security and justice' configuration creates the impression that 'security' and 'justice' are mere complements to 'freedom', in reality the triad led to important transmutations of meaning. Firstly, security obtained an individual dimension; Union citizens were seen to be vulnerable to threats and should be protected from risk, danger, anxiety or fear. Secondly the meaning of freedom widened. It was no longer associated with free mobility, but it took on the meaning of freedom from fear, violence and deception. And although the Action Plan referred to the maintenance of the right balance between the two, in reality security was promoted at the expense of freedom.[11] As Mrs Anita Gradin, former Commissioner, stated, 'liberty signifies a lot more than freedom of movement. It also implies the right to live in a society which takes effective action against those who place themselves above the law. The concept of Europe therefore requires that all MS have confidence in each other's ability to deal with serious organised crime'.[12] A value laden hierarchy was thus created, whereby security was seen to be a

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[11] Lindahl has explored the constitutive relation between security and freedom in 'Finding a Place for Freedom, Security and Justice: The European Union's Claim to Territorial Unity' 29 *European Law Review* (2004) 461-84. Compare also his article on 'Give and take: Arendt and the nomos of political community', 32(7) *Philosophy and Social Criticism* (2006) 881-901.
[12] *Liberty, Security and Justice: an Agenda for Europe*, PE168.396, 14-15.

prerequisite of free movement.[13] But as Huysmans has argued, 'security policy is not simply a practice of protecting and/or limiting a pre-given freedom. It is a governmental practice that translates the abstract notion of freedom into a concrete practice through shaping and moulding practical modalities of the legitimate and optimal conduct of freedom within a society'.[14] The primacy and centrality attributed to security signaled not only the sedimentation of the securitisation ethos in discourse and policy, but also the framing of security as the condition of possibility for freedom of movement and liberty, in general.

Previously competing organisational actors, such as the Council and the Commission, jointly took part in the institutional dynamics of shaping a new form of political order in post-Amsterdam Europe. The area of freedom, security and justice aims at creating a European public space in which citizens feel that 'a proper sense of 'European Public Order' has taken shape and is actually visible today in their daily lives.'[15] In December 1998, the Vienna European Council adopted the Action Plan *on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice*, which entailed a list of measures which had to be adopted within a time frame of two years and five years, respectively.[16] These included the adoption of a European migration strategy based on the reduction of migration pressure at the source, on combating of undocumented migration and the control of legal entry of people.

The Tampere European Council (15 and 16 October 1999) diluted the restrictive character of the above objectives and set out a number of policy orientations and priorities which would make the AFSJ a reality. A scoreboard was set up to monitor progress towards its implementation. The common priorities were: a) partnership with the countries of origin; b) a

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[13] On this, see J. Huysmans, 'Security! What do you Mean? From Concept to thick Signifier', 4(2) *European Journal of International Relations* (1998) 226; 'The European Union and the Securitisation of Migration', 38(5) *Journal of Common Market Studies* (2002) 751; D. Bigo, 'Çriminalisation of "Migrants": the Side Effect of the Will to Control the Frontiers and the Sovereign Illusion', in Bogusz et al. (eds.), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives* (2004).

[14] J. Huysmans, *Security and F*reedom, Paper presented at the UACES Workshop on the Evolving European Migration Law and Policy, University of Manchester (2002).

[15] Working Group X, Freedom, Security and Justice Final Report WD 18 REV.

[16] OJ C 19, 23.1.1999.

common European asylum policy, c) the fair treatment of TCNs and d) the fair management of migration flows.[17] The fair treatment of resident TCNs entailed a vigorous integration policy and the grant of rights and obligations comparable to EU citizens. Perhaps, the most visible manifestations of the influence exerted by the rights-based template of integration advanced at Tampere were the Commission's proposed directives on family reunification (1999) and on the status of long-term resident third country nationals (2001), respectively. The former Directive[18] was based on Article 63(3)(a) EC and sought to harmonise national legislations in this area by granting the right to family reunification to all third country nationals - including refugees under the Geneva Convention of 1951 and persons enjoying temporary protection, who reside lawfully in a Member State and hold a residence permit for at least a year regardless of the purpose of their residence. It also covered Union citizens who had not exercised their right to free movement whose situation has hitherto been subject solely to national rules. The draft Directive *on the status of third country nationals who are long-term residents* was based on Articles 63(3)(a) and 63(4) EC and was designed to harmonise national laws governing the conditions for the acquisition and the scope of long-term resident status, and to grant long-term resident third country nationals the right of residence in the other Member States.[19]

Both draft Directives mirrored the regime pertaining to mobile Community nationals and, predictably, failed to meet the Member States' approval. The Netherlands, Denmark, Austria and Germany insisted on uploading national approaches to integration at the European level, thereby diluting the Commission's proposed provisions in order to make them fit with their own

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[17] Tampere Presidency Conclusions, European Council 15-16 October 1999, SN 200/99 Brussels.
[18] COM (1999) 638 final CNS 1999/0258, Amended Commission Proposal COM (2000) 624 final.
[19] European Commission, *Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents*, COM (2001) 127 final, Brussels 13.3.2001.

migration rules.[20] Accordingly, provisions on integration conditions and measures were added to both Directives.[21]

By that time, integration had become a prominent theme in certain national arenas and a convenient means of restricting naturalization and permanent residence. The Justice and Home Affairs Council in 2002 called for the establishment of National Contact Points on Integration, that is, national experts in this area who would meet in order to exchange information, monitor progress and coordinate their actions at national and European levels,[22] while the European Council meeting in 2003, in Thessaloniki, set the foundations for the development of an integration policy for migrants based on a set of common basic principles and invited the Commission to present annual reports on migration and integration.[23]

The Commission responded to the JHA Council's call for a common policy framework by issuing a Communication on *Immigration, Integration and Employment*.[24] The Communication was a joint product of the DG employment and Social Affairs and DG Justice and Home Affairs, and although it made reference to the MS's security concerns, the Tampere discourse on the fair treatment of TCNS was prominent. Integration was framed as a challenge which could be met by the development of 'a holistic approach' that takes into account the socio-economic aspects of integration as well as other issues, such as cultural diversity, citizenship, participation and political rights. Tackling racism, strengthening anti-discrimination and

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[20] S. Carrera, 'Integration as a process of inclusion for migrants? The case of long-term residents in the EU', in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Forum Maastricht: Maastricht, pp. 699-721.

[21] See Articles 4 and 7 of Council Directive 2003/86 (OJ L 251/12, 3.10.2003) and Articles 5 and 15 of Council Directive 2003/109 (OJ L 16/44, 23.1.2004). Compare also Directive 2004/114 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004) and Directive 2005/71 on a specific procedure for admitting third country nationals for the purpose of scientific research (OJ L 289/15, 3.11.2005).

[22] Council Meeting 2455, Luxembourg, 14-15 October 2002. The NCPs have contributed to the compilation of the first edition of the Handbook on Integration for Policy-Makers and Practitioners. The second edition (2007) focused on the issues derived from the Common Basic Principles and a third edition is forthcoming.

[23] Thessaloniki European Council, 19-20 June 2003. Presidency Conclusions 11638/03. The first report was published in 2004 : COM(2004) 508

[24] COM (2003) 336 final, 3 June 2003.

promoting family reunification[25] were deemed to be crucial axes for such an integration policy. The Communication also highlighted the need for a closer dialogue with third countries concerning the mutual recognition of professional qualifications acquired by TCNS prior to their arrival in the EU based on the principle of reciprocity'.[26] Taking an overall view, the Commission's communication embraced the positive aspects of migration and highlighted its future role in sustaining productivity and economic growth in Europe.[27]

Reflecting the 2003 Communication on Immigration and Integration, the Commission's First Annual Report in *Immigration and Integration in Europe* called for the development of comprehensive integration policies and the mainstreaming of immigration concerns in all relevant policy fields.[28] Migration was framed in positive terms in light of its fiscal impact and the prospect of an ageing and shrinking working age population in the EU. The Report also created a conceptual link between migration and integration by stating that 'admission and integration policies are inseparable and mutually reinforce each other'.[29] It restated national concerns about the migrant duty to 'understand and respect the fundamental norms and values of the host society' and to speak the language of the host state, thereby overcoming 'a barrier to integration'.[30]

The Hague Programme, the successor to the Tampere programme, which outlined the policy priorities for the development of the Area of Freedom, Security and Justice in the period between 2005 and 2010 and was agreed by the European Council on the 4 and 5 of November 2004,[31] reiterated the need for greater coordination of national integration policies and EU

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[25] Ibid, at page 25.
[26] COM (2003) n 26 above, at page 34.
[27] Having said this, irregular migration is the subject of a law-enforcement approach; 'the only coherent approach to dealing with illegal residents is to ensure that they return to their country of origin'.
[28] COM (2004) 508, page 5.
[29] Ibid, page 9.
[30] Ibid, page 9.
[31] On 4 November 2004, the European Council adopted the Hague Programme which set the objectives to be implemented in the area of freedom, security and justice for the period 2005-2010. This was followed by the Commission's Action Plan (May 2005) which outlined ten priorities for action, a set of implementing measures and a timetable for their adoption. The priorities cover fundamental rights and citizenship, counter-terrorism, a common asylum area, migration management, integration, internal borders, external borders and visas, privacy and security, organized crime, civil and criminal justice, sharing responsibility

initiatives and for the development of a clear framework on integration based a set of common principles (CBPs). It is worth noting here that the programme's priorities concerning the strengthening 'freedom' were modest in comparison with those surrounding the objectives of strengthening security and justice, and there was very little commitment to propose or adopt legislation in the area of legal migration.[32] The JHA Council of 19 November 2004[33] adopted the CBPs. The principles reflect national priorities and conceptions and incorporate the discoursive shift of emphasis to migrants' responsibilities to integrate (CBP 1), to respect the basic values of the EU (CBP 2), learn the language, history and institutions of the host society (CBP 4.1), be active societal participants (CBP 5) and the possibility of conflict of cultural and religious practices with European rights or national law (CBP 8.2). The Hague Programme also invited the Commission to present a policy plan on economic migration which materialised with the publication of a Green Paper on an EU approach to managing economic migration in 2004.[34] The Green Paper highlighted the link between migration and integration by stating that strong integration policies should accompany admission measures and reflected the increasing salience of demographic pressures and the need to maintain Europe's competitiveness in light of the Lisbon objectives.[35] The Commission drew attention to the impact of demographic decline and the ageing population on the economies of the MS and highlighted the important role of economic migration for the socioeconomic development of the Union and for the development of a common migration policy. By so doing, it redressed the security-oriented and utilitarian perspective on migration entailed by the Hague Programme and counterbalanced the emphasis on

and solidarity. The Commission's effort to strike a better balance between freedom and security is evident in the Action Plan, which was approved by the Council on 2 June 2005. See European Commission Communication to the Council and the European Parliament, *The Hague Programme: Ten Priorities for the next five years – the Partnership for European Renewal in the filed of Freedom, Security and Justice*, COM(2005) 184 final, Brussels 10.5.2005

[32] The Commission published a Green Paper on managing economic migration in January 2005; COM (2004) 811 final, 11 January 2005.

[33] Justice and Home Affairs Council Meeting 2618, 14615/04 of 19 November 2004.

[34] COM (2004) 811.

[35] This refers to the target of making the EU the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.

external border controls and the combating of irregular migration that prevailed since the Seville European Council meeting in June 2002.[36]

The Commission sought to put flesh on the common basic principles by publishing a Communication on *a Common Agenda for an Integration Framework for the Integration of TCNs in the EU in 2005*.[37] The Communication contained more explicit ideas for the development of framework on integration based on a set of suggested actions at both the national and EU levels with the view of implementing the common basic principles. It also highlighted the need for a more coherent approach to integration at EU level and contained a visible external dimension. Little reflection, however, was given to the conceptual underpinnings of such a policy and the need for an external dimension to integration. Whereas the implementing measures relating to CBP 2 on respect for the basic values of the EU centred on newly arrived migrants, the implementation of CB4, that is, 'basic knowledge of the host society's language, history and institution is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration' referred to the strengthening of 'the integration component of admissions procedures, e.g., through pre-departure measures such as information packages and language and civic orientation courses in the countries of origin.' And in accordance to the Annex, 'as managed migration schemes are established, and within the context of developing a European approach to the admission of labour migrants there is scope for paying more attention to pre-departure measures which can improve the integration process on arrival. Such measures can be part of comprehensive migration and development strategies'.

In its Second Annual Report, the Commission provided an overview of migration trends and mapped the actions taken by the MS regarding the admission and integration of migrants at national and European levels. It noted that 'there is a new emphasis on obligatory integration

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[36] Presidency Conclusions, Seville European Council, 21-22 June 2002, Bulletin EU 6-2002.
[37] COM (2005) 389 final.

courses, containing both language instruction and civic orientation'.[38] It also mentioned plans in the Netherlands to introduce pre-departure integration conditions for migrants coming to the Netherlands for family formation or reunification and for refugees.[39] And with reference to integration in the labour market, the Commission pointed out that fixed and measurable national targets should be adopted in order to reduce the unemployment gaps between EU and non-EU nationals. The Third Annual Report highlighted the need for the continual reinforcement of legal migration policies and integration strategies.[40] It also announced that greater emphasis will be placed on exploring various concepts of citizenship participation and 'the added value of common European modules for migrant integration'.[41] In the same year, the European Integration Fund was established,[42] having a budget of 825 million Euros, with the view to promote actions in the field of integration of newly arrived third country nationals and those who seek to comply with pre-departure integration measures in a third country. The absence of serious reflection on the conceptual coherence and justifiability of 'integration abroad' as well as its impact on integration processes and family reunifaction is puzzling. One discerns here the conceptual widening of integration owing to its closer association with migration and the uncritical acceptance of the part of the Community of the notion of de-territorialised integration. Little attention was given to the fact that, by its very definition, integration, as both a process and outcome, makes little sense outside the whole (social group, polity etc.) of which you wish to become part. Physical presence in a country is, in my opinion, a sine qua non for integration; one cannot integrate into a society by being abroad, in the same way that a family cannot be considered to be integrated by virtue of its members being apart. Similarly, the nexus between migration and integration has not been

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[38] SEC (2006) 892, page 5.
[39] Ibid, page 10.
[40] COM (2007) 512 11 September 2007.
[41] Ibid, at page 10. Compare the Commission's Communication, 'The Global Approach to Migration one year on: Towards a Comprehensive European Migration Policy, COM (2006) 735 final, Brussels, 30.11.2006.
[42] Council Decision 2007/435/EC, 27 June 2007.

adequately theorized.[43] The balance has been tipped in favour of a restrictive approach that uses integration conditions as a means of filtering the population seeking entry, keeping the undesirables out, testing the resource and the commitment of the included, and of promoting 'identificational' integration. For migrants do not only have to learn the language of the host society and its history, but they also have to internalise its values and ways of life and to develop a disposition, containing emotional, rational and behavioural elements, which qualifies them for admission into the collective body of national citizens.

Indeed, the Global Approach to migration adopted by the European Council in 2005[44] and the ensuing Communication bearing the same title, which was adopted by the Commission in 2006, confirm the grafting of the Member States' security-based agenda on migration onto the EU, by announcing that the EU is taking a 'two-track approach' based on facilitating 'the admission of certain categories of migrants on a needs-based approach and to provide a secure legal status to all legal migrant workers' and the launch of the FRONTEX agency with a view to coordinate joint maritime operations in the Atlantic and Mediterranean regions, thereby disrupting, and preventing, irregular migration.[45] The Commission's Communication on *Towards a Common Immigration Policy* clearly associated the EU's economic interest in migration (the resource perspective) with a policy on integration, 'which has been the subject of a pragmatic approach sustained by strong political demand',[46] security, dialogue and cooperation with migrants' countries of origin, and the alleged need to combat irregular migration. It stated that migration presents both a challenge and an opportunity for the European Union and that a common policy on immigration would have to be based on: legal migration (and integration

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[43] See the Commission's Communication on the Global Approach to Migration, supra note 34.
[44] Presidency Conclusions of the European Council meeting in Brussels, 15-16 December 2005, SN 15914/01/05.
[45] See supra note 34.
[46] COM (2007)780 final, SEC (2007) 1632, Brussels 5.12.2007, page 4.

policy); Schengen; visas; management of external borders; new technologies (biometrics); combating illegal immigration and the external dimension.[47]

Following the 2007 Communication and the European Council's meetings in December 2007 and spring 2008[48] which underlined the need for the development of a comprehensive and coherent European migration policy and of the next multi-annual programme on an AFSJ, the Commission issued a Communication on *A Common Immigration Policy in Europe: Principles, Actions and Tools*.[49] In this, the Commission stated that immigration is a reality that needs to be managed effectively[50] and proceeded to outline the (ten common) principles upon which a future common immigration policy would have to be based. These are grouped under three main strands of European policy, namely, prosperity, solidarity (burden-sharing, funding for border management control and integration, and cooperation with third countries) and security (striking the balance between individual integrity and collective security concerns). Each of these principles is to be complemented by concrete actions at multiple levels. Although 'freedom' is not mentioned in the Communication, it was made explicit that the common migration policy should 'build on the universal values of human dignity, freedom, equality and solidarity espoused by the EU', including the EU Charter of Fundamental Rights and the ECHR. But the new triad, prosperity, solidarity and security, showed that migration-related issues continue to be addressed through the lens of security and migration control and that the MS' migration agenda had become hegemonic.

The Communication stated explicitly that a common immigration policy should promote legal migration and there should be a correlation between skills and labour market needs. Integration was placed under 'Prosperity' and was pronounced to be 'the key to successful

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[47] Ibid, paras 1 and 2.
[48] Presidency Conclusions, Brussels 13/14 March 2008, point 14.
[49] COM (2008) 359 final, SEC (2008) 2026, Sec (2008) 2027, 17.6. 2008.
[50] Ibid, page 3.

immigration'.[51] 'The positive potential of immigration can only be realized if integration into host societies is successful. This requires an approach that does not only look at the benefit for the host society but takes also account of the interests of the immigrants: Europe is and shall continue to be welcoming environment for those who have been granted the right to stay, be they labour immigrants,[52] family members, students or persons in need of international protection'.[53] Interestingly, the notion of 'integration abroad' did not feature at all in the Communication, which, among other suggestions, included an assessment of 'the implementation and the need for modification of the Council Directive 2003/86/EC on the right to family reunification'. However, principle three, on 'prosperity and integration', bestowed legitimacy on integration tests and programmes by stating that 'immigrants should be provided with opportunities to participate and develop their full potential. European societies should enhance their capacity to manage immigration-related diversity and enhance social cohesion'. Little attention has thus been given to the fact that national programmes aiming at enhancing social cohesion might in effect prevent the realization of migrants' full potential and participation by denying them entry, permanent residence, naturalization and family reunification. In addition, diversity was portrayed as an exogenous feature which is brought about by migration, and not as an intrinsic characteristic of European societies. The strand on security and immigration included four principles: 'a visa policy that serves the interests of Europe', 'the integrated management of external borders', 'stepping up the fight against illegal immigration and zero tolerance for trafficking in human beings' and 'sustainable and effective return policies'. A number of traditional (- and new) preventive measures, law enforcement actions and sanctions were envisaged under those headings. The third section of the Communication, entitled 'governance of immigration', invited

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[51] Ibid, at page 8.
[52] See the Commission's proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment (COM (2007) 637 final, 23.10.2007) and the proposed Directive on a single application procedure for issuing a single permit for third country nationals to reside and work in the territory of a Member State (COM (2007) 638 final, 23.10.2007).
[53] COM(2008), supra note 50, at page 4.

the European Council to endorse these principles[54] and called for the development of new tools to strengthen the monitoring and evaluation of their implementation.

The French Presidency of the European Council seized the momentum by calling for a 'renewed political commitment on asylum and immigration' in the form of adopting a European Pact on Immigration and Asylum which would entail the foundations of a common migration and asylum policy. Following several drafts,[55] agreement on the text of the European Pact was reached at the JHA Council on 25 September 2008. This was adopted by European Council on 16 October 2008 in Brussels.[56] The Pact endorses the Global Approach to migration, which was adopted in 2005, and Commission's Communication on a Common Migration Policy, and proposed the implementation of five political commitments which would have to be implemented by national and European measures: the organization of legal migration to take into account the priorities, needs and reception capabilities determined by each Member State and to encourage integration; to control illegal immigration by ensuring the return of illegal migrants to their country of origin or a country of transit; the reinforcement of external border controls; to construct a Europe of asylum; and comprehensive partnership with the countries of origin and transit to encourage synergy between migration and development. Evidently, none of these principles is new. Although it is stated that 'rejecting both closed door and open door policies, the Pact strikes the right balance Europe needs' and 'demonstrates that Europe is able to protect its citizens, honour its traditions and develop partnerships', the five commitments reflect the MS's restrictive migration agenda and their preference for according priority to security and control over the fair treatment of migrants and refugees. In comparison to the Commission's Communications discussed above, the Pact encapsulates a more conservative and law-

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[54] The Lisbon Treaty, which was agreed on 13 December 2007, will facilitate the development of a common migration policy by abolishing the third pillar, extending the application of the co-decision procedure to the areas which were governed by unanimity, such as regular migration, and by furnishing new legal bases for regular migration and coordinating action in the domain of integration.
[55] See Version II of the European Pact on Immigration and Asylum, 4 July 2008. Available at www.libertysecurity.org.
[56] The final text is more conservative in both tone and content than the draft dated 4 July 2008.

enforcement approach which appears to legitimize the MS' restrictive stance; 'legal immigration policy must be selective and concerted'; 'family immigration must be more effectively organized… must be in accordance with the acceptance capabilities of the MS and the integration capabilities of migrants';[57] 'foreign persons who are in counties illegally must leave territories, preferably of their own free will. Deportation decisions taken by a Member State will be recognized by all Member States. Measures of assistance for voluntary repatriation will be recommended and must be extended across all Member States. Member States must cooperate with each other more effectively and take joint measures to ensure the repatriation of illegal immigrants. Member States must limit themselves to regularization on a case-by-case basis for humanitarian or economic reasons'; 'the issue of visas containing biometric identification will be extended across all Member States from January 2012. A Visa Information System electronically connecting all consulates and central government departments will be set up'; 'Whenever it proves necessary, coordination for the control of the external borders of the EU will be provided by the FRONTEX agency. The Agency's resources must be strengthened to deal with crisis situations'. Clearly, in the evolving area of freedom, security and justice the paradigm of migration control and law-enforcement continues to be dominant. Governments will define who is deemed to be worthy of entry and will keep out the unwanted and undesirable. Selective migration will thus take place within the limits established by national regulatory regimes, the circulation of temporary workers will be encouraged and irregular migration will be combated. Indeed, notwithstanding the deployment of the notion of a 'pact', if one compares the French Presidency' inventory of migration control to the one presented by the Austrian Presidency a decade ago[58] very little seems to have changed. The policy agenda continues to be dominated by security concerns, thereby resulting in a rather narrow, and predictable, range of policy options.

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[57] The draft dated 4 July defined integration capabilities on the basis of a) families' resources and accommodation in the host country and b) knowledge of that country's language.
[58] European Council, 'Strategy Paper on Immigration and Asylum policy', 9809/98, 1 July 1998, Brussels.

3. The Area of Freedom, Security and Justice and Belonging: The Continuing Spectre of Security and Control

Despite the Commission's efforts to highlight the positive impact of migration and the demographic and social pressures facing Europe in the future, migration issues continue to be approached through the traditional perspectives of security, control and restrictiveness. Echoing the fashionable discourse on contractual relations, the European Pact on Immigration and Asylum illustrates the Member States' hegemony over the framing of migration-related issues and their resurgent power to control legal entry, combat irregular migration and to dictate the terms of migrants' integration. There exists little reflection on normative considerations and on the negative impact of restrictive and law enforcement approaches on the formation of a European identity and the values underpinning the European project. National executives have shown their preference for traditional frames and old tools and the similarities between the French Presidency's European Pact and the 1998 Strategy Paper adopted by the European Council attest this.[59] The only difference is that, due to demographic pressures, the MS would be prepared to admit certain categories of migrants because they need them. Yet, in so doing, they will continue to place hurdles on their path to temporary or permanent residence and to citizenship, which is now framed as a privilege or a status that has to be earned.

An alternative approach to migration governance would have to reflect critically on the concepts, legal initiatives and policies that have characterised the last thirty years of Member State co-operation in this area and to rethink, and reframe, the area of freedom, security and justice. Reframing the area of freedom, security and justice requires, among other things, the de-legitimation of the present law-enforcement approach and the de-securitisation of migration, that is, its removal from the conceptual realm of security and sovereignty and its designation as a

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[59] Ibid.

'normal' issue to be dealt with through political processes.[60] This is required in order to undercut the prevailing definition of migration as a threat and/or a problem and to disentangle migration form integration issues. In the subsequent discussion I defend the merits of such a desecuritised and liberal approach and of establishing a disjunction between migration and integration with a view to realign the latter with domicile and citizenship.

It is true that liberal theories of justice have been elaborated against the background of bounded communities with given membership and fixed borders.[61] The question that escaped attention until the late 1990s[62] is whether porous boundaries and liberal admission policies can be defended on the basis of democracy itself. Making the states' right to admit and exclude aliens an issue of democratic self-determination has probably been the most credible justification of the states' right to exclude. Walzer has addressed the question of immigration from the standpoint of membership in a political community: 'the primary good that we distribute to one another is membership in some human community'.[63] Accordingly, Walzer's defence of the right of a sovereign state or a political community to restrict the entry of foreigners ('legitimate' closure) is that democracy entails the right of the community to determine its membership and to maintain its distinct identity and the integrity of 'shared understandings'. However, implicit in this argument is a differentiation between internal and external membership decisions that is not accounted for. It is difficult to imagine a democratic polity that creates, and maintains, various classes of citizenship, for it has been well-established that internal membership decisions are subject to principled constraints. If internal membership decisions are subject to normative

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[60] Weaver et al, 1998, supra n 4.

[61] The argument here draws on chapter 6 of my book, *Citizenship, Identity and Immigration in the EU: Between Past and Future* (2001: MUP).

[62] Ibid; D. Kostakopoulou, 'Is there an alternative to Schengenland?', 46(5) Political Studies (1998) 639-56; S. Benhabib, *The Rights of Others* (2004, Cambridge University Press); *Another Cosmopolitanism* (2006, Oxford: Oxford University Press); B. Honing, *Democracy and the Foreigner* (2001, Princeton University Press); A. Honneth, 'Democracy as Reflexive Cooperation: John Dewey and the Theory of Democracy Today', 26(6) *Political Theory* (1998) 763-83; L. Bosniak, L. 'Universal citizenship and the Problem of Alienage', 94 *Northwestern University Law Review* (2002) 963-982; 'Citizenship Denationalised', 7 *Indiana Journal of Global Legal Studies* (2000) 447-518.

[63] M. Walzer, *Spheres of Justice* (1983, Basic Books), 31.

constraints, it is not at all clear why external membership decisions should be exempt from any normative test and why the existing citizens' alleged power to make admission decisions should be unconditional. It seems to me that what has escaped Walzer's notice is that commitment to democratic ideals may require the subjection of a community's competence in the migration field to principled thinking and to the same constitutional constraints that limit the exercise of other political competences. In designing migration law and policy, communities must give due regard to constitutional, international and supranational law principles in the fields of human rights protection, asylum provision, the rights of the child, family reunification, protection of migrant workers, equal treatment and non-discrimination with respect to gender, race, nationality, ethnic origin, religion and so on. For a failure to abide by, and honour, such commitments cannot but compromise the democratic culture of communities and the principles upon which they are founded.

A few decades ago, it would have been futile to attempt to establish clear limits on the discretionary power of states to admit and exclude, beyond those entailed by international law instruments. National statism projected communities as particularistic entities possessing a distinctive and, paradoxically enough, fragile culture, and state borders as barriers (stopping points) - not as permeable membranes (meeting points). Internal freedom of movement was seen to depend on some form of external closure, since the latter would ensure the protection of the way of life of the community and guarantee the distinctiveness of its culture.[64] But the world has changed considerably over the last thirty years, and the project of European unification has demonstrated that the value and the significance attached to borders can be altered and made subordinate to other political objectives, such as creating an internal market and a Union of peoples. This contrasts sharply with the nationalist strategy of transforming territory and borders from a mere 'geographical expression of cultural identity into a fundamental basis for defining

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[64] Ibid, at 38-39.

groups and individual identities'.[65] In addition, the reality of globalisation and the constant perforation of boundaries by messages, cultural images, money, and people have made cultures more visibly fluid, overlapping and interwoven. Within such a 'floating world', distinctiveness and vitality in cultures and societies, more often than not, are the by-product of contact, communication, the flow of ideas, cultural exchanges and of cultural collisions. True, certain theorists, such as Kymlicka, could still defend cultural interchange to the extent that it does not threaten the survival of a culturally distinct society. According to Kymlicka, changes in the character of a culture must be the result of the choices of its members, and must not threaten the existence of a culture 'as an intelligible context of choice'.[66] Whilst it is true that an individual's pursuit of worthwhile life plans takes place only within a cultural-societal context, Kymlicka has not been able to show that the narratives and resources needed for making meaningful choices must come from a single, unified, fully constituted and secure cultural matrix. Nor is the congruence between society and culture so unproblematic as Kymlicka himself assumes and arguments about cultural survival, fears of 'being swamped by alien cultures' and the absorptive or assimilative capacity of a country often entail a way of thinking which unavoidably slips back to essential national identities, unified cultures and communities and to fear of difference and change.

Perspectives which take membership as 'given' and community as a unified, cultural entity have not examined whether restrictive immigration policies may compromise democratic ideals by perpetuating fictions of internal homogeneity and promoting nativist narratives of belonging. It has been assumed that polities are empowered to restrict immigration without compromising their internal process of democracy and that exclusionary migration policies have no significant bearing upon the nature of the polity ('the no-effect assumption'), even though constructions of 'the other' or of 'them' are closely linked to internal definitions of membership, the quality of

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[65] J. Penrose, 'Nations, states and homelands: territory and territoriality in nationalist thought', 8(3) *Nations and Nationalism* (2002) 277-297 at p. 283.
[66] W. Kymlicka, *Multicultural Citizenship* (1995, Clarendon Press).

community relationships and the recognition accorded to diversity. Strangers are perceived as a 'threat' for the liberty, welfare or the culture of the host community only in relation to certain ideological conceptions as to what constitutes a member, and these conceptions almost invariably tend to be inflexible and unresponsive to diversity. Admittedly, one of the most important yardsticks by which to judge the quality of democracy is inclusion[67] and adherence to supposedly unified, single and homogeneous nation-states or cultural frameworks gives rise to closure and impairs the cultivation of an ethic of the Other. It also precludes a deeper understanding of the 'dynamics of distancing and relating' in contemporary societies; that is, the possibility of togetherness in apartness (the creation of border transcending communities) and apartness in togetherness (the various forms of diversity existing even within the most supposedly homogeneous group).

Migration may be a 'blessing', precisely because it forces a rethinking of existing conceptions of community, a periodic review of the meaning and terms of membership and the recognition of the artificiality of binary oppositions between 'us' and 'them', since strangers eventually become associates in a collective experience and members of the demos.[68] After all, democracy does not necessarily presuppose nationality as the qualifying criterion for the participation of all those subject to the jurisdiction of a country and affected by its laws in the decision-making process. Nor do individuals' interests as homeowners, parents, employees,

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[67] J Carens, 'Aliens and Citizens: the Case for Open Borders', 49(2) *Review of Politics* (1987) 251; 'Membership and Morality: Admission to Citizenship in Liberal Democratic States', In *Immigration and the Politics of Citizenship in Europe and North America*, ed. R. Brubaker (1998, New York: University Press of America); 'Why Naturalisation Should Be Easy: A Response to Noah Pickus', In Immigration *and Citizenship in the Twenty-First Century*, ed. Noah Pickus (1998, Boulder: Rowman and Littlefield) 141-48; R Dahl, *Democracy and Its Critics* (1998, New Haven: Yale University Press); R. Goodin, 'Enfranchising all Affected Interests, and Its Alternatives', 35(1) *Philosophy and Public Affairs* (2007) 40-68.

[68] My argument should not be taken to imply that I am advocating open borders and universal free movement. The closed/open borders dualism is quite misleading since it forecloses various possibilities for in between positions. It also reinforces the traditional view of upholding the state's right to exclude since, in the absence of a realistic alternative, theorists are persuaded to turn their attention to the ethics of restricting migratory flows or to articulate standards of decision-making in local contexts that are fair from the perspective of society members only. Given that the present European migration regime is about letting a few in, but keeping most out, a principled and non-restrictive immigration policy which circumscribes admissions decisions within definite legal bounds and extends the obligations that polities may have to individuals beyond the confines of national borders would entail a much more generous intake of migrants.

neighbours, local participants and consumers differ in accordance with their 'citizen', 'resident' or 'illegal alien' status. Irregular migration amplifies the artificiality of these categories, because the absence of state authorisation of migrants' entry and/or residence makes them offenders of migration laws, 'illegals' and 'outsiders who have no right to be here'.[69] Accordingly, states have the power to order the removal of undocumented migrants, and the weight attributed to states' consent (- or the lack of it) subdues considerations related to individuals' de facto social membership. Settlement, employment, contributions to the commonwealth are not seen to be normatively relevant under the paradigm of migration control and governmental restraint. But by stepping up identity checks in order to identify the undocumented migrants, using biometric technology, excluding them from social rights, discouraging their regularization and imposing sanctions on those who hire them, states assign migrants to a subordinate status and undermine principled commitments. Apprehension and removal in turn emits powerful signals about the undesirability of migrants thereby fuelling intolerance and xenophobia. Migration rules thus convey important messages for the nature and quality of the polity and, in turn, affect perceptions about membership and shape attitudes toward democratic citizenship.[70]

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[69] B. Bogusz et al, (eds.) *Irregular Migration and Human Rights: Theoretical, European and International Perspectives* (2005, Martinus Nijhoff Publishers).

[70] On the argument that a liberal migration policy would clash with other principles, particularly those underpinning the welfare system, see D. Miller, *On Nationality* (1996, Oxford University Press); 'Immigration: The Case for Limits', in A. Cohen and C. Heath Wellman, *Contemporary Debates in Applied Ethics* (2005, Blackwell); R. Baubock, 'Legitimate Immigration control', in H. Adelman (ed.) *Legitimate and Illegitimate Discrimination: New Issues in Migration* (1995, York Lanes Press) 3-40. There are two major weaknesses with this argument. The first major weakness of the 'social rights protectionist' or 'social trust' argument, in its various forms, is that it assumes that there is some correlation between national homogeneity and robust redistributive programmes. By so doing, it fails to account for the facts that non-national residents, who are normally excluded from political membership in the host society, at least in the first few years of their residence and do not share a sense of common identity with nationals, may be willing tax payers, whereas one may find a large number of co-nationals willing to block redistributive programmes for ideological or purely selfish reasons. Secondly, it tends to misdiagnose the status and aspirations of migrants; the latter are seen as poor, unskilled and vulnerable. This view is incorrect. Similarly, refugees are not just scarred people and vulnerable dependants. They are people with talents, skills, energy and determination to build a better life and contribute to economic growth. Many migrants are entrepreneurs, ready to start their businesses. And although the effect of immigration on entrepreneurship in the host country has not been the focus of systematic research, most studies confirm that migrants are more likely to be self-employed or employers than autochthonous citizens. In addition, all are consumers creating a greater demand for manufactured goods and investors. For a fuller exposition of these criticisms, see Kostakopoulou 1998 and 2001. Compare also, Smith and Edmonston (eds), *The New*

In the 1980s and 1990s, Western European governments designed their migration policies by separating migration from integration. The main argument put forward was that integration could only work if migration were restricted; by building petty-fortresses to filter out the movement of people, migrants' settlement, citizenship-building and race relations would be enhanced. Liberal citizenship laws were thus seen to require tighter border controls. In the new millennium, however, we have been witnessing a deliberate alignment of migration and integration in official discourses and policies, despite the problems associated with such an alignment. True, migration brings in the people who need to 'be integrated', but it is not a sufficient condition for integration to occur. Otherwise put, migration does not promote integration. But 'citizenisation', that is, treating people as stakeholders and facilitating their access to citizenship, does precisely this. What is also noticeable in the new framing of the nexus between integration and migration is that restrictiveness now extends to both. By imposing mandatory integration conditions abroad or as a condition for the grant of a temporary or a permanent resident permit, governments place the entry and residence of migrants under tighter control.

This may not be apparent at first sight owing to the framing of integration as 'a two-way process' or as 'a contract' between the state and the migrant. However, one has to bear in mind that this conceptual frame has been state-led, too. Civic integration initiatives have been neither the product of societal consensus nor the outcome of a far-reaching public debate on the strengths and weaknesses of multiculturalism. On the contrary. Governments took the lead in defining national belonging and refashioning national identity in response to conservative reactions and

Americans: Economic, Demographic and Fiscal Effects of Immigration (1998, National Academy Press); H. Kurthen, 'Immigration and the Welfare State in Comparison: Differences in the Incorporation of Immigrant Minorities in Germany and the United States', *International Migration Review* (1997) 721-31; See G. Freeman and J. Jupps (eds.), *Nations of Immigrants: Australia, the United States and International Migration* (1992, Oxford University Press); N. Harris, *The New Untouchables: Immigration and the New World Worker* (1996, Penguin) 172.

right-wing extremism in the Netherlands, Denmark, the UK and elsewhere in the 1990s and the new millennium.

It is quite perplexing to understand why governmental elites believe that a sense of 'shared belonging' can emerge by testing one's fluency in the host language and requiring the accumulation of factual information about life in the host state, or about its history and traditions. After all, most of the information one accumulates in this way is bound to be forgotten a few months following the written or oral examination. It is equally puzzling why the European Commission has not called this view into question. Certainly, one cannot disregard the Member States' agenda setting power in this field as well as the underlying ideological premises of their positions. Ideology is crucial, because if communities are perceived to be organic entities, unified on the basis of a shared language, unique historical experiences and a shared culture, as ethnonationalist and cultural nationalist narratives postulate, membership would have to be conditioned on linguistic assimilation, knowledge of history and the acceptance of national conventions. In civic nationalist narratives of community, on the other hand, emphasis would have to be put on the acceptance of the values of the country and one's understanding of the historical context which have given rise to those values. Although much depends on the various conceptions of the nation and understandings of national identity pertaining in the Member States, it is, nevertheless, the case that by framing community membership along nationalist lines, governments ultimately succeed in creating the nation and writing its identity. As Smith has observed,[71] 'creating nations is a recurrent activity which has to be renewed periodically'. The role of nationalist ideology in this conceptual shift of integration from a citizenship effect to a condition of migration is also attested by the fact that integration programmes entail not only devotion to one's values, language and culture and a commitment towards their preservation, but also an implicit or explicit assignment of greater value to one's particular traditions and the

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[71] *The Ethnic Origins of Nations* (1986, Oxford: Blackwell), at p. 206.

stereotyping of other traditions.[72] Programmes of civic integration and social cohesion are thus allegedly justified on the basis of the need to correct the deficiencies of migrants by encouraging competence in the host language, imparting skills, preparing people for citizenship and re-educating them to respect the national values - and not on the basis of national definitions of community, the prevalence of certain conceptions of the nation among elites and their advisers, anxieties about national identity and the desire to make the state (and the party in power) relevant.

If, on the other hand, community is conceived of in political terms (- and the European Community cannot be conceived of otherwise), then its membership rules would have to reflect people's sharing of common experiences and their willingness to work together to solve common problems and to contribute to the welfare of the commonwealth. In such political community, qualities, such as a desire to succeed and carve out a space for yourself and your family, to create a home and a better future on foreign lands, a higher motivation to work hard, to persevere, to solve problems, to display economic creativity and entrepreneurship would be given more weight than the acceptance of traditional markers of national identity, such as knowledge of the language, the civics and internalisation of national (-and European) values.

It is, indeed, unfortunate that the political understanding of community and the outward looking and dynamic notion of society which was dominant in the 1990s is under retreat. Much of the present policy is firmly embedded in a present that not only draws on a nationalist and mis-remembered past, but it also disregards the long-term point of view. Security concerns and discussion about the role of Islam in western societies might make provincialism an attractive position for some, but one must bear in mind that globalisation cannot be not reversed and that even a world in financial crisis is pushed closer together. In addition, multilingualism and diversity are no longer optional extras and the demographic picture makes it quite likely that the

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[72] This applies to national integration programmes and to the common basic principles discussed above, such as CBP2 (respect for the basis values of the EU), CBP4 (basic knowledge of the receiving society's language, history and institutions) and CB8.2 (the practice of diverse cultures and religions must not conflict with other inviolable European rights or national law).

future well-being of western societies might well depend on the sacrifices and labour of the very persons they seek to exclude from membership. The migration pact discussed above does not take this into account. Nor does the EU framework on integration reflects the process-like nature of adaptation and settlement and prioritises interaction, mutual learning and cooperative association between newcomers and existing citizens. Interculturalism and pluralism continue to remain credible alternatives for they put emphasis on what really matters; namely, on developing partnerships, cultivating mutual respect, fostering interactions and dynamic learning in action among majority and migrant communities.

A pluralist approach would recognise that whether newcomers will develop feelings of belonging and a sense of identification depend as much on the kind of institutions and practices of membership that will regulate their lives as on the way they will be treated by the host country. It is hard to imagine, for example, an organisation that, as part of its admissions policy, chooses to impress markers of difference upon new recruits, stressing continually that they are unlike the existing members and that they need to overcome their alleged deficiencies in order to become part of it. Even if such an organisation existed, it would be neither well-functioning nor successful. It has been well-established that the key to creating a collegiate environment within which individuals are given the opportunity to thrive and to contribute to the success of the organisation, is the provision of support to newcomers, parity of treatment and giving them a sense of being stakeholders. Any other approach simply would not work. By analogy, if the aim is to encourage social cooperation and a sense of shared belonging in European polities and the European Union, governments would have refrain from adopting neonational narratives of fear and division; instead, emphasis should be put on the things that people can do together and on what can be done to improve the conditions and experience of social membership and citizenship for everybody. Institutionalising indirect discrimination based on nationality erodes the credibility of admissions policies and placing multiple hurdles on the path to citizenship or putting people on probation undermines the credibility of naturalisation policy.

Given the European institutions' interest in devising a coherent a framework of migration governance, it seems to me that both European polities and the EU need to rethink the framing of migration and integration and to redesign their migration and integration policies. Neither the area of freedom, security and justice, nor the suggested new triad of prosperity, solidarity and security desecuritise migration and integration. A principled, coherent and pragmatic approach would view migration as a resource and integration as matter of developing partnerships, fostering mutual respect and dynamic learning among residents and newcomers. The contrasting templates of internal mobility in the EU and the rights and equal opportunities that flow from it, one the one hand, and of migration, on the other, provide ample light onto the benefits of inclusiveness, equal treatment and openness and polities' capacities to take risks. A new deal can be struck in this domain by adopting a common sense and rights-based approach which sees little difference between internal mobility and migration. After all, a willingness on the part of a political community to put its self-understanding and definition of membership to a normative test, that is, to examine whether they conform to its underlying principles, avoid nationalist ideology and ethnocentrism, observe human rights standards and international law norms and foster respect for people, and to review them periodically in line with changes in the external environment and new developments is an integral part of democracy. Bearing in mind the profound effects of restrictiveness, migration control, national mobilization around closure and traditional boundaries, and of the close intertwining of race and nation[73] upon democratic principles and citizens' identities, a positive commitment to inclusiveness in the EU is needed. In such a schema, the goals, interests and aspirations of non-members are neither disregarded nor superseded by the needs of insiders and/or the relevant duties towards one's community. For any damage or hardship inflicted upon outsiders due to the restrictive and law-enforcement character of immigration policy is a cost since it impacts negatively upon the scope and nature of the principles underpinning a polity. These normative reductions do not only inflict undue damage

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[73] Ali Rattansi, *Racism* (2007, Oxford: Oxford University Press) p. 167.

and hardship on outsiders, but also compromise the fundamental values underpinning democratic political communities. Shifting the focus from the migrant to the host community and defending inclusiveness as a principle of *political morality* in the Member States and the European Union is thus necessary.