Gates Fair on All Sides: Christian Reflections on Establishing Ethical and Sustainable Border Policies and Citizenship Laws in a "Globalised" World

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BOSTON COLLEGE

SCHOOL OF THEOLOGY AND MINISTRY

Gates Fair on All Sides.

Christian Reflections on Establishing

Ethical and Sustainable Border Policies and Citizenship Laws

in a "Globalised" World.

a dissertation by René Mario Micallef, S.J.

submitted in partial fulfilment of the requirements

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To the staff of JRS Malta,
their collaborators
and the refugees and migrants
whom they accompany and serve, and for whom they advocate.

ABSTRACT

This dissertation starts by noting a tension in Catholic Social Teaching between the right of certain persons to *immigrate*, and the right of polities to *control their borders,* and seeks to find a way to resolve that tension. In a first moment, we ask whether the "right to immigrate" made sense only before the mass international migration movements starting around 1980, and before "globalisation", and whether polities today are morally justified in adopting increasingly harsh immigration restriction measures unilaterally. After rejecting this hypothesis by using an interdisciplinary analysis of the changes in the phenomenon of human mobility in recent decades, we propose another hypothesis to resolve the tension. We claim that the two rights are not "absolute" rights, and must be *kept in tension.* Which one of them trumps the other in concrete situations is determined partly by a set of (moral) priority rules, and partly through political discernment via fair democratic processes (which are always necessary so as to formulate concrete policies which require the consent of the governed). The rest of this dissertation provides a well-documented argument in favour of this second hypothesis, and in the process, we formulate a number of priority rules which help activists and policy makers, *qua* citizens and *qua* Christian disciples, adjudicate between rights claims based on the right to immigrate and the right to political sovereignty. The work also includes a systematic and historical presentation of Catholic Social Teaching on migration, a case study on immigration and emigration in Malta, a diachronic analysis of concepts related to human mobility in the Hebrew Bible, a philosophical reflection on Political Sovereignty in a "globalising" world, and a virtue ethics approach to the notions of solidarity, hospitality and kinship.

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ABBREVIATIONS – CATHOLIC CHURCH DOCUMENTS[1]

ABB[2].	TITLE	AUTHOR	DATE	DOCUMENT TYPE
AA	Apostolicam Actuositatem	Vatican Council II	18 Nov 1965	Conciliar Decree
AAS	Acta Apostolicæ Sedis	Holy See		Official Gazette of the Holy See
AC	Apostolicæ Caritatis	Paul VI	19 Mar 1970	Motu Proprio
AG	Ad Gentes	Vatican Council II	7 Dec 1965	Conciliar Decree
CA	Centesimus Annus	John Paul II	1 May 1991	Encyclical Letter
CCC	Catechism of the Catholic Church	John Paul II and Special Commission for the Catechism (established 1986).	15 August 1997	Catechism
CHM	Church and Human Mobility	Pontifical Council for the Pastoral Care of Migrants	26 May 1978	Circular Letter to Episcopal Conferences

[1] The parts concerning migration in most of these documents have been published in Baggio and Pettenà (2009), including documents by the US Catholic Bishops and the Catholic Church in Asia. Most of the documents (including the latest Messages for World Migrants´ and Refugees´ Day) are also available at the Vatican website (www.vatican.va), and the orginals are published in the Holy See´s official gazette, the *Acta Apostolicae Sedis (http://www.vatican.va/archive/aas/index_en.htm)*. We will refer to these documents using the paragraph numbers in the Vatican editions of these documents (published by the Biblioteca Editrice Vaticana, and reproduced on the Vatican website and in collections such as that of Baggio and Pettenà (2009) and O'Brien and Shannon (2010). Older documents lacking a numeration of paragraphs in the original edition will be cited with page or paragraph numbers from more recent English editions. Documents from the Italian bishops' conference, the Spanish bishops´ conference, the Catholic Bishops' Conference of England and Wales and the Commission of the Bishops´ Conferences of the European Community (COMECE) can be found on their respective websites: www.chiesacattolica.it, www.conferenciaepiscopal.nom.es, www.catholicchurch.org.uk, www.comece.org.

[2] The abbreviations adopted follow the general usage for the major documents, but we introduce a convention to indicate the relative doctrinal weight of the minor documents. *Major documents* from the Universal Magisterium (Pope, Roman Dicasteries) are abbreviated using *capital letters only*. *Minor documents* from the Universal Magisterium are indicated by the presence of *numbers or small letters*. *Documents from local bishops´ conferences* and their commissions on migration (or on peace and justice) can be recognised by the presence of a *symbol, namely a dash*, preceded by letters indicating the country or region of the conference.

		and Itinerant People		
CHMA	Church and Human Mobility: Annex - The Pastoral Care of Emigrants	Pontifical Council for the Pastoral Care of Migrants and Itinerant People	28 May 1978	Pastoral Guidelines for the implementation of CHM
CR	The Church And Racism: Toward A More Fraternal Society	Pontifical Commission for Justice and Peace	3 Nov 1988	Dicasterial Document
CSDC	Compendium of the Social Doctrine of the Church	Pontifical Council for Justice and Peace	2004	
CST	Catholic Social Teaching			
CV	Caritas in Veritate	Benedict XVI	29 Jun 2009	Encyclical Letter
DCE	Deus Caritas Est	Benedict XVI	25 Jan 2006	Encyclical Letter
DPMC	De Pastorali Migratorum Cura	Sacred Congregation for Bishops	11 Aug 1969	Instruction
EA	Ecclesia in Asia	John Paul II	6 Nov 1999	Post-synodal Apostolic Exhortation
EE	Ecclesia in Europa	John Paul II	28 Jun 2003	Post-synodal Apostolic Exhortation
EF	Exsul Familia	Pius XII	1 Aug 1952	Apostolic Constitution
EM	Erga Migrantes Caritas Christi	Pontifical Council for the Pastoral Care of Migrants and Itinerant People	3 May 2004	Instruction
EN	Evangelii Nuntiandi	Paul VI	8 Dec 1975	Post-synodal Apostolic Exhortation
ES-CP	Constructores de la Paz	Permanent Commission of the Conference of Spanish Bishops	20 Feb 1986	Bishops´ Document
ES-IE	La inmigración en España: desafío a la sociedad y a la Iglesia españolas	Migrants´ Commission of the Spanish Bishops´ Conference	24 Sep 1995	Exhortation by local bishops
ES-IEI	La Iglesia en España y los inmigrantes	Conference of Spanish Bishops	22 Nov 2007	Pastoral reflections and orientations by local bishops
ES-JLE	Por una justa Ley de Extranjería	Social Apostolate Commission and Migrants´ Commission of the Spanish Bishops´ Conference	19 Apr 1985	Bishops´ Document

ES-PM	Pastoral de las Migraciones en España	Spanish Bishops´ Conference	29 Apr 1994	Bishops´ Document
ES-RDS	Los refugiados, un desafío a nuestra solidaridad	Migrants´ Commission of the Spanish Bishops´ Conference	18 Dec 1992	Bishops´ Document
ES-VPR	Votar como un Pueblo Responsable de su Futuro	Permanent Commission of the Spanish Bishops´ Conference	21 Apr 1993	Bishops´ Document
FC	Familiaris Consortio	John Paul II	22 Nov 1981	Apostolic Exhortation
FR-QEF	Quand l'étranger frappe à nos portes	Episcopal Committee on Migrations and Travelling People of the French Bishops´ Conference	1 Jun 2004	Bishops´ Document
GS	Gaudium et Spes	Vatican Council II	7 Dec 1965	Pastoral Constitution
IT-EF	Ero forestiero e mi avete ospitato	Migrations´ Commission of the Italian Bishops´ Conference	4 Oct 1993	Pastoral Guidelines from Bishops
IT-TGV	Tutte le genti verranno a Te	Permanent Council of the Italian Bishops´ Conference	21 Nov 2004	Bishops´ Document
IT-UCD	Uomini di culture diverse: dal conflitto alla solidarietà	Justice and Peace Commission of the Italian Bishops´ Conference	25 Mar 1990	Pastoral Note from Local Bishops
JW	Justice in the World	Synod of Bishops, 1971	30 Nov 1971	Synodal Document
L####[3]	Letter from the Cardinal Secretary of State on behalf of the Pope for the World Migrants´ Day ####	Cardinal Secretary of State of the Holy See, on behalf of the Pope	####	Dicasterial Letter
LE	Laborem Exercens	John Paul II	14 Sep 1981	Encyclical Letter
M####	Papal Message for World Migrants´ [and Refugees´] Day ####	Roman Pontiff	####	Papal Message
MM	Mater et Magistra	John XXIII	15 May 1961	Encyclical Letter
OA	Octogesima Adveniens	Paul VI	15 May 1971	Apostolic Letter

[3] The wild card "####" represents a year.

PFD	The Pope Feels in His Duty	John Paul II	17 Oct 1985	Papal Address
PP	Populorum Progressio	Paul VI	26 Mar 1967	Encyclical Letter
PT	Pacem in Terris	John XXIII	11 Apr 1963	Encyclical Letter
QA	Quadragesimo Anno	Pius XI	15 May 1931	Encyclical Letter
RCS	Refugees: A Challenge to Solidarity	Pontifical Council "Cor Unum" and Pontifical Council for the Pastoral Care of Migrants and Itinerant People	25 Jun 1992	Joint Dicasterial Document
RH	Redemptor Hominis	John Paul II	04 Mar 1979	Encyclical Letter
RN	Rerum Novarum	Leo XIII	15 May 1891	Encyclical Letter
RM	Redemptoris Mater	John Paul II	25 Mar 1987	Encyclical Letter
SRS	Sollicitudo Rei Socialis	John Paul II	30 Dec 1987	Encyclical Letter
UK-MCM	Mission of the Church to Migrants in England and Wales	Catholic Bishops' Conference of England and Wales	03 Mar 2008	Bishops´ Pastoral Letter
US-EJ	Economic Justice for All	US Conference of Catholic Bishops	1 Nov 1986	Bishops´ Pastoral Letter
USMX-SNL	Strangers No Longer: Together on the Journey of Hope	Conferences of Catholic Bishops of Mexico and the US	22 Jan 2003	Bishops´ Pastoral Letter

GENERAL INTRODUCTION

0.1 Two Rights in Conflict?

This dissertation seeks to reflect on a number of pressing issues in the ethics of immigration policy, starting from Catholic Social Teaching (CST), and following the methodology outlined in the second and third parts of this introductory chapter. Let us start by presenting an overview of the following chapters to give the reader a sense of what to expect from this work.

Concerning immigration policy, in the last 60 years, Catholic Social Teaching has proposed a position between "open borders" and "closed borders", which we could call "porous borders". Using typically Catholic "both / and" approach, it has defended the right of certain types of migrants to immigrate (not only to emigrate), while not denying the right of polities to "control their borders". Both rights can be held together only assuming that (a) we deny absolutist versions of both individual rights and of political sovereignty, (b) we place limits on both the "right to immigrate", and the "right to keep people out". This dissertation can be seen as consisting of two movements: a deconstructive movement (0.2) which links individual rights to duties, and critiques Westphalian "absolutist" notions of political sovereignty, and a constructive movement (0.3) which seeks to propose some priority rules that help us to understand better when people have a right to immigrate and when they don´t, and when polities have a duty to let foreigners enter and stay, and when they don´t. The listing of priority rules we propose, though not pretending to be "definitive" or "complete" in any way, helps us to take a step closer to understanding what "porous borders" should

look like, and to inspire Christian advocacy in civil society, while also shaping our way of living hospitality and civic kinship.

0.2 Deconstructive Moment

After a chapter on the methodology which we will follow in this dissertation, we present, in Chapter 2 a summary of Catholic Social Teaching (CST) on migration and borders. CST sketches an ethics of immigration policy by identifying a set of rights (and corresponding duties) and a set of right-order principles relevant to human mobility and political boundaries: many such rights and principles can be found in official Church documents, though often not fully expounded and supported by rigorous argument. Tensions, real or apparent, between such rights and principles are not usually explored and dealt with. That is why, after a first moment where we list and comment the major rights and principles synchronically, we focus on a particular issue in CST which is central to our dissertation — the tension between the right of persons to immigrate into a country and the right of states to control their borders. We then analyse the diachronic development of official Catholic doctrine on this issue.

The main conclusion of Chapter 2 is that, in recent years, there has been a certain shift in emphasis in CST on migration. Recent documents speak clearly about the **right of nations to control their borders**, and risk being interpreted as supporting unilateral immigration restriction, which earlier CST documents reject (in favour of multilateral immigration management and the respect of certain persons´ **right to immigrate**). Either (Hypothesis A) these rights are irreconcilable today, and one of them has to be declared void (given the changes in the phenomenon of human migration in the last

few decades), or else (Hypothesis B) a way of adjudicating between these conflicting rights claims needs to be provided.

The deconstructive moment of our dissertation seeks to negate Hypothesis A. Chapter 3 seeks to show that, even though the phenomenon of migration has changed in the past decades, these changes do not warrant a substantial change in the ethical evaluation of the phenomenon developed in CST between the 1950s and 1970s. The chapter sets out to support this claim with the presentation of a wide panorama of data concerning human migration in recent decades, set in historical perspective, and using economics, law, sociology, psychology and security approaches to the reality of migration in today´s world. Globalisation, mass emigration, international terrorism and the ecological crisis in recent years do not entail that we should abandon the right to immigrate. Rather, given that the issue of border control has come to the fore, we can discern, more than ever before, the need for a moral framework within which to adjudicate conflicting rights claims regarding immigration, and to make the "right to immigrate" more receivable and concrete. This points to a constructive moment where moral theologians need to fill this lacuna and provide such a framework, namely by formulating clear priority rules.

Through the use of a case study, Chapter 4 consolidates the deconstructive argument above, while providing a bridge to the constructive moment of our dissertation. On the *deconstructive side*, we trace Malta´s experience of almost 200 years of mass emigration and its sudden transition to becoming a migrant-receiving country in recent years. We conclude that the Maltese case demonstrates within the confines of a microcosm that some of the problems being faced today by migrant-sending and migrant-receiving countries are not so "new" after all. On the *constructive side*,

from a historical and particular perspective, this chapter inaugurates our ethical reflection on the right to immigrate, namely by developing the Principle of **History-Laden Interdependence** and a related priority rule. Finally, the Maltese case study, using qualitative and quantitative studies, also provides empirical data regarding the legal, political, economic, social and cultural implications of irregular and asylum immigration to Malta in recent years, the beginnings of a difficult process of adjustment to an increasingly multicultural society, and the challenges of integration. All this helps us to prepare a reflection on integration capacity developed in chapters 6 and 7.

0.3 Constructive Moment

Chapter 5 builds on the objections to immigration restriction presented in previous chapters, and in this sense also has a deconstructive component. However, its main aim is to develop an ethical framework which helps us propose a number of priority rules. These rules allow us to define the parameters of an *immigration management* approach suggested by CST, which is multilateral, solidary and compatible with the right to immigrate, properly understood. To do so, *this chapter seeks to understand (1) how to reconceptualise the notion of political sovereignty in the 21st century, (2) who is the "forced migrant" who has a prima facie right to immigrate to satisfy her basic needs and those of her family, and (3) how to tackle the* complex issues raised by *conflicting rights claims.* We distinguish here two orders of problems concerning the rights of immigrants and of polities: one concerning the **origin and foundation** of such rights and their lexical ordering, the other concerning the more precise **content** of the rights and priority rules in question.

As regards the *origin and foundation* of such rights, we explore an increasing number of "cosmopolitan" contemporary political philosophers who in the name of *human rights* challenge absolutist

notions of political sovereignty, and take positions akin to CST's "porous borders" approach. Yet, we also appreciate the importance placed by civic republicans on the exercise of *popular sovereignty*, but seek to reinterpret this in favour of seeking ways of *including* immigrants from the decisions that affect them rather than *excluding* them and so create a new politically-disenfranchised under-class. This nuanced position, though not argued exhaustively in the chapter, seems very plausible from a philosophical standpoint, while being most congruent to the stance taken in CST. As regards the *content* of the rights of immigrants and receiving polities, the second part of the chapter uses the foundations above, and a distinction between different types of stay, to present an argument in favour of a number of priority rules, namely, the **Recipient Country Selection Rule**, the **Immigrant Entry and Sojourn Selection Rule**, the **Immigrant Residency and Naturalisation Selection Rule** as well as a **Procedural Rule**.

The sixth chapter, focussing on an analysis of Old Testament materials, seeks to supplement the more universal and cross-cultural approach in the Chapter 5 with a reflection based a rich human tradition which has had to deal with migrants and strangers for several hundred years. When adequately approached (6.1), the Bible, which brings together law and narrative, provides valuable resources towards a deeper reflection on a number of key concepts: hospitality and kinship (6.2), national identity (6.3), and "strangeness" / "otherness" (6.4). The biblical approach allows us to deepen the historical and theological dimension of our investigation and thus helps us to refine and expand on the preliminary priority rules presented in the previous chapter, namely through the **National Narrative** and **Integration Capacity** Rules (6.6).

The Old Testament teaches us a lot about hospitality, but it struggles with integrating the other. This difficulty brings us to the synthesis proposed in our final chapter, which distinguishes two components within the virtue of solidarity with immigrants: hospitality (both settler and itinerant) and kinship. These two components are already announced in Chapter 5, which links different rights and priority rules to different types of stay (sojourn/long-term residency), and thus implies that a just relationship with different types of immigrants requires different types of practices. The virtue ethics approach we take in Chapter 7 gives due importance to the virtue of hospitality and the practices related to this virtue, but invites to go beyond mere hospitality and to develop practices based on the virtue of kinship-fraternity. To be sure, such a transition is a very difficult one and may seem too idealistic in the current political contexts of many Western democracies. For this reason, rather than make the case again for the priority rules using the language of duty and law, we choose to reflect on how narrative and ritual, in the city as in the Church, can help us foster hospitable and kindred citizenship and discipleship. Hopefully, this can create movements within civil society which challenge the ecology of fear pushing for greater immigration restriction, and propose reasonable rules (such as the priority rules proposed in this dissertation) as guides in the formulation of fairer immigration laws and policies.

CHAPTER 1: METHODOLOGY

1.1 Migrants´ Stories

1.1.1 STEVE´S STORY

In this chapter, we will present the methodology we will follow in our dissertation. We shall start here with some reflections on the hermeneutical approach we believe is necessary for an investigation in the human sciences which aims to be rigorous and intellectually honest, and which has to deal with narratives of various sorts. In his book, *The Great Exodus*, Lawrence Attard (1989, 37–38) published this interview, given in Malta by Mr Steve Pace on the 30th November, 1983. Mr Pace was a typical Maltese emigrant who escaped the grinding poverty in Malta after the Armistice in 1918 caused a considerable reduction in activity and personnel at the British naval base in Malta and hence widespread unemployment:

> *I tried to reach America as a stowaway but was caught while the ship was still in [Malta´s] Grand Harbour. I was seventeen then. When my father and mother realised that there was no stopping me, they decided to give me £29. In all I carried on me £40 when I finally sailed from Grand Harbour sometime early in 1920. There were about eighty other men going to the USA.*
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> *I was able to read and write and I knew a little English. My companions and myself left Malta for Syracuse on the ferry and then travelled all the way by train to the French port of Cherbourg. That journey took five days. From Cherbourg we went on a ship called the "Adriatic" which carried us to New York. That crossing took nine days. In New York we were taken to Ellis Island where they fixed letters of the alphabet on us. They examined us for trachoma and our general health. The whole thing took about five hours. I think I was able to pass quickly because I knew some English and I had enough money on me.*
>
> *From New York I took a train to Detroit. I wanted to go to Detroit because I knew that I had an uncle there, but I had no idea where he lived and he knew nothing about my arrival. In New York and in Detroit I was met by no one. However, as soon as I arrived in Detroit, I started looking for Maltese immigrants. After four days one of them told me where to find my uncle. My first job was with Chrysler. I worked in the Paint Shop but this job lasted only six weeks because most of us workers were sacked. This meant I was two years out of work. During my first two years in America I never wrote back home*

because I did not have the money to buy stamps with. Eventually my mother contacted the British Consul in Detroit to see what had happened to me. The Consul found me out and he gave me some stamps. I was then so hard up that I couldn't afford a pair of shoes. Most Maltese were in the same predicament. At first we were given tickets to buy our groceries, but then they stopped giving such tickets to those of us who were single.

Few Maltese had steady jobs then. Those who worked sometimes would give us ten cents to buy two eggs. We lived in a lodging house which was owned by a Maltese known to us as Pawlu iż-Żgħajjar or Tiny Paul. He hailed from Qormi. Twenty-four men lived in that house. We ate spaghetti for our only meal and sometimes we were given a loaf of bread by the Salvation Army. When one of us had a cigarette, we would share it. Winters in Michigan were much colder than in Malta. At times the temperatures stayed below zero for weeks. For one whole year we had no heating in our lodging house. Most of us were young and single and we were able to survive.

Fortunately relations between Maltese themselves were friendly. We helped each other when we could. Some would lend money without charging any interest. The Maltese got on well with other immigrants. Except on one occasion when the Irish Gang of Fifth Street attacked the Maltese. I think the fight ended in a draw. Next the Irish attacked the Chinese, but the Chinese were prepared for the fight and obtained an easy victory over the Irish.

I remember one fact very clearly. It was 1932. I had been waiting for hours to register for work. It was snowing very hard. After waiting for some hours someone came out of the office and said that work would be offered only to those who were American citizens. At that time I still had my British passport, so I said I was American and gave them the address of my American girl friend. I got a job.

Later I opened a grocery shop. When Prohibition was lifted I opened a Beer Garden where most of my patrons were Irish. Business was good and after the Depression I did very well. In 1935 I went back to Malta for the first time since 1920. Since then I was able to visit Malta regularly. In 1974, after fifty-four years living in the USA, I decided to retire to Malta. Since that year I have been going regularly to the USA where my son lives. In spite of the hardship endured, I am proud of my American citizenship and I am glad that I emigrated when I was only a youngster. I can say that most Maltese who lived in Detroit have done very well for themselves.

Steve´s story introduces us to some of the complexity of the phenomonenon of human mobility. Depending on what we choose to highlight, we could come to some very different conclusions on what “economic” migration entails. Some would note that Steve tried to travel as a stowaway, lied to his employers about his status (pretending to be a US citizen), preferred to stay in Detroit during the Depression (instead of going back home or looking for a job somewhere else) and was involved in fights among immigrant gangs. They would conclude that Steve´s story is yet another proof of

the theory that poor immigrants tend to be violent, ignorant and obtuse cheaters. Others, however, would see this as an impressive success story, the realization of the "American Dream": here is a migrant entrepreneur who integrated very well, became a citizen and is proud to be American. Others still would note the fact that he returned to Malta with some of the capital accumulated and intepret it in different ways: Steve might be seen as a "typical" first generation migrant who is never truly at home in the receiving country, or else as a person who inhabits two cultures with ease. Some would also comment that if, with his family's help, Steve could pay the passage and get through the controls at Ellis Island, he was not "poor" by Maltese standards. Rather, immigration was a rite of passage for the generation that missed the Great War: he was therefore a restless, adventerous young man bent on proving to himself and to others that he was "a man", and making a fortune abroad.

When studying immigration we come accross various "stories". They may be qualitative narratives of immigration experiences, such as the one above. They may be quantitative collections of data selected by economists or sociologists and interpreted in one direction or another. In philosophical and theological Ethics, we also deal with "classic" stories, such as textbook cases, thought experiments, and narratives from religious traditions[4]. For example, the Parable of the Good Samaritan (Lk 10:25-37) is a commonplace[5] in debates on the ethics of borders and on migration, especially in

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[4] For example, cf. Peter Singer's famous "Shallow Pond" case and Appiah's (2007, 158f) discussion of it; the universal compassion (karuṇā and anukampā) of the Buddha; Mencius´ discussion of the case of the child about to fall into a well (*The Mencius* 2A:6); the story of the first Hijra (when Mohammad´s companions were given asylum by the King of Ethiopia) (Ibn Hishâm 1955, 56–60; Ibn Qayyim Al-Jawziyyah 2003, 261–265).

[5] Regarding the use of commonplaces in ethical reflection, see Jonsen and Toulmin (1990, 74).

documents and speeches of Church leaders[6]; the immigrant in the story is the Samaritan, but most interpreters seems to ignore this fact and associate immigrants with the victim. One might even compare the bandits in the story to irregular migrants preying on the poor in our societies.

The complexity of immigration stories allows for many interpretations. There is no "view from nowhere" when debating or studying a "hot" issue like this: we always listen to stories about immigration and read economic and sociological data from a certain stance. There are two things I would like to note at this point. *Firstly***,** the different readings of Steve´s story and the Parable come from different stances, which we can demarcate from one another by tracing imaginary lines between interpretative communities. *Secondly*, the stances themselves are built on narratives, and interrupted by narratives. As we shall see below, by being coherent and intellectually honest, we may, at some point, actually allow those stories to start challenging our initial stances and "pre-comprehensions". Hence, instead of being closed in a vicious circle where every new story about immigration is used to confirm our "pre-judgements" on the issue, we can climb a hermeneutical helix which allows us to look down the ladder at some point and reshape the lower rungs. For example, literature and cinema can be important sources of interpretative narratives which might help us rethink our initial stances[7], as is good journalism done by both "natives" [8] and "immi-

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[6] Cf. explicit references in M1997§2, M1999§5, EM 3, (Willimon 2011), ES-PM (intro.) and implicit references in GS 27.

[7] For instance, the attitudes of Walt Kowalski, in Clint Eastwood´s feature film *Gran Torino* (2008), and Walter, in Thomas McCarthy´s *The Visitor* (2007) change radically when they find themselves obliged to relate with immigrants whom they initially see as repulsive and criminal.

[8] Journalism does not provide "bare facts", but rather stories which present these "facts" in a certain way. Maltese and Italian newspapers often give prominence to news about new boatloads of undocumented immigrants arriving in Malta or Lampedusa, creating the impression of an on-going invasion, and to crimes

grants"[9] who take big risks to provide us with other elements in the construction of our narrative understanding of immigration.

Yet, it is good to state at the beginning where we stand, what "fore-judgements" do we carry into this investigation, what worldview encumbers[10] our judgment, especially in the light of the hermeneutical thought of 20th century authors, such as Hans-Georg Gadamer and Paul Ricœur.

1.1.2 My Stance and My Narratives

A doctoral thesis in the field of theological Ethics can be a "dry" narrative, populated mostly by arguments rather than eccentric and fascinating characters. Unlike biblical parables or Clint Eastwood

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committed by people with immigrant-sounding names. This is a very partial and facile way of reporting on the phenomenon of migration. Yet, there are good journalists committed to tell us a richer story by adopting a different perspective. For instance, Fabrizio Gatti, an Italian journalist, has managed to pass himself off as an undocumented immigrant on many occasions and his articles help us see how migrants are treated in Italy and elsewhere (Gatti 2000; 2003; 2005; 2006; 2007). His book *Bilal — Viaggiare, lavorare, morire da clandestini* (Gatti 2008) gives witness to the life of migrants and refugees on their way to Europe, and how they travel, work and die in the deserts and cities of North Africa. Another daring Italian journalist, Gabriele del Grande, writes an influential blog, Fortress Europe (http://fortresseurope.blogspot.com) and has published two books, *Mamadou va a morire* (2008) and *Il mare di mezzo* (2009a) relating his encounters with immigrants and their families along migration routes in Morocco, Mauritania, Senegal, Algeria, Tunisia, Libya, Malta, Turkey and Greece. Other journalists have accompanied undocumented migrants travelling to the US through Mexico. Cf., for instance, the documentaries by Prieto Tassier and López Castillo (2011), Al Jazeera Mexico team (2011) and Bill Groody (2005), and Don Bartletti´s photoessay "Bound to El Norte", which won the Pulitzer Prize in 2003 (cf. Bartletti 2006).

[9] One example is Jose Antonio Vargas, a former reporter for The Washington Post who in 2008 shared a Pulitzer Prize. In an article published in the Magazine section of the New York Times on the 22 June, 2011, Vargas revealed that he has lived in the US as an undocumented migrant since 1993, when, as a child, his family paid a coyote to smuggle him in from the Philippines (Vargas 2011). Vargas, who considers himself an American, founded the campaign *Define American*, (www.defineamerican.com) seeking to reorient the stalled conversation on immigration reform in the US Another immigrant who decided to tell his story (of disillusionment and failure) and that of other migrants — this time through a 9-part TV series, which was aired on *Al Jazeera English* and a documentary called *Surprising Europe,* which premiered in The Hague on 27 March 2011— is the Ugandan photojournalist Ssuuna Golooba (Akomolafe 2011).

[10] For a critique of the Enlightenment anthropology which tends to see individuals as "unencumbered selves", see Sandel (1998, 82–95).

films, it does not aim primarily to stimulate the desires and imagination of the reader and spur her into action, inspired by the values of some "hero" or "heroine". Yet like these narratives, a dissertation in Ethics uses a descriptive approach to reality which points the intellect towards normative solutions to normative problems: it can be, in this way, a narrative that interrupts other narratives, and that helps the reader challenge her "fore-judgments" regarding a topic such as immigration. But let us here focus on the author, who could himself be challenged in the process of working on a project like this.

I embark on this work by bringing in my training as a Jesuit priest and theological ethicist, as well as my personal story as a migrant and the stories of other migrants I have met, to bear on my research. Three narratives, in particular, shape the stance from which I approach the subject of human migration. One is my personal story as a white, 37-year old Maltese man, born to well-travelled parents who lived abroad for long periods in their youth. I grew up in a middle-class family, studied and lived in six different Western countries, and volunteered with various faith-based organizations working with migrants[11]. Another narrative is that provided by my worldview as a Roman Catholic priest of the Society of Jesus, a very international religious Order that was founded by Ignatius Loyola, a person who called himself "the pilgrim" and lived as one. It is an Order mis-

[11] For instance, before I joined the Society of Jesus, I had volunteered with the Jesuit Refugee Service (JRS) in Malta. This faith-based organization has since grown considerably with the influx of immigrants in recent years, becoming in the 2000s one of the major NGOs in Malta fighting xenophobia and discrimination against refugees. JRS Malta grew from a small office to one of Malta´s most prominent NGO´s and human rights organizations. Dr Katrine Camilleri, legal expert and current director of JRS Malta, was awarded the Nansen Refugee Award in 2008 by the UNHCR.

sioned to the "frontiers"[12], committed to social justice, and with a long history of defiance towards unreasonable or unfair border laws[13]. Finally, in Chapter 1, I present the Catholic Teaching on Migration, an authoritative normative meta-narrative which I adhere to as a professional ethicist working within a particular religious institution.

1.2 Catholic Social Teaching on Migration as Point of Departure

In this section, I discuss further the methodology we will adopt in our dissertation, which hermeneutically starts from a reality already being *assessed* morally by an *active* subject, whose *observation* and *analysis* leads to a renewed *assessment* (1.2.1). It keeps theological and philosophical Ethics in dialogue (1.2.2). In this context, I also delimit our field of study (1.2.3).

1.2.1 A Situated Approach to Debates on Immigration

1.2.1.1 "See-Judge-Act": The Pastoral Cycle

In Catholic praxis and theoretical reflection, the classical method used to approach social issues is a hermeneutical process originally proposed by Joseph Cardijn and the Young Christian Workers´

[12] For various articles on this topic, see the *Review of Ignatian Spirituality* 119 (2008). Pope Benedict XVI, in his address to the General Congregation of the Society of Jesus (21st February, 2008), recognised that the place of Jesuits is still at the frontiers (AAS 100 (2008), 167), not only challenging physical and political barriers to their freedom of movement, but also challenging the barriers situated in the minds and hearts of people who resist welcoming faith and justice into their world.

[13] For example, a 1647 ordinance, published in *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusets* (1648, 26) states that Jesuits trying to enter the Bay Colony should be banished, and if caught a second time, put to death (unless shipwrecked). A similar law from the state of New York (enacted on the 9th August, 1700) threatens Jesuits with perpetual imprisonment (W. H. Bennett 1909, 206–210).

movement in the early 20th century[14]. It is popularly known as the "see-judge-act" process, and sometimes referred to as the "circle of praxis" or the "pastoral cycle"[15]. The "judge" moment actually fuses together **data analysis** — and interpretation of a more descriptive kind ("social analysis") — with a **moral assessment** (philosophical and theological) having a prescriptive intent: we could therefore speak more accurately of the "see-analyse-assess-act" process. Some documents of Catholic Social teaching (CST) have proposed this method as the privileged method to be followed in theological reflection on social issues (MM 236-7; cf. GS 4; OA 4; Elsbernd 1995, 42).

In the light of our above discussion, and of the great epistemological debates or the 20th century (in both Continental and Anglo-American Philosophy[16]), there is a good and a bad way of understanding the "see-judge-act" methodology. A bad way is to think of it as a *linear process starting from "nowhere"*, what Husserl calls the "natural attitude" (Beyer 2013): we first **observe** "facts" (and listen to narratives) from a "neutral" stance, then we **judge** what we observe (that is, we analyse the data and interpret the narratives on the *descriptive* level, and then jump to the *prescriptive* level and make moral claims), and finally we **act** according to that judgment. A good way to understand Cardijn´s method is to see it as a circular, or better, *helical* process. We always find ourselves acting

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[14] One of the first mentions of the "see-judge-act" method is in a 1935 address on "Three Truths" (Cardijn 1955, 86–87).

[15] Cf. Holland and Henriot (1983, 7–10); Pelegri (1979, 153–167).

[16] Continental Phenomenology, starting with Dilthey´s characterization of the "sciences of the spirit", and Husserl´s critique of the "natural viewpoint", then with Merleau-Ponty´s anaylisis of perception and Heidegger´s reflection on the human self as a being situated "in the world", and more recently with hermeneutical approaches of Gadamer and Ricoeur, has helped us to see the human person as a hermeneutical being, already engaged inextricably in the reality around her, yet somewhat able to follow, together with others, a project which makes life meaningful and ethical. Analytical Philosophy and Philosophy of Science, starting with authors like Quine, Popper, Kuhn and Lakatos, have underlined the theory-ladenness of all human observation, and shown that falsification offers a better basis to approach the truth than verification.

in the world and making moral judgments about things. New data and new narratives are not grasped as brute facts by "unencumbered selves", people with no history and no prior interpretative keys to reality. Different people read Steve´s story, or the parable of the Good Samaritan, in very different ways because their observation of reality, their way of listening to a new narrative, is "theory-laden"[17]. The circularity of the process could become vicious if new narratives are not allowed to challenge the fore-judgements that we carry with us whenever we set out exploring reality and making observations. Yet, the circularity can be allowed to develop into a helical process in the sense that every cycle of seeing, judging and acting leads us to another cycle, and with every cycle, we go up one level. This dynamic allows us to shift our position and gaze down critically on our previous experience of seeing, judging and acting.

Such a methodology recognises that we are always in the middle of things, and we start dealing with circumstances in life already situated somewhere. As we navigate the seas of knowledge on rickety boats, we can only improve the boat design from the inside, while sailing, using new flotsam to add features and replace old planks. We do not leave our situation to look at reality "from nowhere". Rather, a rigorous methodology allows us to start from *somewhere* — it could be *anywhere*, in fact, so long as it is plausible and is somewhat ethically acceptable — and embark on a process in the search for coherence and truth, which will then allow us to critique our fore-judgments and put into question bit by bit our original stance. Given that they are part of a continuous helix, the different steps in the process (see-judge(analyse/assess)-act) can be stated in a dif-

[17] The debate concerning the theory-ladenness of observation has marked the Philosophy of Science considerably in the 20th century. It is mainly associated with figures such as Norwood Russell Hanson, Thomas Kuhn, and Paul Feyerabend (Brewer and Lambert 2001).

ferent sequence. In the light of the above, for didactic purposes, we could designate the mid-point of the "judge" as the start of the cycle, and actually talk of an "assess-act-see-analyse" process.

1.2.1.2 "Assess-Act-See-Analyse": Reconceptualising the Traditional Methodology

Let us start with the first step: **assessing reality**. Putting the "**assess**" step at the start of the cycle helps us see better what we are doing in ethics, and avoid certain accusations, such as that of succumbing to the "naturalistic fallacy", whereby we move from purely empirical data to normative claims. The claim that all observation is to some extent "theory-laden" means that even the most rigorous natural scientist, when she goes out into the field to collect data, has certain theories "at the back of her mind" which shape the way she observes things and notes down observations. She cannot write down that she has seen a "rabbit" if she has no idea (and no rudimentary definition) of what a "rabbit" is. In moral thought, our observation is even more "theory laden". When we observe corpses lying along the border between the US and Mexico, we do not only have a definition of "human corpse" and "national border" at the back of our minds, but also theories about justice and freedom. That is probably why we care to go to the border and start making these observations in the first place. Hence, because we have a worldview which gives us a sense of right and wrong, and because we are always in the middle of action (praxis), even when we are "theorizing", we can say that all *observation* is situated within *action*, and all action is inhabited by a worldview that allows us to morally *assess* reality (and make sense of our acting and observing).

This takes us to steps 2 (act) and 3 (see). The conclusion of the above discussion is that we always come to the "act" step from the "assess" step. All conscious and non-banal *human* action (*actus humanus,* not *actus hominis*) presupposes a prior moral evaluation of reality (even though it may be

mostly intuitive in the act of a child), and by calling the methodology "see-judge-act" we may forget this. Keeping in mind the classical distinction between *prâxis* and *poíēsis*, the "action" flowing from moral assessment is *praxical*, but praxis incorporates "poietical" components such as observation and data analysis[18] which do not have, *in themselves*, a moral intentionality, but obtain one from the praxical action which envelopes them and gives them meaning. So the last two steps in our four step cycle (assess-act-see-analyse) are "poietical" actions which make sense in the context of the person's *praxical* action (step 2), informed by their prior moral worldview (step 1).

The *analysis* and interpretation of reality, are presented here as the step 4 of the cycle. When seen as part of the moral act of the person seeking to comprehend reality, the analysis and interpretation of data is not done purely on the basis of "empirical" observation. Social data (and immigrant narratives) would have no moral value if they were lists of purely empirical "facts". Any attempt to derive a moral reflection from such "raw" data would incur the "naturalistic fallacy". Yet analysis (step 4) can lead to a new assessment (step 1), when one recognises that the results are *situated within a pre-existing moral debate*, and linked to prior moral *assessments*[19].

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[18] Theory (theōría), if by this we mean natural scientific theories without substantial metaphysical underpinnings, is merely a complex construct of *poíēsis:* it produces *explanations* of reality which serve to procure necessities and support praxical action. Moral and political systems, however, can be considered as the *theoretical* part of *praxis*: they help us *understand* what the good life is, and live it out of freedom, not necessity (cf. Volpi 2010).

[19] This process does not happen only in the work of ethicists, but also in the work of natural scientists. Let us give an example. You cannot conclude simply from observing *x* rabbits passing by in time *t* in zone *z* (say, somewhere in Australia) that *z* is infested with rabbits and action should be taken to eradicate these "pests". All you can do with this empirical data is jot it down on your notebook and calculate the rabbit density per square kilometre. Calling rabbit densities above a certain threshold an "infestation" is already a value judgement, since the term is negatively charged, and implies that there is something wrong about those population densities. Going from there to calling the authorities and asking them to set myxomatosis-infected traps to get rid of the rabbits is clearly a decision of a moral and political nature; it is not warranted

1.2.1.3 The Use of this Methodology in the Dissertation

These methodological remarks are very relevant to our reflections in the following chapters. We will make *descriptive* observations about immigration ("irregular migration is happening", "most immigrants find jobs and contribute to the economy of the receiving country", "most immigrants come from low HDI countries"): this is the "see" step and the "analyse" step. We will argue, from a *prescriptive* stance, that certain things should be done ("we should adopt certain priority rules when admitting or integrating immigrants"; "we should promote hospitality and kinship"): this is the "act" step. But we don't go directly from "see" to "act" on the basis of the analysis. Rather, when we see, we are already acting, and carrying certain moral assessments at the "back of our mind", such as "basic human rights to safety and subsistence should be respected", or "it is wrong to deny entry to refugees": this is the "assess" step. This is why I would describe the methodology of this dissertation as an "assess-act-see-analyse… and assess again… and then act" cycle[20].

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by the observation *alone*. Rather, the observation triggers a response based on a moral stance you had before ever going out to count rabbits, for instance, on the claim that rabbits in Australia compete with endemic mammals and their population growth *should* be kept in check to maintain biodiversity, or that rabbits damage crops and *harm* the profitability of farms and the wellbeing of farmers, which is a *bad* thing. The moral claim that we can, and should, kill certain animals to protect other animals or to allow certain humans to earn a living and flourish, is certainly a theory that encumbers the observations and actions of the scientist out there in the bush. Not everyone would agree with this claim, and it is certainly not something built from pure empirical observation. Yet most scientific action, as most human action, has a practical intent, and places data analysis at the service of decision-making which is moral and political. When scientists or other people do this, they obviously do not argue from "x is happening" to "we should do y" (naturalistic fallacy). Rather they assume *normative* theories (of a moral and political nature), such as "when x happens, something is wrong and we should do y" (assess), and *then* note that "x is happening" (act/see/analyse) and conclude that "we should do y" (assess/act).

[20] CST itself somehow recognises this; for instance, in MM 220, it is clear that the "observations", which lead to social analysis, ethical judgments and praxis, are themselves rooted in a history of action in the world which assumes certain basic principles, such as the dignity of the human person (cf. GS 46). Christian observation of the world is always theory-laden and praxis-laden with some notion (not always fully thematised or

Given my initial stance and my "fore-judgements" (my personal experience, my Jesuit vocation, my profession as a Catholic Moral Theologian, mentioned above), I come to this project with a certain way of assessing things, with moral claims which encumber my observation. I thus start the cycle by presenting the rights claims and right-order principles in Catholic Social Teaching (Chapter 1), which will give the reader a good idea of where I stand as I embark on this project. This is the "**assess"** step. I then *act* as a researcher through, precisely through the *observation* of reality of immigration and the *analysis* of this observation (Chapters 2 and 3). This is the "**act/see"** step combined with an "**analyse"** step. This first cycle then leads to a second cycle which starts with a philosophical (moral) reflection on the phenomenon of human mobility (Chapter 4). This second "**assess"** step responds to the data presented and analysed in Chapters 2 and 3. It is also compatible with the reflection from Catholic Social Teaching (Chapter 1) of my first assess step, but now it allows me to critique, re-assess or refine certain tenets of Catholic Social Teaching on migration[21]. This then takes me, in Chapter 5, to a second "**act/see**" step. Here I observe the phenomenon of migration, and the way immigrants are treated, in biblical Israel, on the basis of a historical approach to the biblical texts of the Old Testament. This second "**act/see"** step is combined with an "**analyse"** step, given that we will primarily read the Old Testament as a historical artefact, rather than a normative text. We will

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clearly defined) of human dignity and the common good, and with a history of action in favour of both. Repeated cycles of seeing, judging and acting, starting from this situation, have led the Catholic Church to develop a complex body of Social Teaching many rungs up the helical ladder.

[21] The most important thing about the "see-judge-act" methodology adopted in Catholic Social Thought is that it is not rigid and has a great potential for self-correction and self-critique. The young Josef Ratzinger (1969) did not shy away from noting the limitations of CST in the past, and criticising the doctrine of some of the popes for being too rigid and not in dialogue with sociology and history. The fact that such a critical scholar could himself become pope and major authority behind contemporary CST indicates that — putting aside some very sensitive issues — there is a space for a rich and critical internal dialogue within the Catholic Church.

finally embark on the third "**assess**" step in Chapter 6, presenting the virtues of hospitality and kinship, and a series of priority rules, which should guide the **action** of the author and the reader outside of the narrative text of the dissertation, in "real" life. To be sure, the steps are not always as separate as this scheme suggests. Some of the priority rules are presented in chapters concerned mainly with observation and analysis of data and narratives.

1.2.2 A Public Exercise and a Theological Discourse

As a result of the Reformation, European secularization and the modern reorganization of universities, most of our contemporaries tend to think that there is a very clear separation between philosophical and theological Ethics. There are militants on both sides, some asking "where is Jesus Christ in this argument?" or "where is this in the Bible" at every turn, to make sure their theological Ethics doesn't become "too philosophical", while others are constantly trying to blot out any reference to God or to religion from their work in a struggle to convince themselves and others that they are doing "philosophical Ethics, not Theology".

To be sure, there are distinctions to be made, but a strict separation does not make sense from the Catholic viewpoint. Firstly, such separation flies in the face of the Catholic tradition which has sought — using language such as that of the "natural law" — to make the basic ethical principles which Christians use to shape their life comprehensible and acceptable to all peoples. Secondly, when defended from a theological position, this "great divide" tacitly makes Christian ethics surrender to a pessimistic anthropology that denies the possibility of a real dialogue between the "justified/baptized" and the "sinner/unbaptized", and so, between Christians and members of other religions, or between Christians and "the world". Such a Manichean anthropology is certainly not

compatible with Catholic tradition and not helpful in an intellectual exercise such as this dissertation[22].

Finally, when defended from a philosophical viewpoint, this attitude of strict compartmentalisation is highly suspect, since it seems to imply that theological reflections on the good life, or practices and narratives pertaining to certain human communities, should be excluded a-critically from Philosophy, simply because they are "religious". This constitutes an attempt on the nature of Philosophy itself by excluding *a priori* a huge portion of human experience, human self-understanding and of human interconnectedness from Metaphysics, Epistemology and Ethics, thus reducing Philosophy to a yet another politically- and ideologically-censored examination of human life. These disciplines owe many of their classical concepts and arguments to religious traditions and it would be a great loss to Philosophy if the bridges were burnt, under the assumption that Philosophy has nothing (more) to learn from Religion or Theology.

The methodology used in this dissertation will distinguish, but not separate, philosophical and theological sources, arguments and conclusions in Ethics. On the one hand, I am convinced by Paul Ric-

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[22] Such approach assumes that, given the extreme corruption of fallen human nature, there are no shared values and no commensurable experiences of the virtuous life between different cultures and religions. Yet, if human nature were truly so depraved, nobody would have believed in Jesus of Nazareth and followed him when he appeared in history, and there would be no Church today; this is why the Catholic approach insists that original sin does not completely blot out the human heart´s ability to recognise Christ and his message as "good" news, implying some "natural" or "existential" openness to what is authentically "good". In spite of considerable impact of Augustine´s pessimism and his anti-Pelagian rhetoric on Christian thought, the medieval Christian tradition has always insisted, e.g. in authors like St Bernard, that fallen humans still are beings made in God´s "image", even though they may have lost their originary "likeness" to God. The *imago Dei* constitutes a vestige of godliness deep within the heart of every human being, allowing them to recognise and follow what is truly *good*, and therefore (to some extent) both the moral law and the revelation of God in Jesus. Aquinas speaks in this sense of the "intellectus agens" (cf. *Summa Theologiae* I-II, q. 5, a. 4 *ad* 1; *In De Anima* III, *lectio* X); modern authors like Karl Rahner (1961b) refer to the "supernatural existential".

oeur´s (1986, 347f.) claim that great works of literature, religious myths and symbols, and rich narratives provided by the great traditions of humanity "*donnent à penser*", that is, they "offer food for thought", they provide seed capital for philosophical, ethical and political thinking (cf. De Oliveira 2004)[23]. I appreciate the fact that philosophers such as Jürgen Habermas (Habermas and Ratzinger 2007, 43–47) are realizing that the great religious and philosophical traditions of humanity have been actively involved in a quest for a shared yet rooted moral understanding of human action ever since the "Axial Age", in spite of the many tragic moments when "religious arguments" were used to justify violence against and even the extermination of people perceived as "different", "bad" or "expendable" in quests for hegemony and domination which were mostly political in nature. That is why I believe that most of the rights and principles presented by CST resonate within the hearts of most human persons and can be understood and adopted by all "people of good will". On occasion, these rights and principles may be *translated* into philosophical concepts and argued for rigorously

[23] The complexity, ambiguity and intellectual "messiness" of symbolic language is not merely a symptom of simplistic, pre-scientific or pre-political understandings of the world, but often betrays an excess of meaning that offers a deeper understanding of human realities which are inherently "messy" and complex. Such excess of meaning is lost when we try to "demythologise" them à la Bultmann, or "translate" them into "purely" secular concepts or into rationalistic language typical of natural science. Stories from the Bible, the Hadith, the Bhagavad Gita, and also classical narratives from Shakespeare and Dostoyevsky, can be accessible — to some extent— to most readers. The heroes, holy persons and role-models presented in these texts allow us to use our imagination to think "oneself as another", narrate who we are and who we want to be, as inspired by these characters, and develop our sense of what is good and what is just (cf. Ricoeur 1995, 140–168). This repeated exercise of "moral imagination" engenders a "moral wisdom" within cultures, social groups and cosmopolitan human societies. This wisdom or moral "commonsense", whether acknowledged or not, conscious or not, is an essential touchstone used by ethics scholars as they develop moral theories; and moral commonsense and moral theory are reciprocally fine-tuned using dialectical processes such as what Rawls (2005b, 20f. 48–51) calls "reflective equilibrium". In this way, moral philosophers come to articulate moral systems, using abstract concepts and rigorous arguments, and provide catalogues of virtues, elaborate systems of moral norms, principles and values, and taxonomies of moral cases, which, working together as a complex whole, allow us to act morally and build our moral character, as individuals, communities, societies and members of the human race.

with no reference to religious authorities. But, many a time, they may also be *simply presented* in a "public" religious language, or through religiously-derived narratives that can be understood more directly by people open enough to listen to this idiom and willing to explore it, willing to find parallels in their experience, culture, religion or worldview[24]. This is why, in my discussion of CST (below), the biblical approach to migration and borders (Chapter 5) and the Christian understanding of hospitality (Chapter 6), I also seek to dialogue with, and remain comprehensible and convincing to readers from other denominations, religions and worldviews.

On the other hand, I believe that Theology should listen to, and reflect upon, some of the debates in contemporary Philosophy. I seek to do this in Chapter 4. Catholic theological Ethics has learned many things from modern Philosophy, which on occasion has prodded the Church to ask itself whether certain moral principles and practices, which it had been taking for granted for many centuries, were truly faithful to the Gospel and the old tradition of the Church, or whether they were

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[24] I do not believe that religious ideas, arguments and narratives in the field of ethics (or politics) should *always* be translated into non-religious language or "public reason" when submitted to the general public. Rawls (2005a, 215) insists on the use of public reason, and assuming we should vote according to the ideal of public reason, criticizes citizens who "talk before one another one way and vote another". However, in the *Idea of Public Reason Revisited*, Rawls (2005a, 443–445) restricts the forum of "public reason" considerably and distinguishes it from another very "public" forum, called "background culture", where "nonpublic reasons" are allowed. He compares this forum to what David Hollenbach (1995) calls "civil society". I believe that in most public fora, there are situations where religious language, presented in a way which remains faithful to the religious worldview but is comprehensible to the particular audience being addressed, can be "public" enough to make sense and be appreciated by listeners from different religions or cultures. Many people can appreciate a good deal of what Christians say when they claim that "human beings have dignity because they are created in the image of God". Even though they may be non-believers or not agree with this doctrine, they can get a sense of the "sacredness" Christians attach to the human person and may find elements in their worldview which resonate with this Christian teaching. This is even truer when we present Gospel parables or stories from the life of Jesus and the saints; most people can make sense of these narratives and let them challenge their ethical thinking, even if they are non-believers. Often, however, philosophical or secular "translations" of some major ethical notions present in Christianity (and other religions), such as human rights, are very useful: they allow us to dialogue in public with people who are suspicious of religious language or whose worldview may be very different from ours.

rooted in accommodations and compromises with the socio-political realities of the Roman Empire, Medieval feudalism or Renaissance culture. The Catholic Church´s initial opposition to the recognition of certain human rights[25] and to the abolition of slavery[26] are well-known examples. Outsiders can often help us understand better who we are, and challenge us to be coherent and faithful to our roots. Philosophical and theological Ethics can therefore welcome and critique one another reciprocally, and learn from each other.

Bringing philosophical and theological Ethics to work together in this way, as ways of thinking which are distinct but not separate, we are reminded once more of the mystery of the Incarnation. As Chalcedon (and Rahner) teach us, what is divine is not at odds with what is human, and what cannot manifest itself in a fully human form and speak to the heart of all persons of "good will" cannot be credibly associated with what Christians call "God". In this deep sense, all Theology should be "public" and "anthropological", but our reflection on issues such as migration and borders will seek to be an exercise in Theology that is *manifestly* so.

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[25] In the XIXth century, the Catholic Church considered certain human rights (e.g. freedom of conscience, expression) as philosophical inventions which were contrary to Christian morals and condemned them (Cf. *Mirari vos* (Gregory XVI) and *Pascendi Dominici gregis* (Pius IX)). Later, after World War II, the Church realised that these same rights, when properly understood, are fully compatible with Gospel values and are ultimately based on a notion of human dignity which has deep biblical and theological roots. Recent popes have championed these rights.

[26] Catholic theology did not condemn slavery and continued to stand by the classical arguments used to justify this horrible institution until several Western governments (mostly influenced by philosophical arguments) abolished slavery in the XIXth century, and until Great Britain (through the personal efforts of Viscount Palmerston) pressured pope Gregory XVI to condemn the slave trade. Finally, in 1839, Gregory consented, and published the document *In supremo Apostolato fastigio* (Noonan 2006, 104–109). Many decades later, John Paul II, in his 1993 encyclical *Veritatis splendor* n. 80, did not hesitate to call slavery an "intrinsic evil", something so bad that it cannot be justified or excused by mitigating circumstances, in spite of the fact that most of his predecessors had in fact justified or excused it. Modern philosophy has helped us see that the biblical God does not want or condone slavery, in spite of the biblical passages which take this institution for granted.

1.2.3 Preliminary Delimitation of the Field of Research

I offer here a preliminary delimitation of my field of research. This dissertation is a reflection on the "ethics of migration and borders". However, I will do *ethics* in a particular way (following the methodology described in the previous paragraphs) and I will deal with particular types of *migration* and particular types of *borders*. Given my present situation as a citizen of Malta and the European Union, and an "alien temporarily and legally present on US soil", I am particularly interested in the *border* between rich countries and blocks (such as the EU and the US) and their neighbours (such as North Africa and Mexico). How "open" should that border be? Who should be allowed across, and following which rationale, which criteria? How many should be allowed across, for how long, and under what conditions?

As regards to what type of *migration*, I will not focus on convention refugees, though many of these refugees who actually reach the "First World" — most do not! — end up settling permanently in the new country and becoming "immigrants". Most people and politicians in rich, Western nations agree (at least *in principle*) that refugees according to the "strict" definition of the Refugee Convention[27] should be allowed in, granted asylum and allowed to live in the receiving country at least for as long as the source of the persecution being feared ceases to exist or be harmful. Though much ethical reflection is still needed on actual practices of reception and integration of convention refu-

[27] The 1951 *Geneva Convention on Refugees* (Article 1:A:2, amended by the 1967 *Protocol Relating to the Status of Refugees* Article 1:2) defines a refugee as someone who is "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

gees, other categories of migrants are much more problematic from an ethical point of view, and hence offer fertile ground for a more original reflection[28]. I also bracket the debate on family reunification, since this tends to shift the discussion to the rights of the citizens and permanent residents who sponsor potential new immigrants, whereas I prefer to limit the debate to immigrants who have not yet crossed the border, or who have not settled in and become "integrated".

My focus is on the portion of migrants which lies between two extremes: "strict" convention refugees on the one hand and "empowered" economic migrants on the other. (By "empowered economic migrants" I mean people who have their rights adequately respected and their needs adequately satisfied in the country of origin, but who migrate mainly to earn more money and attain a better standard of living)[29]. These two limits correspond to relatively clear cases: "strict" convention refugees have a strict *moral* right to be allowed to enter and stay; "empowered" economic migrants have no real *prima facie moral* right to be allowed to enter and stay in another country. Yet, between these limits lie a number of other cases which are hazier, namely, forced migrants who are not considered "refugees" under a strict interpretation of the Refugee Convention, environmental migrants, and migrants whose economic situation in the sending country "forces" them to seek a decent salary and standard of living abroad to meet their needs and provide for their families.

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[28] Furthermore, I do not focus on tourists, seafarers or aircraft crewmembers, persons who live abroad temporarily for studies or training, highly-skilled workers recruited by receiving countries to ease labour shortages in certain sectors of the economy, businesspersons representing foreign companies in countries open to investment, and rich persons who are enticed to transfer their residence to receiving countries and bring their wealth with them. I will also avoid the complicated but important topic of welcoming and integrating travelling people.

[29] A more precise definition of this term will be provided below, in section 5.3.3.2.

What are the rights of these people as they try to cross borders into wealthy nations? What are their duties with respect to their families, to the sending countries and to the receiving countries? What rights do states and receiving communities have with respect to this kind of migrant? Can they simply close their borders to these people whenever they please, and for whatever reason? Or are there *ethical* criteria which will help determine how many migrants in these categories should be allowed in every year, and provide a rationale for granting and refusing entry, and establishing entry criteria or quotas? We will start to tackle these questions by giving an overview of Catholic Social Teaching on migration in the following chapter.

CHAPTER 2: CATHOLIC SOCIAL TEACHING ON MIGRATION AS A POINT OF DEPARTURE FOR AN ETHICS OF BORDERS

2.0 Introduction

This introductory chapter sets up the framework of our research. We here present a summary of Catholic Social Teaching on migration and borders. After an introductory section (2.1), we list and comment on the Teaching synchronically in the form of a set of rights (and corresponding duties) and a set of right-order principles (2.2). We then focus on a particular issue in CST which is central to our dissertation — the tension between the right of persons to immigrate into a country and the right of states to control their borders — and analyse the diachronic development of official Catholic doctrine on this issue (2.3). In the process, we will note some of the strengths and limitations of this teaching; this will help us discern the call being made to Moral Theology to develop more concrete guidance to the faithful on this subject (2.4).

We end the chapter by mapping out the rest of our dissertation and formulating the main question of our investigation (2.5), which can be summarized as follows: Given the limitations of CST and the actual situation of international migration (Chapters 3-4), what can contemporary Philosophy (Chapter 5) and biblical exegesis (Chapter 6) offer in the way of a conceptual framework to help us reflect ethically on this topic (Chapter 7)? How can we use that framework within both a (i) philosophical and (ii) theological reflection to determine a number of (iii) criteria that will help us evaluate border policies and naturalisation laws ethically (Chapter 7, Conclusion)?

2.1 Human Mobility in Catholic Social Thought

2.1.1 Catholic Social Teaching on Immigration: End or Beginning of our Quest?

In his famous 1951 paper "Chalcedon: End or Beginning?", Karl Rahner[30] re-opened a huge dossier in Systematic Theology. In the process, however, he also challenged Theology to adopt a new way of seeing its great moments of sedimentation, those moments when landmark authoritative decisions are taken on what the Church believes on certain questions, when official "teaching" is defined and promulgated. Rahner invites us to see these moments *not only* as moments when discussion and reflection *ends*, *but also* as moments when discussion and reflection *start anew*, having made one step forward. To use Rahnerian jargon, official Church teaching is not only *that-toward-which* our theological, philosophical and political thinking in the public sphere is oriented, but *also that-starting-from-which* we begin thinking anew, discussing among ourselves and with others. In this dissertation, I take this cue from Rahner and consider Catholic Social Teaching on migration primarily as a *starting* point of my discussion.

As we stated in the Introduction, this dissertation starts from CST, as a "praxical" way of understanding the reality of migration and presenting the worldview from which we embark on this project. As we develop some of the resources and principles of CST itself, we *observe* and *analyse* reality, and then dialogue with human sciences and Philosophy so as to propose a moral *assessment* in later chapters which does not simply repeat CST, and may at times be critical of certain aspects of

[30] This paper was originally published in English with the title "Current Problems in Christology" (Rahner 1961a).

Church Teaching, especially those expressed in minor or dated documents[31]. This is why we think that CST should be seen as a point of departure, rather than a point of arrival, of a scholarly work such as this. In the hermeneutical process of a doctoral thesis in theological Ethics, CST is best understood as the *background* which sets the stage for a new cycle of observation, judgment and action pursued in the doctoral project, rather than some predetermined standard of orthodoxy which the *judging* phase of the project should reconfirm, conform to and defend, as in classical "apologetics"[32]. There would be no point in writing a dissertation to argue that the judgment warranted by the observations and justifying the subsequent course of action is nothing other than what is already contained in Church documents. If it were so, one ought rather to dedicate oneself to writing guidebooks on CST, rather than pursue a career in theological and ethical research.

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[31] Pope Paul VI has helped us overcome the traditional separation between the *ecclesia docens* and the *ecclesia discens* by arguing —in line with the teaching of Vatican II (cf. GS 43; 62)— that any concrete social teaching pronounced by Church authority must be linked to a learning process involving consultation with others and the use of human sciences; while the general principles of CST are considered "stable" and in conformity with objective truth, their material elaboration and application to particular circumstances in particular moments of history requires an on-going local discernment which is fallible (OA 4; cf. US-EJ 20; Elsbernd 1995). Regarding migration, Paul VI states that "a study must […] be made on scientific lines, in consultation with others, on what the causes and consequences of these phenomena are, and an examination made of how travellers of this kind can be helped towards natural and supernatural development, and also from what dangers they must be safeguarded" (AC §472, in Baggio and Pettenà 2009). This work can then guide the action of the Church and allow her to "make known her mind on social, economic, cultural and other problems which often give rise to these migrations" (ibid.). Furthermore, EM 71 asks Episcopal Conferences to entrust to Catholic university faculties in their territories "the task of studying the various aspects of migration more thoroughly for the benefit of concrete pastoral service for migrants", and also to program "compulsory courses of theological specialization" for this purpose.

[32] Catholic Theology after the Reformation and before Vatican II has often limited itself to expose a series of rigid doctrines and to defended them "apologetically" in front of a straw-man outsider, without actually entering into a serious debate with the real others (cf. Blondel 1994, 129–150). The Council specifically sought to overcome this understanding of the role of Theology in documents such as *Gaudium et Spes*.

2.1.2 Preliminary Moral Assessment: Allegiances in Tension

2.1.2.1 A Right to Immigrate and a Right to Control One´s Borders

In 1971, Pope Paul VI insisted that "it is necessary that the law [of receiving countries should be] established in such a way that the right of [persons] to immigrate is recognised and their integration is made easier" (OA 17). Though the official English translation mistranslates this as "the right to emigrate", the pope is clearly indicating that migrants have a **right to move in**[33]. In 2003, the American bishops claimed that according to the Catholic Church, "sovereign nations have the right to control their borders" (USMX-SNL 36). Though this claim is hard to find stated as such in important documents of the Roman Magisterium, which prefer to make guarded phrases on the "right to dominion"[34] and the "right to control and limit the flow of migrants when for the common good

[33] The Latin says "right to migrate", but the context makes it clear that Paul VI is claiming that there is a right to *immigrate*: "Necessarium est […] ut lex de illorum statu condatur, qua ipsis migrandi agnoscatur ius, facilius iidem populi corpori inserantur […]". The position of the Catholic Church on this issue does *not* mirror that taken by the 1948 Universal Declaration of Human Rights, which recognises a right to emigrate *without* the corresponding right to immigrate *somewhere*. CST generally speaks of the "right to migrate" to designate both rights (e.g. *iure personali migrationis* in GS 65). The teaching goes back to Pius XII, who in his 1952 *Christmas Address* (AAS 45 [1953]: 41-24) declares that there is a natural right not to be impeded while emigrating or immigrating (*[il] diritto naturale della persona di non essere impedita nella emigrazione o immigrazione*). Cf. note 52.

[34] For instance, EF §102 (cf. numbering in Baggio and Pettenà edition) does recognise state sovereignty, but insists that it not be used as excuse to limit immigration: "The [right of] dominion of particular policies (*dominium singularum civitatum*), although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, provided of course, that the public wealth (*utilitas publica*), considered very carefully, does not forbid this". Similarly, sovereignty cannot be invoked to deny the right to emigrate. "Of its very nature, civil authority exists, not to confine men within the frontiers of their own nations, but primarily to protect the common good of the State, which certainly cannot be divorced from the common good of the entire human family" (PT 98).

serious and objective reasons exist which affect the migrants' own interests"[35] (M 1999 2), it is clear that many Catholics (including major bishops´ conferences) are convinced that states do have a right to **keep migrants out**. Is Catholic Social Teaching on Migration self-contradictory? The rest of this chapter will examine this and other tensions within CST, and place them within a larger context.

2.1.2.2 The Common Good

Before proceeding any further, it is important to realize that CST reflects on migration from three particular vantage points: that of the person and one´s family (**familial perspective**); that of society and the body politic (**societal perspective**); that of the whole human race (**cosmopolitan or universal perspective**). All of these perspectives or "horizons" are important and allow us to see the goods produced and distributed, as well as the burdens and injustices endured, by the different actors in the phenomenon of migration. Equating these goods together is not a matter of applying a standard mathematical formula but rather a matter of *phronesis* (prudential judgment). We understand what is truly the "common good" by fusing together these horizons. While including *human rights* as conditions of possibility for the flourishing of persons, families, societies and, ultimately, the whole human race, in a *just system of relationships* among humans and with other creatures, the common good is not merely a list of objects or even human capacities acquired through the promotion of rights and distribution of certain goods.

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[35] Official documents which mention this right (e.g. EM 21) refer to GS 87, which does not speak of international migration, but rather of migration from rural to urban areas of the same country.

Understood in the Aristotelian-Thomist tradition which undergirds most Catholic ethics, the "good" life achievable in this world is an *activity* which is an *end in itself* (even though related and somehow subjected to the beatific vision in the afterlife). Yet this good life of a single person becomes "common" when enmeshed with that of other similar beings, since humans are fundamentally relational. The *common good* is thus properly understood as a complex of "social" and "political" *activities*[36], conducted by societies of "city animals" — as Aristotle defined human beings — whose relationships are *rightly ordered*. To be able to participate in such a common good, and not be marginalised or "cut off" from such a complex of activities, persons and groups have to be allowed certain basic freedoms and political *rights*; they also need to develop certain capabilities to participate effectively in the common good, and hence should be guaranteed a number of socio-economic and cultural *rights*[37]. Fundamental human rights are therefore pre-requisites in the attainment of the common good. CST mentions a number of rights related to the phenomenon of migration, and provides several principles which help us to understand how human relationships can be rightly ordered so that all can justly partake *in* and *of* the common good[38].

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[36] In other words, activities relating to the "polis", the city. According to this understanding, the common good does not refer primarily to material or spiritual objects in themselves, or to states of mind, but to relational *activities*. However, a number of prerequisites are needed to participate in such activities, which can be considered part of the common good itself (cf. Hollenbach 2002, 81–86).

[37] An adequate view of the Common Good implies taking into account "all those social conditions which favor the full development of human personality" MM 65. Cf. Hollenbach (1979, 41–100; 2002, 159–165), Habermas (1998, 121–125), Nussbaum (2007, 284–291).

[38] Cf. Christiansen (2005, 227f). "The common good of individual states is something that cannot be determined without reference to the human person, and the same is true of the common good of all states taken together. Hence the public authority of the world community must likewise have as its special aim the recognition, respect, safeguarding and promotion of the rights of the human person" (PT 139; cf. PT 64). "The common good is best safeguarded when personal rights and duties are guaranteed. The chief concern

However, before delving into rights and principles as presented in Church documents, let us return briefly to the three perspectives mentioned above which help us see the allegiances in tension in the documents. The *universal or cosmopolitan perspective* is important for most Christian churches. Many churches, referring to the "Great Commission", insist on the universality of the Gospel message and of the Church which brings together those who receive it. For Catholics, "catholicity" is one of the marks of the Church of Christ[39]. The Church sees itself as a "sign and instrument of communion with God and unity among men" (LG 1). She is

> *sent to all peoples of every time and place, [and] is not bound exclusively and indissolubly to any race or nation, any particular way of life or any customary way of life recent or ancient. Faithful to her own tradition and at the same time conscious of her universal mission, she can enter into communion with the various civilizations, to their enrichment and the enrichment of the Church herself (GS 58).*

This cosmopolitanism inherent in Christianity is however lived in rooted, situated communities of "human" proportions; this is where the *familial* and *societal* perspectives come in to temper Christian cosmopolitanism, and distinguish it from bland universalist ideologies and projects of cultural homogenization or world government. Fraternal hearts, whose love and solidarity embraces the whole wide world, are raised in the virtues of charity within small human communities, starting from the family, the neighbourhood, the school and the parish community. Yet, the concentric circles of proximity which trace familial, racial, religious or socio-political boundaries around the self can never stop the Christian from being a true neighbour to the stranger in need who happens to

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of civil authorities must therefore be to ensure that these rights are recognised, respected, co-ordinated, defended and promoted, and that each individual is enabled to perform his duties more easily" (PT 60).

[39] Other mainstream Christian churches, for example, the Anglican Communion, hold similar teaching, though their notion of "catholicity" may be somewhat different from that employed by Catholic theology. Regarding the use of this notion as a framework for a theology of migration, see Robert Schreiter (2008).

be physically close, nor can they so dilute charity at the outer circle of humanity as to make it indifferent to the rights and needs of people at the other end of the globe. The boundary tension between local and universal has an important impact on CST when it comes to speak about sovereignty, migration and borders.

The three perspectives are also linked to Church structures: the universal Church (which manifests itself in the Pope and the Roman Dicasteries, Synods and Ecumenical Councils), the local Church (which manifests itself in the Conferences of bishops and their commissions, Diocesan synods, and, to some extent, in the parishes) and the domestic Church (which can be found alive in the nuclear and extended family). These structures also imply certain allegiances, which have to be held in tension. To some extent, the institutional church — both universal and local — claims to represent the migrants (being the Mystical Body of Christ — M1985 3; being truly "catholic" — M1985 2; offering pastoral care "without frontiers" — CHM 26). Xenophobia goes against the *nature* of the Church (L1983), and "excessive" nationalism is constantly critiqued in CST (e.g. AG 15; EM 8). Popes have insisted that the Church is "ferment in the construction of human unity, of a civilization of love" (PFD 5). Yet, as we shall see, the Catholic Church — universal and local — is also tempted to use a language of complementarity or simple reconciliation of conflicting rights claims that ultimately makes her seem to take the side of the nation-state or to unwittingly advocate unlimited tolerance of the *status quo*. Dioceses, bishops´ conferences and their institutions are bound and restricted by national borders, and ever since the Emperor Constantine, the whole Catholic Church has been or-

ganized territorially as a stable community with dioceses and parishes often mapped on parallel units of civil administration[40].

In spite of its historical resistance to the Westphalian system and the modern notion of state sovereignty, the Roman Catholic Church too participates in today´s nation-state system, since its central "governing body", the Apostolic See, is physically situated in and intimately linked to a particular "nation state" — the Vatican City State — with well-defined borders and with its own state apparatus. The Apostolic See also has its own network of ambassadors (nuncios). To be sure, this "privileged" situation has often been used to solve dilemmas linked to the system of nation-states (offering shelter and documents to certain refugees and stateless persons), and to represent the "voice of the voiceless" in forums like the UN General Assembly, but it also projects an image of the "Pilgrim Church" which seems to be far from the precarious itinerant life of Jesus and the apostles. The local and domestic Churches too face similar tensions: they are inserted in a locality and often depend on the nation state and on the sense of identity it provides to understand themselves and their mission; they may gladly collect and send money and goods to refugees and migrants in foreign lands, but welcoming a migrant into one´s Church or into one´s home may be, at times, very challenging. Local church communities are often tempted to see the immigrant as the "other", ra-

[40] Vatican Council II does not put this organization into question and underlines the importance of territoriality and the parish system, cf. *Sacrosanctum Concilium* 42; *Presbyterorum Ordinis* 6; *Lumen Gentium* 28. Some more recent documents, however, argue that the Church should become more mobile to match the modern world on the move. Though parish structure is still very important and relevant today, we must also think "trans-territorially", and the Church needs to "overcome habits rooted in the static" (CHM 20). Orobator (2005, chap. 4) reflects on how the "settled Church" setup influences the pastoral work with refugees and immigrants in Africa.

ther than as a *constitutive* member of their church which, though locally-situated, is nonetheless called to embody the catholicity and inclusiveness of Christ´s Body.

I believe it is difficult for any Christian church today to challenge nation states and take prophetic stances on certain issues like migration. Bigger churches like the Roman Catholic Church, the Anglican Church in the UK or the national Orthodox Churches may not want to antagonize governments (or conservative political parties) with whom they collaborate on many issues, or to be seen as exerting an excessive influence on the electorate. Smaller churches, on the other hand, often lack structures and institutions to think and act effectively on such international issues[41]. The Christian faithful as well as ordained ministers, immersed in a culture hostile to immigration, are often all too willing to take for granted modern ideas on the inviolability of sovereignty and they often simply assume there is nothing morally wrong with arbitrarily closing borders to protect one´s society from an "invasion" of "illegals". While Catholics are not shy to be countercultural on topics such as abortion, torture or capital punishment, to be counter-cultural on the issue of migration requires that we challenge the notion of sovereignty itself, and this is like opening once again a very disturbing chapter of Church history, advocating for a return to a more cosmopolitan view of human society which the Church had painfully and slowly given up after Westphalia.

To be sure, the institutional Church has not been silent on the rights of migrants and asylum seekers; it has claimed it has a right and a duty to speak about these issues, not only to its members, but

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[41] For instance, Graham James, an Anglican bishop raised in the Congregational Church, comments on his experiences of the difficulties faced by smaller Christian churches without a parochial system and with few or no enduring structures to be "mission-shaped" and deal with new challenges such as the phenomenon of immigration (James 2006, 6).

to all peoples. Being an "expert in humanity" (Paul VI 1965) the Church has something to say about social justice that is truly universal (O'Brien and Shannon 2010, 310–311; cf. M1998 2), and this is part of the core mission of the Church: "proclaiming the Gospel permits and demands the full salvation of man, his authentic and effective 'liberation', in order to reach the conditions proper to the fullness of his dignity"[42] (CHM 17; cf. EN 30-39; O'Brien and Shannon 2010, 310–311). In some Western European countries, the official organs of the mainstream Churches, and some faith-based organizations, have been vocal in defending the *rights of asylum seekers* (Snyder 2012, 201–207), but from my experience, most people in the pews (and many members of the clergy) have never heard of Catholic Church´s stance on the "right to immigrate". In the US, several Catholic bishops have famously championed immigration reform (cf. Baggio and Pettenà 2009), but many people in the pews see such social justice issues as an "optional" part of Catholic ethics, compared to "real" issues like abortion or euthanasia (G. A. Smith 2006).

As a result, many actors in government and civil society, even in "very Catholic" countries like Malta, seem little aware of the Church´s thought on the issue of borders and migration, and many Catholics think this teaching is very peripheral or optional to their faith, or that the Church should not be talking on these issues. Furthermore, those who know something about the Church´s teaching on migration and borders often know it in an oversimplified form, as we noted in the introduction of Section 2.1. Even in high-level local documents such as *Strangers No Longer* (USMX-SNL 33-

[42] Most Church documents which speak on immigration (and their official translations, especially those published in past decades) do not use inclusive language. As a rule, we will not try to amend them or hide the fact that the Catholic Magisterium is not generally very sensitive to this issue. Obviously, the full liberation of "man", in this text, means the full liberation of "humankind", and not merely of the "male gender". For the Catholic Church, that liberation, in its historical dimension, certainly includes the emancipation of women; however, what should be appropriately included in such emancipation is a very contentious subject.

38) [43], pastors and local bishops often present the teaching as striking a balance between two complementary "rights", kept in tension by the notion of the common good: the right of people to *immigrate*[44] and the right of sovereign states to *control their borders* (often presented as equivalent to a "right to restrict immigration" for some "good reason"). Stated in this form, persons not acquainted with the Catholic understanding of rights and the common good may be tempted to think that one of the following options is true. (a) Either these are "absolute" rights which do come in conflict, but being absolute, each believer or state is allowed to decide which right trumps which, and act accordingly. Or, (b) CST uses the word "rights" lightly, situating them in an irenic world where they practically never give rise to truly conflicting claims. As we shall see, neither of these theses is correct. It is important, therefore, to take a good look at what the Church documents say about the issue.

2.1.3 Immersed Observation: Migration As Seen By Migrants and Local Communities

The Catholic Church has a long tradition of accompanying migrants and speaking up for their rights, though for many years official teaching has tended to see migration primarily through the lens of Italian priests reflecting from Italy on the phenomenon of human mobility (especially that of fellow Italians). Of primary importance are two bodies: the *Pontifical Council for the Pastoral Care of Migrants and Itinerant People* (PCPCM), which was instituted in 1970 as the then *Pontifical Commis-*

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[43] This document summarizes Church teaching on migration in five principles (n. 33-38). "I. Persons have the right to find opportunities in their homeland. […] II. Persons have the right to migrate to support themselves and their families. […] III. Sovereign nations have the right to control their borders. […] IV. Refugees and asylum seekers should be afforded protection. […] V. The human dignity and human rights of undocumented migrants should be respected."

[44] See note 53.

sion for the Pastoral Care of Migration and Tourism and then restructured in 1988, and the *International Catholic Migration Commission* (ICMC), established in 1951[45]. These are linked to and often staffed by people from various organizations founded within the Catholic Church to accompany and advocate for migrants and refugees, for instance the religious congregations founded by Blessed Giovanni Battista Scalabrini.

These organizations have contributed considerably to CST on migration, bringing together people working in the field, in close contact with migrants and with local receiving communities, people trained in human sciences like sociology and psychology, as well as theologians and pastors. Even though, traditionally, CST documents avoid citing secular and scientific sources, the reflection which gives rise to the social, ethical, political and theological "judgments" on the phenomenon of migration is often based on accurate quantitative and qualitative observation of the reality on the ground, seen, as we have said, from the standpoint of believers with a certain worldview. Tables A1 to A4 in Annex A offer a summary of observations found in various documents issued by Popes, Roman dicasteries and Bishops´ conferences in Europe and North America.

When reflecting on the "causes" of migration (Table A1), CST sees a number of factors at play: "pull" factors, "push" factors, subjective motives and facilitating factors[46]. CST also observes the

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[45] The ICMC often functions as an NGO, but was originally constituted as, and still is, an "international commission of Catholic Bishops Conferences and Episcopal assemblies of similar status working with migrants and refugees on national and regional levels". Cf. http://www.icmc.net/structure-and-governance (accessed on 2nd June, 2013).

[46] Push factors include violence and injustice, poverty and economic mismanagement, environmental and climate-related factors and even national policies that favour or promote emigration in the countries of origin. Some push factors depend on actors outside the sending country (which could be active in local and regional conflicts, and may interfere in the economic life of the sending country) and on international struc-

effects of migration, firstly on the migrants themselves (Table A2). It dwells little on the positive effects, assuming that there are positive effects if people are ready to face so many difficulties and hardships to move to another country and adapt to another culture; it mentions the fact that migrants and receiving communities are enriched by the cultural exchange and the dialogue it occasions. Church institutions often see persons as "migrants" when they are in difficulty; migrants who are fully integrated blend into parish communities and cease to be referred to as "immigrants". This is perhaps one reason why the documents tend to emphasise the *negative* effects of migration on the migrants: issues, or more precisely, "problems", which are economic and work-related (e.g. exploitation), social (e.g. marginalisation), personal and family-related (e.g. abuse, insecurity, difficulty to raise and educate children), as well as legal, religious and moral ones.

As regards the effects on sending communities (Table A3), CST mentions remittances and their positive effects, while noting the negative social effects of the separation on families and communities. Various documents also survey the effects on receiving communities (Table A4): immigration has positive effects being culturally enriching and overall socially and economically beneficial to wealthy and stable receiving countries but also has negative effects (e.g. rise in xenophobia, spaces of illegality which surround irregular migration and possible wage competition, especially with unionized native labour).

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tures such as economic globalisation, the effects of trade agreements, and demographic imbalances. Pull factors are mainly linked to higher wages and better living conditions in a foreign country, or at least better economic opportunities and personal freedoms, both real and perceived. People do not always move from where the push is greatest to where the pull is strongest; one has to add to this picture subjective motives and facilitating factors, such as transportation and communication links, transnational networks, cultural and linguistic affinities, family relations, etc.

All of these observations are, of course, situated. A nationalist politician, a Chicago-school economist, or a philosopher who believes in totally-open borders may see the reality differently. In Chapter 3, we bring these observations into dialogue with data analysed by social sciences to see how we can make this picture a more complete and rigorous representation of reality, without however pretending to present some fictional "view from nowhere".

2.2 Rights and Right Order in Catholic Social Teaching on Migration

2.2.1 Judging the Situation (I): A Series of Rights

Christians have reflected on the phenomenon of human migration for many centuries. One of the key Catholic authors at the dawn of modernity, Francisco de Vitoria, is known for his argument in favour of the right to travel and dwell in foreign countries (Vitoria 1991, 278f). The argument probably works much better when applied to peaceful individuals and groups than to expansionist nations whose settlers are always accompanied by technologically advanced conquering armies, such as those of Vitoria´s Spain. At the wake of the industrial revolution, with its multiple effects on demography and warfare, various popes expressed their concern about the situation of refugees and migrants[47], but the nucleus of CST on migration took shape during the pontificate of Pius XII. Pope Pius was deeply moved by the plight of refugees and stateless people during and after the turmoil of World War II, and also by the situation of migrants leaving the European continent devastated and impoverished by war to look for jobs and start a new life abroad. This led him to reflect on such

[47] For a brief history of the Catholic Church´s concern about the situation of migration between the Industrial Revolution and Pius XII, cf. ES-PM II:2:2, ES-IE 61ff and EM 19. EF (part I) offers a lengthy excursus on the subject.

issues in a number of speeches and radio addresses[48]. These reflections were developed and integrated in 1952 in an important Church document —the pastoral constitution *Exsul Familia Nazarethana*[49]. Most of the intuitions in this landmark text were developed by John XXIII, the Second Vatican Council and especially during Paul VI´s pontificate. Paul VI was very concerned with the situation of migrants. After World War II, as Substitute at the Secretariat of State, the then Msgr. Giovanni Battista Montini was personally involved in the setting up of the International Catholic Migration Commission (ICMC), which was instituted on the 5th June, 1951. During his pontificate, Paul VI continued to press the Church to reflect on the issue of migration, and various important documents were produced by the Vatican dicasteries. In 1969, the Sacred Congregation for Bishops published *De Pastorali Migratorum Cura* and in 1978, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People published *Church and Human Mobility;* both documents are considered very important texts on the issue. More recently, in 2004, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People issued the Instruction *Erga Migrantes Caritas Christi*. To these documents, we need to add the messages that the Popes issue yearly to commemorate the World Day of Migrants and Refugees.

Documents issued by local bishops and bishops´ conferences on this issue are also important, given OA 4´s claim that "in the face of [the] widely varying situations [in today´s world] it is difficult for

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[48] The best known is the radio message broadcast on Pentecost 1941, "La Solennità di Pentecoste", written to commemorate the fiftieth anniversary of Leo XIII´s *Rerum novarum* – cf. AAS 33 (1941): 195ff. (cf. p. 203 in particular as regards migration). Some letters to individuals and associations also provide an occasion for reflection on the topic of migration, for instance Pius XII´s 1948 letter to Archbishop John T. McNicholas and the National Catholic Welfare Conference (AAS 41 (1949): 69-70) contains an interesting reflection on immigration and sovereignty.

[49] Pius XII´s reflection on migration continued to evolve after EF. For example, the 1952 Christmas Address attacks the injustice of restrictive immigration policies in wealthy countries (AAS 45 (1953), 41-42).

[popes] to utter a unified message and to put forward a solution which has universal validity", and hence Catholics should heed *on-going local discernment* on particular problems — which is, of course, fallible, but also more concrete. In the light of John Paul II´s 1997 Apostolic letter *Apostolos Suos*, the doctrinal authority of documents issued by bishops´ conferences is limited, unless they are unanimously approved or given the "recognitio" of the Holy See. Nonetheless, we will use such documents with due caution in our review of CST on migration, especially when they are clearly in line with papal teaching and can stand on their own theological, biblical and philosophical feet with the intrinsic authority of the arguments they furnish.

In its reflection on the ethics of borders and migration, the Church sets forth the rights of the persons and groups concerned. These rights are based on human dignity, and their practical application "fits into the concept of the universal common good" (CHM 17; cf. M2001 3). Since John XXIII, at least, Catholic teaching has fully embraced the use of the language of rights. PT 9 claims that

> *any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature that is endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.*

More recently, countering the tendency of some Catholics to insist unilaterally on notions of "right order" and to consider the language of rights as problematic in societies of late modernity, Pope Benedict XVI made it clear in his address to the United Nations General Assembly on April 18, 2008 that Catholics should oppose communitarian or culture-based scepticism on human rights and continue to defend the universality of fundamental human rights and the use of rights language (AAS 100 (2008), 334). He also notes, however, the problem of putting too much emphasis on *legislative*

enactment and focussing on the *legal* aspect of *possessing* rights, understood as something separate from the *ethical and rational* context which grounds these rights and links them to an end.

It is true that there are many risks involved when using the language of rights today. Many of our contemporaries seem all too ready to make rights claims and to "invent" new actionable rights to advance their interests, but not so willing to recognise the duties that come with such rights. Lists of rights are often understood as catalogues of fully independent "absolute" rights, rather than complex mosaics whose elements are interdependent[50]. This prevalent "piecemeal" way of understanding rights, coupled with various forms of scepticism on human rights, often gives rise to a "pick and mix" attitude towards human rights. Furthermore, the subject of rights is often seen as a monadic self, an "individual", rather than a person embedded in a web of social relationships which need to be rightly ordered[51]. All of these factors contribute to misunderstandings when CST on migration and borders is presented simply as a list of rights. As John Paul II insists, "one cannot speak of a 'right' for the migrant or for the receiving country, without speaking of 'duties', of reciprocal duties" (PFD 3). To help the reader understand CST better, we present in Table A5 (in Annex A) a number of rights with their corresponding duties, and, in Tables A6 and A7 (discussed in the following section of this chapter), we present a series of principles that help us set these rights in a

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[50] Mary Ann Glendon (1998) argues that the Universal Declaration of Human Rights (UDHR) has an intentional architecture, as in the French civil law tradition, and the articles (rights) work together as a whole. Unlike the US Bill of Rights, it should not be read as a list, with a series of independent elements added piecemeal (as in common law systems).

[51] "Without a renewed education in solidarity, an overemphasis on equality can give rise to an individualism in which each one claims his own rights without wishing to be answerable for the common good" (OA 23). For a concise distinction between justice understood simply as rights, and justice understood as right order, cf. Carlson (2008, 308–310).

framework of principles that will help us to understand how CST conceives the right ordering of modern human societies in view of the common good.

We can distinguish four classes of rights in CST on migration (cf. Annex A5 for all documentation): (A) basic freedoms and political rights of persons, (B) socio-economic rights of persons, (C) rights of families and groups affected by migration, and (D) rights of polities affected by migration. As mentioned above, the rights presented are primarily moral imperatives regarding what is due to certain persons and groups, and the corresponding duties on the side of those who should be giving others their due. As far as possible, though, such moral rights should be entrenched in national and international legislation in ways that are overall beneficial to the common good and do not unjustly curtail the rights of others.

CST insists that people should not be left stateless or in danger of persecution; this is why it declares that people have a *right to some nationality* (A1), and that *refugees and forced migrants have a right to asylum* (A2). Both rights are grounded in human dignity and are seen as necessary to accede to other rights and to participate in the common good; both entail corresponding duties on the part of the international community. CST claims that people have a *right to migrate*, both to emigrate from their home country (A3) and to immigrate into another country (A4) together with their families (cf. *right to family reunification*, C1):

> *Persons have a right to migrate if certain conditions are met, namely, if due to poverty and overpopulation in their home country, or due to conditions imposed by the state which offend human dignity*

(DPMC 7), persons "cannot use the material and spiritual goods which allow ready access to one´s fulfilment"[52] *and/or cannot adequately provide for their family.*

CST uses various strategies to argue for this right, invoking human flourishing, duties towards one´s family, freedom of movement, the unity of the human family and the universal destination of created things. Two observations should be made regarding this right. First, the popes do not make a clear distinction between the right to emigrate and the right to immigrate, as some political philosophers and international law experts tend to do (Christiansen 1988, 87); the right to emigrate (exit one´s home country) would be vacuous if there were no corresponding right to enter some other country[53]. To be sure, this is not an "absolute" right, and should not be understood as a right to en-

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[52] GS 26 argues that such goods are necessary to achieve the common good, and notes that "there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy and rightful freedom even in matters religious." Cf. DPMC 7 for the application of GS 26 to international migration.

[53] Some Catholics have been led to believe that CST makes this distinction by misleading translations from the Latin, where *iure personali migrationis* (in GS 65) and *migrandi […] ius* (in OA 17) is rendered as "the (personal) right to *e*migrate". The translations are particularly problematic in the case of OA 17. The Latin text is the following: "Omnino necessarium est illam exsuperari agendi rationem, in nimio propriae nationis studio positam, ut lex de illorum statu condatur, qua ipsis migrandi agnoscatur ius, facilius iidem populi corpori inserantur, expeditius iis reddatur suae artis profectus, et copia praebeatur convenienti domo utendi, ubi familiae, data opportunitate, cum iis coniungi possint" (Paul VI 1971a). This text may be rendered more literally as follows: "It is altogether necessary that we overcome a way of proceeding which places excessive emphasis on one's own nation, so that their law {of receiving countries} is established in such a way that the right of these {immigrants} to migrate is recognized, *etc.*" The official English translation states: "It is urgently necessary for people to go beyond a narrowly nationalist attitude in their regard and to give them a charter which will assure them a right to emigrate, favor their integration, facilitate their professional advancement and give them access to decent housing where, if such is the case, their families can join them" (O'Brien and Shannon 2010, 287; Baggio and Pettenà 2009, 177). The French (Paul VI 1971b), Italian (Paul VI 1971c) and Spanish (Paul VI 1971d) versions are very similar; the editors of these versions and of the English version have even added a title to this paragraph, calling it: "Right to emigrate". It is however clear from the context (and from the Latin text) that the paragraph does not deal with *assuring* the right to *exit* a country (emigrate) but with recognising (*agnosco*) the right of migrants to *enter* (*ius migrandi… facilius inserantur*) anoth-

ter and stay in *any* country *whenever* one wishes. Nevertheless, in the current political situation where there are no longer any developed countries with permissive border policies, we cannot simply tell people who leave their country and knock at our door that they have a right to *emigrate* but that they should "*immigrate* elsewhere". There must be *grave* reasons to refuse entry to immigrants and to deny such a right. Second, CST recognises the right to migrate for *economic* reasons even though not all "economic migrants" are entitled to immigrate *into* a foreign country. The documents identify one class of "economic migrants" which possess this right: these are the people who, due to poverty and rapid population growth in their home countries cannot find adequately-paid employment there to feed their families or to attain a decent standard of living that allows them to flourish as human persons. The popes recognise that the situation of these people may, at times, be more precarious that that of convention refugees. Both groups of people migrate due to some sort of "necessity" (M1992 3) and the current political arguments that easily recognise the rights of "true" refugees but not those of "economic" migrants may be unjustified[54]. The documents also underline the *right to basic freedoms in one´s homeland* (A5), which, when not respect-

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er country (immigrate). Furthermore, the English translation warps the Latin *lex de illorum statu* (which obviously refers to the concrete immigration and integration laws and policies of receiving countries) into something unrecognisable by using the word "charter". The word "charter" is practically never used in English to refer to laws and policies of a particular state, but usually denotes legal documents such as the UN Declaration of Human Rights. To suggest that receiving countries may indulge in drafting non-actionable "charters" of rights which assure that people somewhere else in the world have a right *leave* their country of origin, without adding what the international community —and they themselves, through their very own legal system— should do to make this possible (i.e. provide for the reception of such migrants) sounds doubly cynical, and is certainly not what Paul VI is asking for.

[54] US Immigration laws and policies enacted in the 1980s, for instance, easily recognised the rights of political refugees fleeing communist regimes, but placed many restrictions on immigration from impoverished countries in Central America. It was far from obvious, at the time, that the latter did not "need" to leave their country as much as the former (Christiansen 1988, 91).

ed, pushes people to migrate and go through the many difficulties (and often harrowing experiences) linked to the migration.

As far as possible, people should not feel forced to migrate, so CST also insist on the *right to (adequate) employment in one´s homeland* (B1). To be sure, some poor countries can do much more to create good jobs for their citizens and attract investment, but they often have serious structural problems that weigh on their economies, and cannot be expected to provide a decent standard of living for their citizens unless helped effectively by wealthier nations. This right also applies to the citizens of receiving countries who may be having difficulty finding jobs because of wage competition with migrants; one has to see the real dimensions of this problem (often exaggerated by politicians, labour unions and media) and seek appropriate solutions which are fair towards migrants and persons affected by migration. This brings us to other socio-economic rights claimed by CST for migrants: the *right to be helped to integrate in a new country* (B2) and the *right (of migrants) to receive equal pay for equal work* (B3), when one compares their salaries with those of native workers. Among the rights of families and groups affected by migration, CST makes a special emphasis on the *right to family reunification* (C1), linking it to the dignity of the family and the need of having united, functioning and healthy families to ensure the future of societies in both sending and receiving countries. The documents also refers to the *right of host communities (and migrants) to live in a cohesive and well-ordered society* (C2) — which implies ensuring the rule of law (by creating realistic and enforceable laws concerning migration, and then seeing that they are respected by all) and the effective integration of immigrants —, the *right of migrants (and also native minorities) to keep their native identity* (C3), the *right to public profession of religion* (c4) and the *right to full membership in the local church* (C5).

The last group of rights defended by CST concern the rights of polities. Sovereign states have a *right to limit "brain drain" and capital flight* (D1), and the *right to sovereignty* (D2) implies the right to protect one´s own territory, and to take proper measures to safeguard legitimate national interests, to protect one´s citizens from harmful persons and harmful objects which criminals and enemies might try to smuggle across the borders. This right therefore implies a right to control borders. While noting the existence of such rights, the Catholic Church often insists that the prerogatives of states are limited by ethical imperatives, should not unduly restrict freedom, should respect human dignity and advance the common good. CST does not like to emphasise the prerogatives of modern states, but rather seeks to highlight the *rights* of individuals and small groups, and the *duties* of states. Sovereign states are well aware of their prerogatives, and often seek to exaggerate them to advance their interests at the expense of vulnerable individuals and groups. Similarly, ethical systems built on human rights after the experiences of totalitarianism in the XXth century are often sceptical of the "rights" of states. If, as we have mentioned above, the language of rights could be problematic when appropriated in a piecemeal and absolutist fashion by individuals, it is much more problematic when states appropriate it in such a manner: they end up constituting themselves into judges and plaintiffs against those who are seen to violate their prerogatives and this seems to be an excellent recipe for injustice.

2.2.2 Judging the Situation (II): A Rightly-Ordered World

Well aware of such problems, CST does not simply present us with lists of rights and duties. Firstly, it offers us a way of thinking about rights that seeks to avoid some of the issues mentioned above. In CST, rights are not subjected to a *consequentialist calculus* which assumes we can easily do away with the rights of certain people or groups for the greater good of a nation, or of the human race.

Nonetheless, the approach is not *purely deontological* in the Kantian sense. Rights are understood as situated within a *teleological ordering*: they serve to build a truly just society, a series of rightly-ordered relationships that ensure "shalom", that is, fully-flourishing relational being across human society. Such a "peace", according to John XXIII, rests on four pillars: truth, justice, charity and freedom[55]. This end, which human societies should seek and human rights are seen to promote, is often called the "common good", and, as mentioned above, it is best understood as a complex of *rights-empowered activities* which constitute the life of the *polis*, be it on the level of the neighbourhood, city, state or region, or on the international level.

Secondly, to help us understand better how rights and duties fit together into a complex web of just relationships that build up the common good, CST offers us a number of principles that provide a glimpse of what a rightly-ordered society would look like. The principles proposed by Catholic teaching may sound like lofty ideals; indeed they tell us how people who are trained in Christian virtues go about seeing the world and doing things. The language of right-order principles, however, is not just a prophetic language addressed to believers; it can truly help shape policy when one factors in the legitimate tensions that mould the conscience of policy makers and legislators, as well as the necessary compromises that must be made in a pluralistic society to craft laws and policies that are reasonable, enforceable, beneficial in the long term and not unduly restrictive of personal freedoms. Given the numerous principles in CST that help us reflect on the phenomenon of migration, I have distinguished, in Annex A, between *general* principles applied to migration (Table A6)

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[55] Pope John asks us to "bring the relationships of daily life into conformity with a more human standard, based, as it must be, on truth, tempered by justice, motivated by mutual love, and holding fast to the practice of freedom." (PT 149; cf. PT 163. 167, CHM 16).

and principles which are more *specific* to the issues surrounding migration and borders (Table A7). Detailed documentation for the principles outlined below can be found in those tables.

One of the most important general principles is the *principle of the universal destination of created goods* (G1). National sovereignty and private property draw borders around some goods, allowing certain people to benefit from them and not others. History has shown that it is very difficult if not impossible to abolish such borders, and more harm than good has been done trying to do so. However, God´s desire is that created goods should flow fairly to all, and the borders which are useful to promote good stewardship and industriousness should not be allowed to breed greed and cause deprivation and exclusion. Borders are never absolute; they are useful, but we have to remember that if we go back in history, it is virtually impossible to establish legitimate entitlements to property, even intellectual property (most "new" ideas basically appropriate and recombine knowledge from the public domain). Nothing is absolutely *mine*, no patch of the surface of the Earth belongs absolutely to *one* nation. The needs of others may at times trump our shady entitlements to what, according to CST, ultimately belongs to God. When this happens someone may have to force us to share our goods with others if we insist on keeping what we hoarded at the expense of others. To be sure, this has to be done in an orderly way, as far as possible. Governments can force citizens to do so through just taxation or land reform that actually promotes the common good, but there is no authority that can force rich states that hoard an unfair share of the world´s wealth to share those goods with others. Irregular migration, though disorderly, often forces the hands of such states to do more to help developing nations, and to accept more legal immigrants who, by sending remittances and reducing unemployment, help poor nations develop.

Several other general principles can be linked to the universal destination of created goods. One is the *principle of solidarity* (G2), which is a commitment to the common good that persons and societies take, to ensure freedom from want in one´s neighbourhood, country and in the whole world[56]. The *principle of subsidiarity* (G3) ensures a certain autonomy for persons and groups showing solidarity to others, warns us against inefficient and oppressive top-down approaches. It teaches us not to reduce the needy other to a mere "object" of charity but rather give her the means to eventually be able to fend for herself, fight for her rights and help others. Of course, this principle assumes that higher levels of authority with a society (e.g. the state) *should* intervene when lower levels are fail to (or cannot) ensure access to basic human rights and the realization of the Common Good; it is built on the idea of empowerment, not on the ideology of libertarianism. The *principle of priority of labour over capital* (G4) also can be referred to the universal destination of created goods. "Labour" refers to the activity of human persons, be they workers, investors, administrators, etc.; goods such as land and money, should be placed at the service of these people and not be considered as ends in themselves and accumulated indefinitely at the expense of human life, health and

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[56] In her doctoral thesis (published online through ProQuest), *The Rights of the Stranger*, Tisha Rajendra (2009, chap. 4) argues that "the key principle for understanding the theological perspective of Catholic Social Teaching on migration is solidarity". Rajendra works through the understanding of solidarity in the documents and tries to bring out some more concrete implications of this teaching for her reflection on the rights of migrants. She insists that solidarity is a duty, not merely a virtue, and that it is social, not only personal. The problem, however, is that it is not easy to go from solidarity as a duty of persons to solidarity as a duty of institutions, and from there to argue that migrants may, on certain occasions, have a right to *demand in justice* the solidarity of countries when they ask to be received as legal residents and eventually as citizens. If migrants cannot make such demands and *expect* that on certain occasions a country may have a *duty* to say "yes" (even when this is politically inconvenient for those in power), then the "right to immigrate" is not a true *right*. If solidarity can be construed as a vague duty that persons and polities can exercise "when they feel like it", or "maybe in 20 years´ time when the economy will need migrant workers", or "when the voters´ attitudes towards migrants change" then its usefulness in a debate concerning rights and justice ends up being quite limited. For this reason, in this dissertation, we will first seek to understand immigration as a right, and its limits, through a series of priority rules, and then link it to solidarity in the final chapter.

well-being. Migration, both regular and irregular, is usually driven by the needs of persons (e.g. labour shortages in receiving countries; unemployment, poverty or persecution in sending countries), and in situations of need, wealthy persons who own many goods can use their wealth to exploit others, putting labour at the mercy of capital. This principle implies that migrants should be paid a fair wage and should work in a safe and healthy environment. Furthermore, it proposes a good ideal that is not altogether unrealistic if world trade were to be better regulated: capital should move to poor countries to provide good jobs for the people there, rather than force people to migrate and uproot themselves to earn a decent salary.

The *principle of just legislation* (G5) objects to a purely positivist or politically "realist" attitude to legislation. Only just laws are true laws, and one should make sure that just laws are voted for, unjust laws are repealed and that appropriate modifications are made to past laws which have become unjust due to changing social and political realities. This is a particularly important principle when reflecting on laws and policies which concern migrants and refugees; the rationale behind old quota systems and visa procedures may have become untenable in the rapidly changing international scene, and laws voted in recession years to restrict immigration may soon become inadequate when the economy starts to grow. Many people end up migrating irregularly and not cooperating with the law simply because they are not offered legal channels to do so, in a reasonable amount of time. We can link this to the previous principles: often, inadequate migration laws and quotas are kept in place unjustly since they create a convenient pool of undocumented migrants whose labour can be more easily exploited by rich and powerful persons and states. The lack of legal recognition allows companies to easily fire these people when not needed, and states to deport these vulnerable people in recession years, instead of recognising their past contributions to the

country´s economy and providing them with support. Another general principle of CST insists on keeping diversity and universality in a dialogic tension, and invites all persons to be "*cosmopolitan patriots*" (G6). All should be good citizens, rooted in their local communities, but should develop a love for humankind and strive to overcome prejudice, xenophobia and excessive nationalism inside them and around them.

Two further general principles have deep theological roots, but can be appreciated even by non-believers. The framework which helps us understand these principles is that of the inseparability of faith and justice: on the one hand, true believers and followers of Christ cannot claim to be faithful to their faith if they do not strive for justice in the world (even if that means collaborating with non-believers and doing things which may not appear to immediately "promote faith"); on the other hand, persons who truly seek to build a world which is more just cannot ignore *a priori* what religions can teach the world on this topic (even if they be non-believers). In fact, the *preferential option for the poor* (G7) and the *recognition of structural evil in the world* (G8) offer good examples of how biblical and theological concepts can help ethics in general to understand better what justice is about. The first principle mirrors God´s tendency, manifest in the Judeo-Christian Bible, to side with the marginalised. It teaches us that pure legal or commutative justice is not enough to build a just world; we should take sides with the marginalised and the needy of the world and seek that they be freed from want and allowed to participate effectively in society, even before heeding the complaints of the rich and the powerful who claim that what is "theirs" is "theirs" and should not be

given to others[57]. In a world rife with inequalities, this option can be easily appreciated and adopted by non-believers seeking to build a more egalitarian world.

The second principle delves more deeply into the reality of our world. The Christian teaching on original sin helps us to reflect on the presence of evil in the world, some of which is structural. Inspired by this teaching, the *principle of acknowledgment of, and resistance to, structural evil* helps us to see that some of the causes of migration are structural evils and should be resisted, yet the same could be said of some of the procedures, laws and institutions which we have put into place to keep migrants and asylum seekers and their needs from interrupting our lives and challenging our lifestyles. It teaches us to recognise that we cannot deal with these problems on our own, or solve them through quick fixes; it makes us realize that while upholding great moral principles and rights as the ones mentioned above, we need to build justice slowly in a world which resists it, we need to make compromises to reach workable strategies to effectively reduce evil, injustice and oppression in the world (rather than jam ourselves in the prophetic "gear" and shut ourselves out of the realms of policy-making); it also reminds us that sometimes we may fail, and that even our moral judgements may be fallible, since we too are somehow contaminated and corrupted by the evil within us and around us[58]. A secular audience may be uncomfortable with the theology of sin

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[57] The "option for the poor" can be linked to the principle of solidarity. In her doctoral thesis on migration, Rajendra (2009, chap. 4) does this, referring to the "option for the poor" in Jon Sobrino´s theology. The challenge, however, when proposing this principle, is to explain how this is not something "optional", or else something required only of Christians and Christian churches. Non-believers and lay governments too are challenged by CST to adopt this option and discover through it a fuller meaning of the word "justice". Indeed, a deep and complete notion of justice for every human person must include this option (even though different lifeworlds and worldviews may imply different ways of putting it into effect).

[58] Protestant reflections on this topic are many and varied, as can be seen from the famous Niebuhr brothers´ 1932 debate in *The Christian Century*: H. Richard Niebuhr argues from sin to idealist pacifism (since sin-

which underpins some of CST´s reflections on this principle, but may be quite receptive to lay versions of Reinhold Niebuhr´s "Christian realism", present, for example in Barack Obama´s 2009 *Nobel Lecture*.

Table A7 lists several derived principles which are more specific to the debate on migration and borders. They are not usually presented as "principles" in CST or referred to with the titles I propose in this dissertation, but they are taken for granted or argued for in various official Church documents on migration; the relevant sources are noted in the Annex. One important principle (S1) insists that *justice has priority over relief* (or "charitable work") when dealing with migrants and refugees: CST insists that these people have a number of *rights*, and that they should be treated in accordance with certain *principles*, and what is *due in justice* to them should be given them. Persons and states cannot be allowed to deceive themselves and think that they owe nothing to these people, and that they are already being very generous and charitable by giving them things as "gifts"

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ners are ill-equipped to recognise and fight evil), while Reinhold Niebuhr argues from sin to "Christian realism", which entails responding to political evil with plentiful diplomatic craftiness and military violence, when those who consider themselves "good enough" judge it "necessary". Catholic theology fully recognises the presence of sin in world history and in the legal systems and policies of all nation states, and advocates a response based on justice, proportionality and discernment of the greater Common Good. No immigration policy or legal system that upholds the rights of immigrants and of native communities can be absolutely just, since the Kingdom of God is never fully realized in any polity in history. Politicians, when designing laws and drafting policies, are aware of the power struggles present in society, and they seek to balance these forces, some of which emerge from evil in our world: xenophobia, exploitation, selfish and greedy forms of nationalism, profiteering from the imperfect enforcement of laws (or from the situations of public disorder or illegality that result from inadequate laws), etc. Catholic theologians recognise that politics and public laws cannot aim for utopian justice, but this does not mean that we can accept *any* form of society that maintains relative order and peace and *any* "effective" manner of balancing the wills to power of the different forces within a state and of the different states within the international community. While we should not confuse Church and state and while we must recognise the imperfections present in both (when considered as realities within history populated by sinful humans) we should not stop striving, imbued with a humble hope, so that the Lordship of Christ may exercise itself in both realities, as far as possible, already within history.

which they do not "deserve". Two other important principles are the *principle of regulation of migration and asylum* (S2), and the *principle of due respect towards national sovereignty* (S4), which we will discuss in the next section. The *Principle of voluntary repatriation and non-refoulement of asylum seekers* (S3) demands that asylum seekers be given adequate means to apply for asylum and to substantiate and defend their claims of suffering persecution in the home county, and have their cases competently judged; if rejected, they should not be deported back to countries where it is quite clear that they will suffer persecution.

Other principles include the *principle of historical accountability and recognition of shared historical realities* (S5), the *principle of fair and realistic integration policies* (S6), the *principle of fair and realistic policies in dealing with undocumented migration* (S7), the *principle of reciprocity* (S8), the *principle of resistance to racism and xenophobia* (S9), the *principle of seeking comprehensive solutions to localized poverty and marginalisation* (S10) and the *principle of subsidiarity and solidarity applied to local churches* (S11). I will only specify briefly what CST says on policies which deal with undocumented migration (S7), since this has to do with the categories of migrants we are focussing on in this dissertation.

Firstly, while recognising that some countries may find it truly hard to integrate undocumented "economic" migrants and may be justified in deporting migrants in this category, some documents note that the work done by these migrants over a number of years is a *de facto* form of membership in a society. For this reason, persons who have truly grown roots in the new country and contributed to its development should be allowed to regularize their migration status, rather than be deported in recession years. Deporting such people, and especially those who entered the country

as children, could prove to be a very painful uprooting experience and a form of reverse emigration; this should be avoided. Secondly, certain persons should not be considered "economic migrants". Spouses and children who, due to bureaucratic hurdles and unfair policies, feel obliged to migrate irregularly to reunite with their family living legally abroad should not be deported but rather offered a regular status. Such people may have a certain *obligation* to migrate to live together with their family members. Other people who migrate because they are *obliged* to do so are victims of armed conflicts, erroneous economic policy or natural disasters, who, as such, are not considered convention refugees if one sticks to the very narrow classical definition of "refugee".

Finally, CST claims that national interest or prosperity cannot be the only criterion to determine the size of the immigrant population which can be supported by the receiving country. Given the huge differences in income between rich and poor countries in today´s world, and the great need of certain migrants, receiving countries or communities should be ready to sacrifice some of the wealth they have accumulated (often at the expense of others) to make room for migrants. This reasoning follows what we have said on the universal destination of created goods, and the option for the poor. When facing a *political realist*, this is best presented as part of an *a fortiori* argument, since most economic data suggest that at current levels (and in spite of the considerable increase in recent decades) immigration into wealthy countries offers no real threat to the standard of living of citizens (provided some social safety net is in place) and is overall clearly beneficial to the economies of receiving countries. If excessively restrictive policies are not justified when welcoming migrants actually "hurts", *how much more* should border policy be generous with "economic" migrants when welcoming such migrants is actually "profitable"?

2.2.3 Some Observations on CST on Migration, Taken as a Whole

I cannot offer, at this point, a general and detailed appraisal of CST on migration, but I believe that the rights, duties and principles mentioned above demonstrate the richness of this teaching. I think that the documents offer us very valuable ethical insights on many aspects of the phenomenon of human mobility. The reflection provided is deeply inspiring, instructive and normative for the praxis and reflection not only of Catholics but also for most people who are willing to engage seriously with the texts, are committed to justice in our world and embrace a worldview that can support a robust notion of human dignity.

There are several critical observations that one could make to such a vast body of teaching[59]. However, I limit my reflection here to two tendencies in CST which, I believe, should be questioned, especially in the light of the phenomenon of international migration as it presents itself in the 21st century and which will help us set the scene for the following section. The first is to assume, maybe too quickly, that stability is ideal, and that being uprooted is an evil (e.g. LE 23): CST is strongly biased in favour of a "settler" or "sedentary" vision of human societies[60]. In general, destitution may be more dehumanizing for an uprooted person and one expects CST to see reality from the eyes of

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[59] Other authors have provided valuable appraisals and critiques. For example, in her thesis, Tisha Rajendra (2009, chap. 4, conclusion) analyses CST on migration and concludes by noting a series of lacunae or serious limitations in the Church´s official teaching on the subject of migration: (1) while underlining the universality of human rights, the official documents do not take a clear position on the right of certain migrants (e.g. documented guest-workers) to naturalisation after a certain number of years (when even communitarians such as Michael Walzer tend to accept this!); (2) while emphasising communal self-determination and the universal common good, the documents do not help us understand clearly what are the limits of state sovereignty, if any, and what duties a state has towards insiders and outsiders; (3) while providing a global perspective on the issue, the documents do not adequately account for the "realities of globalization and the multiple levels of relationships among political communities, individuals and organizations that span political communities" (ibid.).

[60] This tendency is most clearly present in the writings of John Paul II; cf. section 1.3.3.2 below.

the destitute, not of middle-class globetrotters. However, the apostolic Church is an assembly which seeks to follow the itinerant Jesus, not an institution seeking to perpetuate the religious branch of the administrative structure of the Roman Empire, and so, it should never forget that native soil is not the only reality that allows people to be rooted in this world.

The second tendency is that of understanding the relationship between human need and human agency in simplistic terms. CST seems to construe the decision to migrate either as "forced" (by a need) or as "free" (freely chosen). Yet, very poor and "needy" persons often do have a number of options to choose from: they do have some agency, and their choices are hence not mechanical and "forced by necessity". On the other hand, ´free´ choices of rich and well-educated persons are often conditioned by more complex psycho-social "needs". The choice of an unmarried, pregnant Somali woman to migrate (rather than settle down with a man she doesn´t want to marry) may be more authentic and existential than that of millionaire who decides he will retire in the Bahamas because "everyone is doing so". We do not completely abandon the language of "forced" migration in this dissertation: it obviously has great rhetorical power. Yet, in Chapter 4, we distinguish between migrants whose basic security and subsistence rights can be met in their countries, and immigrants who flee situations of serious poverty and danger. Consciously choosing (or not) to venture into the unknown with very few resources, which could mean greater poverty and danger than those which are known, and a serious risk of death along the way, is human agency at its existential best.

Some documents claim that the ideal is "one in which migration flows are driven by choice, not necessity" (USMX-SNL 59) but, in the light of the above, I think this tends to misconstrue the phenom-

enon of human mobility. I therefore prefer to use the language of "empowerment": some migrants (with a decent level of education and financial means, and who would be considered "middle class" in their country of origin) are "empowered" migrants: their agency is not skewed by constant threats to their basic human rights. Other migrants, are, comparatively, "unempowered", and this is what I understand by "forced migration". Once a person´s basic rights are guaranteed, she can much more effectively develop herself as a "city animal" and a "thinking being", and open up a space of "leisure", in the sense proposed by classical Philosophy.

These two observations, taken together, help us see the existential dimension of human mobility, which is rarely highlighted in CST. The itinerant life can be the good life, and it can be existentially chosen. I believe that the greatest *penultimate* human "necessity" is a sense of purpose and meaning in life, as Victor Frankl discovered in Nazi forced-labour camps. Some people find meaning by resolutely leaving their homeland or adopting an itinerant life. Of course, not all of them have an *a priori* right to enter and stay in a foreign country of their choice. However, CST on migration could do well to take the themes of exodus and itinerancy in the Bible and in Christian hagiography seriously and question its bias towards sedentary life and its assumption that uprooting is necessarily an "evil". Contrary to what is assumed too easily by many classic Greek authors, the goods (including active political life) provided by one´s own polity — no matter how plentiful — may not be enough to provide a good and meaningful life to all citizens. Though it may not always be possible to partake of such goods (especially that of full participation in the social and political life of a country different from the one that a person is born in), and though relatively few people in our "globalising" world are truly transnational, CST could do more to remind us that strictly bordered nation-states are a modern invention and may not survive late modernity. Furthermore, given that, from a

Christian perspective, our *ultimate* "choice" and *ultimate* "necessity" is union with God, in yearning for an unknown that is "bigger" and in showcasing a deep and uncalculating hope, migrants point to the ultimate existential decision in life.

We may say, in conclusion, that while the decision to migrate is almost always a true decision (except maybe in the case of people who are kidnapped and trafficked for prostitution) the "ideal" is to reduce the influence of violence, destitution and environmental degradation on the people making that decision, so that the choice may be more "empowered" and less "forced". Furthermore, it is clearly desirable to develop the economic, cultural and spiritual richness of all the big regions of the world (and the interconnectedness of peoples within these regions) so that people may be able to flourish not too far away from the place where they were born and raised, in their "home-region" if not in their "homeland". That is a much more complex and realistic ideal that the one mentioned above, or the even more obscure "right not to have to migrate". To be sure, "empowered migrants" may have less *moral* claims to the "right to immigrate" than "forced migrants", but they are generally seen as less threatening by receiving countries and offered better *legal* paths to immigrate.

2.3 Diachronic Analysis: The Shift from "Regulation" to "Restriction"

After presenting a synchronic overview of the teaching of the Catholic Church on migration and borders in general, I dwell on the problems raised by economic migration and irregular migration. This is an issue which is particularly relevant to our project. In fact, much of the political debate on migration today centres on undocumented migration. Given the rights and principles mentioned above, we are asked how to judge between the conflicting claims made by two groups of people.

On the one hand, we have certain immigrants who, according to the criteria of CST, have a *prima facie* moral right to immigrate into a country. On the other hand, we have public authorities who (according to the current international system of state sovereignty which recognises no higher authority than the state on matters of immigration) have a *prima facie legal* (and, to some extent, moral) right to judge and deny the rights claims made by non-citizens knocking on their doors.

Earlier documents of CST gave some rough criteria to adjudicate between these conflicting claims, which have been presented above (via the right-order principles). These criteria, however, if they are still relevant, need to be worked out in the particular context of today´s world, where irregular immigration has become a major form of migration. More recent documents, however, as we shall see below, are less willing to help us see more precisely when migrants have a *moral* right to enter and stay in a country —no matter what the immigration laws say— and when states have a *moral* right to restrict immigration and deport this or that person —no matter how many legal loopholes an immigration lawyer may find. According to Catholic teaching, laws which do not conform to morality are not real laws; they should be obeyed only reluctantly and only if disobedience would result in a greater social evil, and if one is not thereby obliged to directly commit seriously evil acts in violation of one´s conscience. It is therefore crucial to provide criteria which help people evaluate the morality of immigration and integration policies, to help them form their consciences on this matter.

2.3.1 The Need to Regulate Migration

2.3.1.1 A Shift in Tone

The rights, duties and principles above, when presented synchronically, hide a shift in tone within CST on migration and borders. It is important to note from the start that the main tenets of the teaching have not changed; rather, the more recent documents seem to shy away from recognising that most migration in certain parts of the world has become "irregular" *because* of perverse policies which calculatingly or not make it so, and from *clearly denouncing* restrictive immigration policies, as in the past. The absent or very veiled critique of certain government policies that clearly go counter to the rights and principles presented in CST on migration, and the reluctance (by the local bishops and the Apostolic See) to apply the principles and rights lucidly to the case of irregular migration today can be quite misleading to the faithful and to policymakers alike.

As time goes by, the clear positions of Pius XII, John XXIII, Vatican II and Paul VI could become a distant memory if not repeated with the same clarity and applied to the current situation. Instead, one gets the impression that the teaching is now being presented in obscure and extremely delicate diplomatic language, and the critique to the policies of nation states has become so vague that an average reader could find it hard to notice that CST requires (of wealthy democratic states or unions, such as EU and the US) anything more than a simple tweaking of current immigration policies. I have even met people recently trained in CST who were not aware that the Church upholds the *right to immigrate*, not only the right to emigrate. The problem is further compounded when people — even so-called "experts" of CST within the Church itself — read past documents outside their historical context, using bad translations. They often end up confusing "regulation" with "re-

striction", and not realizing that what often gets translated as "emigrate" or "emigration" is actually "migrate" or "[human] migration" in the Latin, and applies equally to immigration.

To be sure, some aspects of the phenomenon of transnational migration have changed, and it is natural for most people to look at latest documents of CST to understand the position of the Catholic Church on the matter. At the end of the XIXth century, and after World War II, most migrants were European, documented, and were leaving countries like Italy, Poland and Spain for countries like the US, Argentina or France. Today, most migrants are non-European, and those who are most visible to people in the West are the undocumented migrants. Countries like Italy have very rapidly started to receive large numbers of migrants and though the so-called "immigration crisis" is mostly an imaginary crisis created by politicians, lobbies and the media, the challenge of integrating so many people from different cultures is indeed real and serious. The easy solution which many Western politicians have found to this problem is to claim that their countries cannot absorb so many immigrants so rapidly, that people should seek flourishing in their home country or region (which could be helped to develop with development aid). Furthermore, they claim that, given the fact that some development aid is actually being given to poorer countries (often little, and through inefficient channels), only refugees according to the strict definition of the Refugee Convention have a *right* to enter their country to ask for asylum. According to this reading, all the other people knocking at the door are "economic migrants" who have no *real* right to enter wealthy countries and eat at their table: letting them in legally is a *concession* that makes sense only when it serves the national interest, and those who enter illegally should be arrested and deported, always assuming that this serves the national interest or, more probably, the populist agenda of some political party.

CST, seeking to remain "receivable" in such a political climate, has made some concessions to such ideas. Most documents up to the pontificate of John Paul II admit sovereignty, and, by extension the state´s right to control its borders, but they do so grudgingly, adding limitations and conditions and subjecting this right to higher moral imperatives (cf. EF §102, in Baggio and Pettenà 2009; Christiansen 1988, 87 f.)[61]. CST assumes that, except in wartime or in moments of crisis (natural disasters, civil wars, etc.), most immigrants do not pose a threat to sovereignty or national security, and normally they would not come into a country and *stay* unless work is available for them. This is why, in most of these documents, "controlling national borders" was understood to mean keeping criminals or dangerous people out, and closing borders in times of crisis. Classical CST is clearly not in favour of adopting policies which systematically restrict immigration.

2.3.1.2 What Does "Regulation" Mean?

To be sure, the documents also speak of "regulating migration"[62]. It is important to understand what CST means by this expression. On the *local level*, "regulating migration" means designing generous and realistic laws which allow people to enter one´s country in an orderly and legal manner so as to avoid discrimination, employment in the informal economy and the concentration of immigrants in poor and crime-prone ghetto neighbourhoods. On the *international level*, which is

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[61] "Civil authority exists, not to confine its people within the boundaries of their nation, but rather to protect, above all else, the common good of the entire human family"; *Pacem in Terris* (n. 98). To be sure, when we understand correctly the Church´s notion of the universal common good and the purpose of the state, state sovereignty cannot be considered absolute, and the right to control and protect borders does not entail an absolute right, superseding all other ethical imperatives, to close borders indefinitely for all but some "very desirable" rich and educated people. If it were so, and if all states enjoyed such absolute rights, the "right to migrate" would fizzle down to nothing, since one cannot have a right if nobody has a duty to respect it.

[62] For an overview of the documents that speak on this issue, cf. the *Principle of Regulation of Migration and Asylum* (S2), in Table A7 of Annex A.

deemed the most appropriate level for regulating asylum and migration, this means establishing fair and reasonable agreements among sending, transit and receiving countries to ensure that the rights of migrants are respected, and that migrants do not have to resort to illegal channels and traffickers to enter countries which can support them and need their labour.

More generally, international "regulation" in CST means signing and ratifying without undue geographical restrictions documents like: (1) the *Refugee Convention* (1951) and the *Protocol relating to the Status of Refugees* (1967); (2) international agreements which offer subsidiary protection to forced migrants not considered refugees by (1); (3) the covenants associated with the *Universal Declaration of Human Rights* (1948); (4) The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).* For example, several documents insist that receiving countries should urgently ratify the latter convention (cf. EM 6, M2007, USMX-SNL 77 and Caritas Europa *et al*. (2006b)) but no migrant-receiving state in Western Europe or North America has done so until now, nor have other important receiving countries, such as Australia, the Arab states of the Persian Gulf, India and South Africa. "Regulation", in this sense, is not the same as "restriction", which is often a knee-jerk reaction to rates of immigration perceived as excessive; restriction is often disproportionate and forces many immigrants, needed by the economy, into precisely those shady situations that proper regulation seeks to avoid[63]. If we were to re-

[63] *Exsul Familia* says that "there would be very great benefits from international regulations in favour of emigration and immigration" (§111 in Baggio and Pettenà 2009), referring to an address given in Rome by Pius XII on the 2nd July 1951 to the members of an International Catholic Congress for the Improvement of Rural Living Conditions. The accent here is on regulations *in favour of migrants*, not in favour of states or receiving communities; Pius XII was inviting the international community to deal effectively with the problem of statelessness and to ensure that the human rights of migrants are respected. To appreciate this, we should remember that the Refugee Convention was adopted that same month on the 28th July, and that the Universal

duce this to a slogan, we would say that the Catholics have been crying, at least since the 1950s: "No to unilateral restriction! Yes to multilateral regulation!" That cry has not changed, but has become muffled in more recent Church documents, while, ironically, more and more experts and reports are adopting precisely this position, and implying that what Pius XII was saying 60 years ago was not only morally right, but also politically prudent to maintain the rule of law and sustain economic growth[64].

Restrictive "migration reduction" policies, such as those introduced by the US in the 1920s on the basis of the "findings" of the Dillingham Commission[65], have been very harshly criticized by the

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Declaration of Human Rights had been adopted a year and a half before, on the 10th December, 1948. Neither does Vatican II take a position in favour of the right of states to restrict immigration. Although EM 21 states that "the Council recognized the right of the public authorities, in a particular context, to regulate the flow of migration (cf. GS 87)", this statement could be misleading. The "particular context" was the movement of country dwellers to the cities in the same country, *transitum ruricolarum ad urbes*; the text in Latin makes no reference to (cross-border) migration or sovereignty. The other major Church documents on migration before the papacy of John Paul II, namely *De Pastorali Migratorum Cura* (1969) and *The Church and Human Mobility* (1978, May) do not speak of "regulation" of migration in terms of restriction, or the closing of borders.

[64] Current authors use the term "management" instead of regulation, given that "regulation" tends to be confused with restriction. For instance, John Salt´s (2005, 41) Report to the Council of Europe concludes as follows: "First, management rather than control is now the name of the game. There is a recognition by individual states and by intergovernmental organisations that international migration cannot be controlled, in the sense that countries can turn the taps of movement on or off at their borders. In reality they were never able to do that anyway. Second, there is an acceptance that migration is generally a positive phenomenon and that the prime purpose of management is to ensure an all-round positive outcome. Third, migration management strategies require a comprehensive approach that takes in the complete spectrum of movement and deals with both legal and illegal moves. […] Fourth, countries can no longer act alone. Cooperation is vital, both with European neighbours and with countries further afield."

[65] The US Supreme court struck down state-level regulation of immigration in 1786; in 1882 the first federal *Immigration Act* was signed into law, together with the *Chinese Exclusion Act* which banned the immigration of Chinese labourers on purely racial grounds (R. M. Smith 1997, 357f). In the following years, race "science" rapidly developed to offer an aura of legitimacy to increasing anti-immigrant hysteria (Marfleet 2005, 120f). The Dillingham Commission's 1917 Report recommended that the US restrict immigration from Italy and from Southern and Eastern Europe, since people from these geographical areas were supposedly shown

Catholic Church. Pius XII, in his 1952 Christmas Address (AAS 45 [1953]: 41-24), attacks the "nude calculus" — at the time mostly based on Malthusian arguments — that gives rise to the policies which wealthy nations use to shut the door in the face of people who have a right (and duty) to migrate[66]. Pope Pius considers immigration restriction akin to state-imposed birth control. He claims that recipient countries often go as far as "mechanizing consciences" by manipulating public opinion so that "the natural right of the individual to be unhampered in immigration or emigration is not recognised or, in practice, is nullified under the pretext of a common good which is falsely understood or falsely applied, but sanctioned and made mandatory by legislative or administrative measures" (ibid.).

"scientifically" to have problems integrating themselves and becoming good US citizens. To be sure, any Italian pope would have found such "findings" offensive. The copious "scientific" report, based on racist hypotheses, biased survey questions, dubious methodology and "corrected" answers (Lund 1994), gave rise to a series of immigration reduction policies in the 1920s which discriminated against Italians (and Eastern Europeans) and were kept in place until 1965, when ethnic quotas were removed. However, the current quota system in the US is still overly restrictive, and the quota system, while seeming fair on paper, does not adequately take into account the geographical situation of the US and its relation to its closest neighbours. In fact, so as not to be "racially biased" in favour of Mexicans, the US places a similar ceiling (percentagewise) on visas to Mexicans as that placed on distant countries which have much fewer historical, social and economic ties with the US; the "fairness" and "colour-blindness" of a system of geometric equality which is completely out of touch with history and reality hence becomes a new "scientific" justification of racist exclusion.

[66] Here is the orginal text, in Italian: "Quando gli sposi intendono di restare fedeli alle leggi intangibili della vita stabilite dal Creatore, o quando per salvaguardare questa fedeltà cercano di svincolarsi dalle strettezze che li serrano nella loro patria, e non trovano altro rimedio che la emigrazione — altre volte suggerito dalla brama di guadagno, oggi spesso imposto dalla miseria —, eccoli urtarsi, come contro una legge inesorabile, ai provvedimenti della società organizzata, al nudo calcolo che ha già determinato quante persone in determinate circostanze un Paese può e deve nutrire, al presente o in avvenire. E sulla via dei calcoli preventivi si tenta di meccanizzare anche le coscienze: ed ecco le pubbliche ordinanze per il controllo delle nascite, la pressione dell' apparato amministrativo della cosiddetta sicurezza sociale, e l'influsso esercitato sulla opinione pubblica nello stesso senso, e finalmente il diritto naturale della persona di non essere impedita nella emigrazione o immigrazione, non riconosciuto o praticamente annullato col pretesto di un bene comune falsamente inteso o falsamente applicato, ma che provvedimenti legislativi o amministrativi sanciscono e rendono valevole."

2.3.2 The Use of Language: Supporting Notions of Sovereignty Incompatible with CST

To understand this position, taken by Pius and his successors, we need to understand how CST understands sovereignty. "Sovereignty", for the Catholic Church, *is inseparable from the moral duty to open borders to certain types of immigrants* (besides refugees) *who, on the basis of moral criteria, have a right to enter and stay*. **A notion of sovereignty which denies that countries are bound by this moral duty *is not compatible with CST***.

Given that it is precisely this problematic notion of sovereignty that is in fact being taken for granted by many of our contemporaries in developed nations, Pius and his successors *were very careful when recognising the rights of states*, *since **language** matters greatly in contentious political debates*. One might unwittingly end up promoting a notion of sovereignty contrary to CST simply by stating the Church´s teaching in ways which place the accent precisely on those certain aspects of sovereignty which the Church doesn´t want to accentuate. Furthermore, the notion of sovereignty in CST implies international solidarity, and a responsibility to contribute *significantly* to redress the economic and social imbalances in the world. Insofar as boundaries and sovereignty create barriers to development and make it harder for the human rights (including the social and economic rights) of all peoples to be honoured, and insofar as wealthy countries do not contribute *significantly and effectively* to the development of poorer countries (in ways and quantities which ensure that the current imbalances will start diminishing in the foreseeable future), *sovereignty is a structure that perpetuates certain injustices in the world*.

In today´s political context, when one defends legitimate political "sovereignty" (as understood by CST), one risks being understood as promoting a form of sovereignty which is *de facto* absolutist, morally isolationist and morally exceptionalist: this is what usually comes to mind when someone speaks of the "right to control national borders", the "right to national sovereignty", and so forth. Only in developed countries which make *very significant* contributions to the development of poorer nations can we speak of a "just" exercise of sovereignty when they seek to restrict migration, since they are truly doing their fair share in the international effort to deal with the causes that force people to migrate. Very few countries, if any, can honestly claim to be doing this today. Other nations (in practice, all wealthy nations, today), which hoard a lion´s share of the world´s material and intellectual resources, have little moral authority to send away people from poorer nations who knock on their door to claim back their key to flourishing, which has been locked inside.

The absolutist understanding of sovereignty claims that "no matter what we did to others in the past, and no matter what I do in the present that may be economically, ecologically, socially or politically detrimental to others (short of declaring a war), nobody can ask anything of our polity in justice: it is sovereign and recognises no higher law". Sovereignty, so understood, is not compatible with Christian ethics, as presented in Catholic Church teaching. Sovereign nation-states are a part of the human race, and have obligations towards the whole of humanity. This explains, in part, the Church´s historical resistance to the Westphalian system at least up until Leo XIII, and in a sense, up until the aftermath of World War II, when the international community recognised a series of human rights and adopted a system of international institutions that put limits on the excesses of absolutist sovereignty (cf. PT 5-7; González-Carvajal Santabárbara (2005, 48–63); Carlson and Owens (2003, 1–19)).

2.3.3 Does Regulation Imply Restriction, Today?

2.3.3.1 Italy´s Transition from Country of Emigration to Immigrant-Receiving Country

In general, John XXIII and Paul VI stood by, and expanded the teaching of Pius XII on migration. However, Pius´ harsh critique of restriction started to be softened in the 1990´s[67]. During the papacy of John Paul II, Italy became a country of net immigration, and anti-immigrant rhetoric, as well as real concerns raised by receiving communities, started to affect deliberation closer to Rome. Clandestine migration became a major issue in European politics and some speeches and messages of John Paul II started to equate the *need to regulate immigration* with the (perceived) *need to restrict immigration*. The Church started to give more and more weight to the local common good of receiving communities, which was hardly a concern before (cf. L1984 2; M2001 3; M2003 2). Already in the late 1980´s we can see signs of this shift. For instance, Christian groups in countries like the US offered "*sanctuary"* to undocumented migrants, following classical CST on migration, and judging unjust their country´s restrictive immigration policy and its unrealistic quotas for migrant workers, which only served to force people into irregular situations. However, John Paul II was not consistent in supporting the work of the Sanctuary movement, and at times preferred to appease governments and insist that Catholics are law-abiding citizens rather than criticize national laws[68].

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[67] For instance, *Pacem in Terris* (n. 106) claims that a migrant has a right to "enter a political community where he hopes he can more fittingly provide a future for himself and his dependents", and that "as far as the common good rightly understood permits, it is the duty of that state to accept such immigrants and to help to integrate them into itself as new members".

[68] In a Sunday Mass in San Antonio, TX on 13th December 1987 John Paul II appeared to endorse the Sanctuary Movement´s work among undocumented migrants, in veiled language typical of Vatican diplomacy (cf. *The New Mexican*, 14th September 1987 edition (The Associated Press 1987a)). The Immigration and Naturalization Service asked the Vatican press office to state clearly whether the Pope was applauding an association which helped people who violate immigration laws, and Joaquin Navarro-Vals, the Vatican spokesper-

2.3.3.2 John Paul II: A "Reluctant" Immigrant?

When reading the documents, one gets the impression that John Paul II, the first "immigrant" bishop of Rome since 1523, had a negative view of migration. Previous popes often spoke of the evils linked to migration, especially the risk of losing one´s faith, one´s roots and one´s rights, but documents produced during the papacy of Paul VI, such as *De Pastorali Migratorum Cura* (1969), were more hopeful and positive (cf. FR-QEF D3 p.4). In contrast, John Paul speaks as though the human phenomenon of migration itself were an "evil", albeit a "necessary evil" (LE 23; PFD 3; cf. M1995 3). He insists that political and sociological research should focus, in particular, on the "dramatic and disturbingly negative aspects" of the phenomenon of migration (M1985 4)[69]. Certainly, the economic and political crises of the 1970´s and 1980´s dampened the optimism of the 1960´s, especially in developing countries, creating huge waves of forced migration, but surely the pope´s personal experience and worldview contributed considerably to this particular appraisal of the phenomenon.

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son, issued a denial (cf. *The Los Angeles Times*, 15th September 1987 edition (The Associated Press 1987b)). Most Catholics still believed that the Pope had said what they understood him to have said (Christiansen 1988, 81); the Church had always claimed that defending fundamental human rights and helping marginalised people was more important than supporting the agencies and laws which seek to restrict migration and close borders, that obligations rooted in the "natural law" trumped those stated in "positive law", that fundamental rights and duties trump border regulations. Yet, we can note in this incident how the Catholic Church in the 1980´s warms up to the idea that nations have a right to enforce serious restrictions on immigration, and no longer feels it should insist on the "right to migrate" and the clear corresponding duty on the part of receiving countries to draft laws that allow for immigration as strongly as in previous decades.

[69] John Paul II did believe that something positive can come out of the phenomenon, namely, more diverse societies in the receiving countries (PFD 3), but this diversity too is deemed problematic. I think that, even though it is good at times to focus on the suffering and deprivation of the marginalised, one should not see migration in such a pessimistic way. This approach tends to miss the hope, the courage, the sense of adventure of these people, and this depressing narrative tends to reduce them to passive recipients of compassion and charity rather than sustain their cause as bearers of rights based in human dignity, and to learn from them that trust in Providence that should inspire a pilgrim Church which, like Abraham, Israel in the Exodus, Jesus and Paul can only be their true selves by setting off on a journey. Furthermore, this pessimism is not warranted by much of the sociological data and the experiences of those who accompany migrants.

John Paul´s negative view of migration, as well as the changing situation in Italy, may help explain the shift in language, which becomes more and more tolerant of immigration restriction policies, or at least less willing to condemn them.

After the 1987 "Sanctuary Movement Incident" at San Antonio[70], a number of papal documents start referring explicitly to the right of states to restrict immigration. The *Message for World Migration Day 1992* notes that "developed nations are not always able to assimilate all those who emigrate", while insisting that "the criterion for determining the level that can be supported cannot be based solely on protecting [the receiving nations"] prosperity, while failing to take into consideration the needs of persons who are tragically forced to ask for hospitality" (M1992 3). In terms of *content*, this position is similar to that of Pius XII, but the shift in *accent* is noticeable. While the latter sees the classical justification for restricting immigration mostly as an *unacceptable excuse* for unjust exclusion (with some exceptions), John Paul presents it as valid rationale and manifestly accepts the principle of applying quotas.

To be sure, from a purely *theoretical* standpoint, John Paul´s statement is correct: one could imagine cases where developed nations are completely overwhelmed with a large influx of immigrants. In *practice*, however, as we shall see in Chapter 2, this is not the case; most developed nations can integrate many more immigrants than they are doing at present (even including irregular migrants), and, in general, restrictive policies are being put into place simply because these nations want to reap the benefits of immigrant labour without paying the cost of treating these persons humanely and fairly and offering the possibility of integration to those wishing to stay.

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[70] See above, note 68.

As we know from decades of experience with immigration control — even Pius XII could reflect on at least a century of attempts to ward off irregular immigrants![71] —, quotas and restrictions on immigration try to stop the flow, but when work is available and the need to escape poverty or reunite with loved ones is great, people tend to continue coming in, in spite of such restrictions[72]. It comes as no surprise that increasingly restrictive policies are generally accompanied by an increase in irregular migration some years later. In the 1992 Message, John Paul acknowledges the existence of this phenomenon, and argues that "the work by which undocumented aliens participate in the common effort of economic development is a *de facto* form of membership in a society" (ibid.). This is an important point to be made, even though it sounds like offering an *ex post facto* solution to the problems created by excessively restrictive immigration policies.

2.3.3.3 CST, Immigration Restriction, and the Final Years of John Paul II´s Papacy

The *Catechism of the Catholic Church* (provisional edition 1992; definitive edition 1997) clearly mentions the right to immigrate, but also mentions the right of political authorities to subject this right to "various juridical conditions"[73], which sounds quite vague, considering Pius XII´s harsh cri-

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[71] In 1852, Britain dispatched a steamer patrol to prevent unwanted refugees and migrants from landing on the Channel Island of Jersey (after the 1848 revolutions in Europe). Today, 150 years later, countries like Italy, Spain and Australia are still trying to send away boat people in much the same way.

[72] As we shall see in Chapter 2, the restrictions only serve to make the trip more expensive, traumatic and deadly, and the stay more exploitable; "survival of the fittest migrants" actually serves as an artificial selection strategy to make sure that, as much as possible, only resilient, resourceful and able-bodied refugees and migrants reach the developed world.

[73] "The more prosperous nations are obliged, to the extent they are able, to welcome the foreigner in search of the security and the means of livelihood which he cannot find in his country of origin. Public authorities should see to it that the natural right is respected that places a guest under the protection of those who receive him. Political authorities, for the sake of the common good for which they are responsible, may make

tique of precisely such "legislative and administrative provisions" in his 1952 Christmas Address. The *Catechism* also insists that immigrants should "respect with gratitude the material and spiritual heritage of the country that receives them, to obey its laws and to assist in carrying civic burdens" (CCC 2241). Though the text of the Catechism does not clearly mention *restricting* immigration, John Paul II's *Message for World Migration Day 1995* seems to interpret it in this way: the Church, it claims, "does not deny public authorities the right to control *and limit* the flow of migrants when for the common good serious and objective reasons exist which affect the migrants' own interests" (M1995 2, my emphasis). So at this point, the documents start to recognise the right to *restrict* migration, albeit timidly, using double negatives and insisting that this should be done in the interest of the migrants themselves.

In the 1995 *Message*, for instance, references are made to irregular migration and the evils which accompany it (M1995 3). This negative reading is developed further in the *Message for World Migration Day 1996,* which deals with the issue of "illegal migration" as something that "should be prevented" (M1996 2). The phenomenon of undocumented migration seems too hastily judged in this Message: the pope links it immediately to crime and assumes that these migrants compete directly for jobs with unemployed citizens and legal immigrants (ibid.)[74]. The solution offered is inter-

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the exercise of the right to immigrate subject to various juridical conditions, especially with regard to the immigrants' duties toward their country of adoption" (CCC 2241).

[74] The pope does not seem to realize that such a negative view of immigration sounds quite close to what the anti-immigrant lobby and its "experts" are claiming in Europe today (mainly against Muslims, and certain migrants from Africa and Asia who have little chance of entering legally into Europe), and to what the immigration reduction lobby and its "experts" were claiming almost a century ago in the US (mainly against Catholics, and certain migrants from Southern and Eastern Europe). If one listens to the economical and sociological data from less biased sources, one would have to acknowledge that the picture is much more complex.

national cooperation for development, so as to reduce and eventually eliminate the current economic and social imbalances between nations[75]. Furthermore, instead of defending the right to *immigrate* clearly, as in previous documents, the pope presents the Church's position on this right in the form of a hypothetical question, saying that the Church "asks what the right to emigrate is worth without the corresponding right to immigrate" (M1996 3). The pope recognises that Christian communities are frequently "infected by a public opinion that is often hostile to immigrants" (ibid.) and says that the Church is working to tackle this internal problem, but instead of maintaining the more prophetic stances of previous texts and addressing the problem of irregular migration lucidly by drawing the logical conclusions from the right to immigrate as presented in the tradition, John Paul seems somewhat comfortable presenting arguments which closely resemble those typical of the anti-immigration lobby.

So how should we deal with the problem of irregular migration? John Paul provides a multi-layered answer to this question. First, the pope asks social and charitable institutions to help such immigrants to try to find ways to **regularise their situation**, seek acceptance in other countries or return to their countries (M1996 4). Second, he recognises that laws may be unjust; for instance, it is unjustifiable to force "into an illegal situation people whose right to live with their family cannot be denied by any law" (idem; cf. Caritas Europa *et al.* (2003)). Hence, he insists on the **harmonization**

As we shall see in the following chapter, most experts, in fact, agree that migration, even irregular migration, is overall beneficial to most of the migrants, and to most of the receiving and sending countries.

[75] Again, the pope's reflection here seems unaware of the data which show that migration and remittances —in the political and economic climate that will continue to prevail in the foreseeable future— is far more effective in reducing such imbalances than development aid (especially considering the meagre quantities and inefficient ways in which it is provided at present, which one cannot realistically expect to change in the short and medium term); cf. Pritchett (2006).

of migration laws and the equitable distribution of burdens among countries. Finally, he discreetly addresses the claim made by some Christian groups and institutions that some migrants should be given "sanctuary" when the laws are unjust. The pope says that "solidarity means **taking responsibility for those in trouble**", and that for Christians "the migrant is not merely an individual to be respected in accordance with the norms established by law, but a person whose presence challenges them and whose needs become an obligation for their responsibility" (M1996 5). The second point mentioned shows that certain regulations that seek to limit and restrict immigration may be unjust and may violate migrants' rights. However, it would be useful to go beyond mentioning this as a vague possibility and to develop some clear criteria to evaluate the fairness of border policies, something that the recent documents seem much less willing to do than the texts of Pius XII and John XXIII.

In M2000 3-4, John Paul II links migration to globalisation, but does not reflect on the duties of states that benefit most from the effects of globalisation towards those most negatively affected by it, given the national and international economic policies that powerful nations put into place in an ever more interdependent world. Then, towards the end of his pontificate, in 2003, we find a peculiar text which puts great emphasis on the rule of law and seems to assume far too easily that positive law is generally morally just and valid (at least in Europe). Addressing the European Bishops at the end of the 2003 synod, John Paul II claimed that "the acceptance of immigrants must *always* respect the norms of law and must therefore be combined, when necessary, with a firm *suppression of abuses*" (EE 101, my emphasis). Such a text seems to come from someone completely different from that Karol Wojtyla who in 1965 considered it a folly to make "public order *in conformity*

with juridical norms" a limitation on freedom[76]. The young Mgr. Wojtyla strongly believed that only "public order *in conformity with the moral law*" can justify limitations on human rights placed by states, and he insisted on amending all mention of legal norms or public order in what became *Dignitatis Humanae* to reflect this, to avoid making concessions to absolutist conceptions of sovereignty and also to avoid any misinterpretation of Church teaching on human rights[77]. Unfortunately, many years later, the elderly and ailing pope John Paul II was less adamant on correcting his speechwriters´ drafts on this point, when speaking about migration.

Even though this is not a major text of CST on the issue and probably has in mind primarily the activities of traffickers, and even though it has to be understood in the context of the whole teaching,

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[76] Cardinal Wyszyński, in a heated intervention at the Council on the 20th September 1965, attacked the naïveté of Westerners who were ready to make easy concessions to the prerogatives of states, and offer them, in the text on religious freedom, a notion of "public order" (not subjected to the objective moral order) with which they could easily justify placing arbitrary limitations on human rights (Grootaers 1981, 167 n. 1). Mgr Wojtyla too felt that one of the most important issues at the Council was that of defining the precise conditions under which states could invoke "public order" as a reason to limit a natural right, such as that to religious freedom, so as to prevent the abuse of state power. That is why two days later, on the 22nd September 1965, Wojtyla, in the name of the Polish bishops, delivered an important speech to the Council after the closure on the public debate on the fourth version of the *schema* on Religious Freedom. He argued that "it is necessary to state [in the text] that the right to religious freedom, being a natural right (that is, founded on the natural law and hence on divine law) cannot be subjected to any limitation, except on the basis of this moral law itself. Positive law of human origin cannot place any limits here, unless it does so in conformity with moral law. In other words, only an act which is morally wrong, an act which violates moral law, may be considered as an abuse of religious freedom. […] Following the same principle of respect towards moral law, one should similarly revise the parts [of the *schema*] concerning the juridical norms which deal with the limitations that can be placed on the exercise of religious freedom, norms which in many places are not only inappropriate, but also give rise to abuses against true religious freedom" (Grootaers 1981, 156–157). It is useful to read this text again today, replacing the natural right to religious freedom with the natural right to migrate (for reasons considered valid by CST); both rights are considered by CST as rights based on the moral law.

[77] This is the result, which is not always reflected in the translations: "*iustus ordo publicus*" (DH 2); "*iusto ordine publico*" (DH 3); "*iustae exigentiae ordinis publici*" (DH 4); "*tamen fieri debet non modo arbitrario aut uni parti inique favendo, sed secundum normas iuridicas, ordini morali obiectivo conformes*" (DH 7); "*homines formare satagant, qui ordini morali obsequentes legitimae auctoritati oboediant*" (DH 8).

we cannot but note that its lack of reference to justice or the "objective moral order" to temper positive law seems to hand a blank cheque to lawmakers, border guards and police officers. In this sense, it seems to tip the balance to the side of sovereignty, especially when compared to the teachings of previous popes which clearly championed the right to immigrate and were extremely reluctant to make concessions to the prerogatives of states as regards the restriction of freedoms.

2.3.3.4 Situating John Paul II´s Later Texts on Immigration in the Wider Context of CST

I do not believe that this passing comment, in an exhortation to European Bishops, should be given too much doctrinal importance; it certainly cannot be understood as contradicting a whole series of high-ranking official documents dedicated to the subject of migration. It is however emblematic of a shift in tone from older CST documents which were very careful to put the rights of migrants ahead of the prerogatives of states. Such a statement could easily be misunderstood, in the context of the current anti-immigrant hysteria, as justifying harsh and repressive policies against undocumented migrants, some of whom could be forced migrants and even refugees.

The current pope, Benedict XVI, has not said anything really different from John Paul II on the subject[78]; CV 62 mostly re-echoes previous texts, but sees the issue as balance between rights of migrants and rights of host countries. In this sense, his position tempts the reader to think that there is no real conflict between the right to immigrate and the right to control one´s borders (now understood by some to include the right to restrict immigration and use repressive policies against undocumented migrants). The differences on this issue can also be seen when we compare differ-

[78] However, Benedict XVI seems particularly concerned with the effects of migration on students, young people and minors (cf. M2008; M2010).

ent documents from the bishops´ conferences on the issue, for instance, the document *Pastoral de las migraciones en España* (1994) by the Spanish bishops, and *Strangers No Longer* (2003), by the Mexican and US bishops[79]. The Spanish bishops, following classical CST on the issue, do not place the right to immigrate on the same level as the right of governments to control their borders[80]. The Mexican and American bishops, on the other hand, tend to present the right of individuals and families to immigrate and the right of states to "impose reasonable limits on immigration" as two rights of the same order, which "complement each other" (USMX-SNL 39)[81]; this reading of the Catholic tradition may have influenced other bishops (cf. UK-MCM 3)[82].

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[79] As we said above, though some might simply think that the difference between these two documents is a matter of accents, accents make a lot of difference in the real world where complex teachings can be easily misinterpreted in a given socio-political climate.

[80] For the Spanish bishops, the right to immigrate is inseparable from the *moral obligation of states* to open their borders to certain groups of immigrants, and to certain asylum seekers who can be considered forced migrants, not only to "refugees" according to the strict definition provided by the Refugee Convention (ES-PM II:2:3:b). This serious moral duty is not recognised by states nowadays and in such a context, simply saying that "countries have a right to control their borders" could lead to misunderstandings (ES-PM I:2:1:c). Cf. RCS 3-4 on "de facto" refugees not recognised by the Refugee Convention.

[81] There is a history behind this "American" reading of CST on migration. In a 1985 statement, "The Pastoral Care of Hispanic Immigrants", the Catholic bishops of Texas claim that "on the legal and moral plane, the rights of suffering members of the human family […] must be balanced with the right of a nation to regulate the movement of peoples across its border in order to maintain its well-being". Drew Christiansen, commenting in 1988 on this statement, says that "as a matter of legal practice and a question of constitutional and statutory law, state control of borders cannot be denied. However, the bishops' admission, while politically prudent, is misleading. For since the time of Pius XII magisterial social theology has so thoroughly contested the right of sovereign powers of states to unqualified control of their borders that any assertion of sovereign rights in this area must be judged, from the point of view of Catholic social ethics, a secondary or residual right, not one of primary importance. The older presumption in favour of state authority holds only in exceptionally grave circumstances" (Christiansen 1988, 88).

[82] These bishops easily concede to the state the right to intercept undocumented migrants (USMX-SNL 78), linking this to the "security interests" of citizens (when, as we have seen, CST actually insists that restricting migration should be done in the interest of the objective common good, and the good of migrants themselves). To be sure, the American and Mexican bishops object to "some of the policies and tactics" used by governments and law enforcement agencies (USMX-SNL 78ff), for instance the use of excessive force, shackling of hands and feet, discrimination, abuse, dilapidated detention facilities, lack of access of detainees to

2.3.3.5 The Urgency of Discernment and Adjudication between Conflicting Claims

The tension between the right of migrants to *immigrate* (presented in strong terms, as in the Church documents up to the 1990s) and the right of states to *restrict* immigration (which may seem obvious to many people today, but which was never clearly mentioned and developed in CST before until the 1990s) seems more and more difficult to reconcile now on the basis of CST alone. On the one hand, we cannot simply *assume*, as in the past, that when states restrict immigration in times of peace, they are probably in the wrong. This seems to **hint at the need for discernment and adjudication between conflicting claims**. To be sure, such complex moral judgment is not an easy task for individual Catholics and sympathetic readers of CST, since the documents remain very vague on the extent and limitations of such rights. On the other hand, one may be tempted to think that it is safe to assume that when democratic countries (*of our day and age*) restrict immigration to *today´s* migrants, they have a right to do so and it is morally acceptable, even though the recent documents *do not support such a position*. One might also claim that the reluctance of recent CST to condemn immigration restriction and to relativize and bracket the rights of sovereign states and receiving communities is a sign of a change in doctrine still in the making, a capitulation to the prevalent absolutist understanding of political sovereignty. According to this hyper-nationalist interpretation, though the Church will not easily admit this change in doctrine, such an absolutist understanding of sovereignty is ideal since it will allow us to **resolve the problem without the need of complex adjudication of claims, simply by changing our default assumption about who is in the**

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lawyers or relatives, corruption, police brutality, lack of transparency and accountability of agencies and detention-centre contractors, etc. What they do not clearly specify is that CST goes much further and insists that, as far as possible immigration should not be reduced or restricted except for valid moral reasons.

right. Catholic citizens, moral theologians and local bishops will then have no need make any discernment regarding the moral rightness or wrongness of immigration policies.

As we said at the beginning of this section, the change in accent and the recent willingness to recognise more strongly the prerogative of states on the issue of borders and immigration does not fundamentally change the main tenets of CST on this topic. However, it does affect the reception of CST in a "postmodern" world where many people are increasingly averse to complex moral discernment, hungry for a clear authoritative word from above, and situated in a strongly polarized and indeed "poisoned" political milieu when reflecting on these issues. Most people in the world today, both in rich and poor countries, take it for granted that immigration should be restricted. Gone are the days when most economists championed opening borders to labour as an obvious way of boosting economic growth, when sociologists and politicians spoke positively of multiculturalism and presented migrants as heroes, when several countries in the world had permissive border regimes that allowed in most ("white") people who at that time wanted to migrate. Most Catholics do not seem to be questioning their countries´ border, immigration and integration policies today; they seem so used to categorical statements by bishops and popes on other moral issues that they tend to interpret the more conciliatory and diplomatic approach on this issue as a sign that they are free to think what they wish, or adopt the position of their favourite politicians and anchor-persons.

In many wealthy countries, the attitude of citizens towards the phenomenon of migration has become very negative and pessimistic, and general ignorance of the seriousness of the economic, political and ecological situations faced by poorer countries allows them to construe most international migration as a free and capricious choice made by people duped by mass media who think

they can make some easy money working abroad but in fact are hurting only themselves, their families and the poor people in the receiving countries by migrating. This simplistic (and in many ways erroneous) narrative entails that migrants would be better off staying at home, and that restrictive laws are "fine" since they actually promote this "ideal situation". John Paul II´s (and Benedict XVI´s) pessimistic view of migration may actually tempt Catholics to think that this logic is sound and compatible with CST.

2.4 The Road Ahead: Two Attitudes and Two Hypotheses

I believe it is unfortunate that more and more Catholics seem comfortable with the immigration-restriction laws and repressive policies being introduced all over the world, even though many such laws clearly violate CST criteria, and even though, by CST standards, wealthy states have little moral authority to justify immigration restriction (given that they are doing very little to help poorer countries develop and in some cases are not even sending the aid they had promised in the past). Other scholars of CST may, however, question my stance on this point and see this attitude as inevitable and not in itself problematic. They may insist that the phenomenon of human mobility has changed drastically in recent years, that immigration restriction makes sense today (for a number of reasons), and that CST should move to admit this, in spite of its past hostility to such policies. These two conflicting attitudes and readings of recent CST, already sketched in the conclusion of the above section, point to two different ways of moving forwards, based on two different hypotheses.

2.4.1 Case I: Has The Phenomenon Itself Changed?

Most people agree that *certain aspects* of the phenomenon of human mobility *have changed* in recent years due to globalisation and other factors. There are things which are obviously different in

the new waves of "economic" migration — most migrants enter illegally, they are non-European and, in Western countries, the most "conspicuous" of immigrants today are Black, mulatto, and/or Muslim. Yet, it is far from clear that *such changes warrant a change in CST on this issue*.

First of all, we need to ask whether what is new about the "new labour migrations" actually allows us to assume (from an ethical standpoint) that governments are usually right when they restrict the entry of such migrants. It may actually be true that the new migrants are too many and too culturally different to integrate themselves effectively, that they are not really migrating because they "need" to (but rather to strike it rich or to have an "adventure"), that the labour market is so rigid that it can only provide to immigrants the jobs it takes from native workers, and that many contemporary migrants are "dangerous" and have a tendency to become criminals or terrorists. If so, democratic states would be doing the right thing in keeping these people out. Simply by accepting and admitting this, CST could then spare us the complexity and challenge of adjudicating between conflicting rights claims. We could now simply shift to a new "default assumption" on who is in the right, and ask CST to delicately admit that what Pius XII and Paul VI said in the past does not apply any more in the 21st century, in a "globalised" world. However, if we cannot show there has been a significant change in the phenomenon itself, and if we are simply witnessing a resurgence (on the global level) of the anti-immigrant rhetoric (supported by biased "scientific data") that was common in the US about a century ago, then we cannot ask the Church to give up its more prophetic stance in favour of immigrants. In this case, we would rather ask from the Church some help to discern better how to regulate and manage (rather than restrict) the flow in the concrete realities of today´s world.

To deal with these questions, let us formulate a starting hypothesis:

> ***Hypothesis A:*** *The phenomenon of labour migration has changed significantly in recent years in its ethically-relevant features, and most of the differences are real, not merely perceived. The changes warrant increasingly restrictive immigration policies.*

I believe that, overall, this hypothesis is false, but I have to argue my position in the following chapters. I am ready to concede that there have been some changes in the past decades that *do have some ethical significance*, and that may point to the need of *better migration management*, but not to *greater migration restriction*. For instance, globalisation has caused the weakening of welfare states and made poor people in the First World more vulnerable: this points to the need to regulate the flows of certain economic migrants, but probably, what needs to be managed the most is the flow of money from the cities and neighbourhood which thrive on immigrant labour to those that provide them, and poor "natives", with services and welfare. Furthermore, pluralism, conflicts of identity and the resurgence of politically militant religion — all of which characterize late modernity — make it difficult to define "French" or "American" and figure out what are the basic behaviours, symbols and beliefs that migrants should be asked to adopt if they want to be active members of the receiving society. While recognising the importance of these changes, I still think that they are not significant enough to make Hypothesis A true. I do not believe that such problems can allow us to make an easy presumption that states are usually *morally* right when they detain and deport immigrants, asserting the prerogatives of sovereignty. I hope that the interdisciplinary survey of the phenomenon of labour migration in Chapter 3 will allow us to argue convincingly against this hypothesis.

2.4.2 Case II: Do We Need A Better Ethical Framework To Adjudicate Conflicting Claims?

If Hypothesis A were false, and if, from an ethical standpoint, little has changed in the phenomenon of international migration since the 1980s, we would have little reason to shift from a *presumption* in favour of rights of immigrants to a *presumption* in favour of the rights of states. Yet, CST has been telling us in recent years that, though persons have a *prima facie* right to immigrate into a new country, that right is subject to many conditions. We cannot simply assume that a well-meaning migrant from a poorer country is in the right when she crosses a border irregularly into a wealthier country in times of peace. By shining a spotlight not only on the suffering and rights of immigrants, but also on the prerogatives and problems of receiving states and societies, CST seems to be tacitly admitting that there is a *real conflict between rights claims here*. Even so, the documents seem to avoid saying so implicitly. This leads us to a second hypothesis:

> **Hypothesis B:** *CST may have a difficulty admitting that we are dealing with claims in conflict, and that making presumptions in favour of one or the other party is not a good way to adjudicate between such claims. Yet, by simply listing and juxtaposing seemingly incompatible rights claims,* ***the Catholic Magisterium is hinting at the need for a moral framework within which to adjudicate conflicting rights claims regarding immigration, and to make the right to immigrate more receivable and concrete****. Moral theologians need to fill this lacuna and provide such a framework, and we can do so precisely by formulating clear priority rules.*

Making presumptions on who "probably" is in the right is an easy way of doing ethics. It is useful to pacify scrupulous consciences or to help simple people deal with complex moral dilemmas, but it does not help us to make serious moral judgements. To judge claims in conflict, we need clear criteria, and, more specifically, a set of *priority rules*. This is probably the greatest lacuna in CST on migration. Though Christian ethics has many resources which can help us see what has priority over

what, CST on migration has not laid down clear priority rules that help us see clearly whose claim has priority in what circumstances.

Ethics is not a deductive science, and judging between moral rights claims remains a matter of ordered prudential judgment in a given historical context. Priority rules do not provide an automatic way of judging between rights in a complex world, but they are helpful, especially when we need to transpose moral rights and duties into legal ordinances and bureaucratic protocols. This is why certain theologians who are well acquainted with CST and the Catholic understanding of human rights and the common good, such as David Hollenbach, have argued for the need to clearly specify certain priority rules to navigate CST´s complex world of rights and right-order principles (Hollenbach 1979, 174f; 203f).

If the relationships between different groups in a society are conceived as organic and harmonious, and if we assume that the *status quo* is mostly just, then proposing (non-absolute) lists of rights in tension (such as the right to immigrate and the right to restrict immigration) would not pose much of a problem: the different groups will find ways to work out a just balance between the claims. Such an organicist view of society has been predominant in Catholic theology up until Vatican II (Cf. Hollenbach 1979, 160f), and recent papal documents such as CV still seem to play down the existence of conflictive relationships in human societies. To be sure, Pius XII did not shy away from admitting the conflict between the “national interest” of states and the rights of migrants and refugees, nor did he assume that the *status quo* in his day was mostly just, but Pius and his successors were not willing to stray away too far from the classical organicist understanding of society. Admitting the reality of social conflict and reflecting on it ethically is dangerous for an institutionalized

Church which is at the service of everyone and seeks to follow the example of Jesus Christ, the Prince of Peace. Furthermore, offering social analyses of rights *conflicts*, as is often done in liberationist Theologies, may sound "Marxist".

There is nothing "Marxist", however, in drawing the conclusions from CST on migration and recognising that, at the borders, different sets of *rights do clash*. Admitting a clash of rights does not necessarily imply provoking a physical clash between people, such as a revolution (even though immigrants do get shot while trying to cross certain borders, and are raped and beaten up regularly in certain detention centres). However, admitting and reflecting on the conflict between the rights claims here is of the essence. Simply stating rights and principles and letting the "competent authorities" decide which ones to respect and which to ignore is not a proper way of solving the matter, since the authorities in this case are far more partial than in most other social issues. It is unrealistic to assume that politicians and border guards, who have all the means and physical power in their hands, will be able to discern justly between the rights claims of the state and those of immigrants. Ethics has a role to play here in helping people to see how to adjudicate these rights claims. Hollenbach (2011, 810–812), for instance, claims that not all non-refugees[83] should be admitted as legitimate migrants, but the following priority rules should be considered:

1) "A rich country that has contributed to causing the economic deprivation of a poor country has a special duty to admit economic migrants from that poor country" (ibid.);

[83] The *Principle of Non-Refoulement of Refugees* clearly takes priority over national sovereignty in times of peace. Cf. discussion of this principle in Annex A, Table A7, Principle S3.

2) "When a country has a history of political or military involvement in the life of another country, the former country can have special duties to admit migrants from the latter" (ibid.)[84];
3) Additional grounds could be considered, including "welcoming migrants facing grave need in a nearby country" as a form of neighbourly solidarity, or "opening the door to migrants with religious or cultural ties to the people of the receiving country" (though the latter is problematic since it could end up justifying discrimination in favour of "people like us" in a quota system)[85].

The main aim of this dissertation is to propose and argue in favour of a series of priority rules such as those mentioned by Hollenbach. Such rules put the emphasis on the "who" we should let in, rather than on the "how many" do we need: we should start to analyse rights claims ethically, rather than start by establishing quotas based on economic models. Obviously, there is a limit to "how many" can be absorbed and integrated in any given polity, though it is doubtful that any developed country today (including a tiny country like Malta) may be anywhere near that limit (even when we

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[84] These two priority rules can be linked to Christiansen´s (1988, 91) claim that the obligation of rich nations to help poorer nations through international cooperation development aid is "more weighty where political, military or economic intervention has either contributed to economic deprivation or prevented its correction". Christiansen´s argument is based on Shue (1980, 35–64; 155–174), and gives, as an example, U.S involvement in Central America.

[85] Christiansen (1988, 91) suggests some other priority rules. "The poor ought to have priority over other economic migrants in admission to the United States and in eligibility for US citizenship. To effect such a new priority for the poor, privileges for men and women with certain employable skills or professional qualifications need to be strictly limited. […] People who have suffered extreme economic deprivation ought to be given the same priority for admission as political refugees from more repressive regimes. The current privileged status of political refugees, especially those fleeing communist regimes, no longer makes moral sense. They still deserve special consideration, but alongside refugees from right-wing authoritarian regimes and economic migrants from the poorest countries."

count undocumented immigrants). At some point, however, when adjudicating the claims of persons who do not "strictly" have the right to immigrate into a particular country (since they do not satisfy the ethical criteria), quotas may be required to cap excessive migration flows, and a discussion on "how many" may be in order, especially if formulated in this way: "how many immigrants would we like to include in our project of building a society together?" (ES-IE 82). This question helps us realize that rules for admission of migrants should also be linked to integration. The good of "political belonging" should not be offered to those who do not really want to build a society together with current citizens. This is an important matter to consider when distinguishing between admitting temporary migrant workers or persons fleeing persecution (who might be returned if the persecution ceases in a matter of a few months or years), and admitting permanent residents.

2.5 A New Cycle of Action: Formulating the Main Question of Our Investigation

The lack of clear priority rules is a limitation of CST which may seem quite disappointing to certain Catholics who work in the field, or who have a heightened consciousness of the actual situation. The moral theologian, however, sees in them a great opportunity to ply her trade and exercise her ecclesial vocation by applying general principles to concrete situations, and proposing secondary principles or criteria to enlighten the Christian conscience and help Christian communities, under the guidance of their pastors, to see, judge and act collectively in their concrete, local context. This has, in fact, been precisely the task of Moral Theology over the centuries[86]. Indeed, if we appreciate

[86] For most of the history of the Church, the Papacy relied on theologians (scholar-bishops, learned monks, university professors, manualists) for concrete guidance in ethical matters (Keenan 2006, 171f). Furthermore, in some recent documents (notably *Octogesima adveniens* n. 4), the popes have stated that in an in-

the principle of subsidiarity and apply it to the Church itself, then members of Christian communities should have no qualms about seeking guidance from moral theologians on the issue of migration, and moral theologians should see here an invitation, being made to them by the Church, to investigate such a complex matter in an interdisciplinary way, as is fitting (bringing together the resources of the academia and pastoral reflection from the grassroots), and to help the bishops formulate more concrete proposals in their local context.

The above limitations raise three sets of interesting questions which we will try to answer in the present dissertation. *First*: how has international "economic" migration changed in recent years? Are the changes ethically relevant? Do the changes automatically warrant the restrictive policies which are being adopted by wealthy nations worldwide? *Second*: given the present situation, how do we balance the rights of migrants and the rights of states (and receiving communities)? What priority rules should we adopt to adjudicate conflicting claims? How can these rules be linked to conditions for membership, sensible integration policy and a feasible project for the building of a cohesive society and a national identity that includes natives and immigrants? *Third*: how should we understand necessity and human agency in the phenomenon of migration, so as to develop a robust notion of a "forced migrant" in a globalising world? How are mobility and stability an integral part of human reality?

An interdisciplinary analysis of the actual situation of international migration (Chapters 3-4) will provide us with a number of observations that will help us answer some of these questions, espe-

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creasingly complex world, one cannot expect it to provide one-size-fits-all solutions and concrete guidance on all matters.

cially those in the first set. Contemporary Philosophy (Chapter 5) and biblical exegesis (Chapter 6) will help us reflect more deeply on the issues of mobility and stability, forced migration, and the rights of persons, families and polities. This reflection will lead us to a conceptual framework, both philosophical and theological, and based on the virtues of fraternity and hospitality, which will help us provide a series of priority rules for adjudicating conflicting claims and so evaluate border policies and naturalisation laws ethically (Chapter 7).

2.6 Conclusion

The purpose of this chapter was to set the tone for a mature discussion on migration and borders in a globalising world. I have done this by presenting, with sufficient nuance and complexity, what Catholic Teaching says about these issues and by showing how this reflection can serve as a "conversation starter", rather than a "conversation stopper" in the current debates. I have not analysed all the tensions present in this body of teaching, nor have I tried to apply this teaching to a particular case of immigration policy, but have rather limited myself to the preliminary task of clarifying what we are actually speaking about when we refer to CST on migration and borders, and to note some of its *lacunae* and problematic elements. After observing and reflecting on CST, and on its way of seeing and judging the phenomenon of human migration, we are moved to act. Part of the action is also intellectual, and consists precisely in embarking on a new cycle of observation, analysis and reflection through projects such as the present dissertation. This has been facilitated in the previous section by a series of questions and a scheme of chapters which will frame our research.

CHAPTER 3: AN INTERDISCIPLINARY OVERVIEW OF INTERNATIONAL MIGRATION

3.0 Introduction

While seeking to understand in what ways the phenomenon of human migration has changed in recent years, this chapter provides a wide yet nuanced and well-documented panorama of the phenomenon, bringing together a number of empirical approaches. It sets the stage for philosophical and theological reflection in later chapters, and ensures that the ensuing speculative debate is well informed of the complexity and concreteness of the situation on the ground. The changes caused by demographic shifts (3.1), globalisation and new understandings of political sovereignty (3.2), irregular migration (3.3), new destination countries and rising xenophobia (3.4), scepticism on integration (3.5), and shrinking welfare states (3.6) are explored, to see if, today, they justify increased immigration restriction and the negation of the "right to immigrate" proposed in the mid-20th century and defended by CST.

Ecology and Economics (3.1), Sociology and History (3.2, 3.5, 3.6), Law (3.3), Political Science (3.4) and Psychology (3.5) are thus used to reflect on migration in the last decades of the 20th century and in the 21st century. In the conclusion (3.7), we review "what´s new" in the phenomenon of human mobility in the so-called age of "globalisation", to see if the empirical reality on the ground today has changed in ways that require a rethink of ethics and Catholic Social Thought on the matter or not.

3.1 Demographics: Volumes Have Changed

According to the United Nations, "by 2010, the estimated number of international migrants was 214 million, an increase of 58 million since 1990. International migrants represented 3.1 per cent of the total world population" (UN-DESA 2011, xviii). Furthermore, "at the end of 2010, it was estimated that there were 15.4 million refugees and 845,800 asylum-seekers globally" (International Organization for Migration 2011, 54). The number of international migrants has more than doubled since 1965 (Zlotnik 1998, 431), such that the end of the 20th century, and the start of the 21st have been called "the age of migration" (Castles and Miller 2009). These statistics are impressive; nobody doubts that the volume of migratory flows has increased significantly. The question is whether the situation constitutes some sort of "crisis", or exceptional situation, justifying severe limitations to the freedom of movement of persons, and the adoption of harsh immigration restriction policies.

3.1.1 Why Are There So Many Migrants Today? Brief Historical Background

When people in wealthy countries speak about "immigrants" today, they do not usually think of people with similar or higher levels of wealth and education, coming from countries with similar or higher levels of development as theirs. Most people do not object to stockbrokers, software engineers or wealthy retirees moving into their neighbourhood, whatever their race or religion, and would be happy to let them buy 3.1% of the housing there, or much more. 214 million middle-class people spread out all over the world in this manner would not be a real cause of concern.

Yet, most of those 214 million persons are not middle-class, and they are not spread evenly around the world, and among rich and poor neighbourhoods in receiving countries. Actually, there is often a huge economic and developmental differential between sending and receiving countries and this

is what mainly drives the flow. This differential fuels dangerous myths about "being invaded by hoards of paupers", it makes integration difficult, it produces an excess of low-skilled labour on the international labour markets which private enterprise is tempted to exploit, oftentimes to the detriment of local labour and of the migrants themselves. As citizens from certain countries and regions plunged in debt, poverty, ecological crises and political instability come to realize that their dearth of civil, social and economic freedoms can no longer be tolerated in a contemporary world that produces so much wealth and knowledge, they may feel forced to migrate elsewhere to provide for themselves and their families at least the minimum of what is considered "decent" in the 21st century.

A century ago, masses of people were ready to move to countries where wages (adjusted to Purchasing Power Parity – PPP) were twice those in their own, or even less. Today, wage gaps could be tenfold or more (Pritchett 2006, 20–27), and the pressure to migrate is enormous. How did this come to be? Why are some countries called "developed" (formerly called "industrialized" and before that "colonial powers", and for a reason), while others seem to be stuck with the label "developing"?

A more exhaustive answer to this question needs to address three implicit parts of the question, so as to trace three periods of world history. (1) How did some countries accumulate enough knowledge, wealth and demographic growth at the eve of modernity to embark on colonial ventures? (2) During modernity, why did only a few of the colonies develop so much as to rival their colonial masters? (3) Today, after 50 or more years of decolonization and independence, why are there so few of the former colonies which seem to be "catching up"? For reasons of space, we can

only refer the reader to authors like Jared Diamond (2005) for a serious discussion of the first two questions. Ecology, luck and historical accidents (not biological or cultural superiority) explain why certain peoples were equipped to colonize others in early modernity; racist segregation, immigration and education policies in the colonies (together with wholesale massacres of natives in some) explain to a good degree why the US, Canada and Australia had a predominantly white, educated and effective workforce and bureaucracy after decolonization (and became culturally and economically very similar to their former colonizers), while other countries did not (and rather had to deal with white flight, lack of capital and skills, a poorly educated bureaucracy and the difficulties of building an industrial and services sector from scratch).

Some would object, however, that 45 years or more have passed since most "young" nations became independent, and that they have had ample time to rebuild their institutions and rush to catch up with the global West and North, especially given the wealth of natural resources they possess. Why aren´t many unemployed and impoverished Europeans and Americans migrating to Kinshasa, Cuzco, Manila, Abidjan, Hyderabad, Lagos or Tehran to find jobs in the current recession? One part of the answer to this third question is that 45 years, for many nations, is not enough to "catch up", though many "new" states have not lost time, and a few have even surpassed their former colonizers in human development within a couple of decades[87]. Another part has to do with

[87] Using the Human Development Index to rank nations, we could highlight South Korea, Singapore, Malta, Brunei, Qatar, Bahrain, Chile, Barbados, the Seychelles, Malaysia, Costa Rica and even Cuba: these nations have done some impressive "catching up" since independence, and in some cases have reached or surpassed their former colonizers in spite of a lack of natural resources. In sub-Saharan and non-continental Africa, Gabon and Botswana, and Mauritius and Cape Verde, are the "stars" which Westerners hardly know about. Since they defy the stereotypes, and do not furnish "typical" or "exotic" African news stories, they rarely feature in the Western newscasts.

different demographic histories and futures. A third part of the answer lies in the fact that most unemployed Europeans and Americans do not seem to have the hope and determination to embark on a great adventure and travel the world for a decent job and a promising future, while many Africans and Asians do.

However, the most relevant part of the answer lies in the debt burdens that many developing nations got into after the oil crisis of the early 1970s, which made billions of "petro-dollars" easily available to poor countries, while crippling the world economy and ending 20 years of economic boom (Marfleet 2005, 42–44). As emerging nations borrowed money and equipped themselves to export more and more, developed nations struggled with stagflation and importing less and less, and soon, poor countries were accumulating infrastructural and industrial white elephants and borrowing more and more money at higher interest rates to service their soaring debt. When they could no longer pay their debts, "Washington Consensus" policy prescriptions were imposed by the IMF and World Bank to reform the economies of these nations via one-size-fits-all "Structural Adjustment Programmes"; the effects of these programmes on human development were, in general, devastating (Marfleet 2005, 44f; Stiglitz 2003)[88]. Increasing poverty and marginalisation led groups

[88] The "Washington Consensus" is a set of economic policy recommendations, summarised in John Williamson´s (1990) famous "ten points" or the mantra "Stabilize, privatize, and liberalize". These policies, implemented during 1990s, were proposed as a way out of the stagnation of the 1980s, which development economists call the "lost decade", but they did not make the situation any better. World Bank economists, such as William Easterly (2001, 135) estimate that "in 1980–98, median per capita income growth in developing countries was 0.0 percent, as compared to 2.5 percent in 1960–79." In fact, the World Bank (2005) itself, one of the major institutions behind the Washington Consensus, in its lucid report "Economic Growth in the 1990s: Learning from a Decade of Reform", recognises that the reform policies imposed on developing countries in the 90s did not have the desired results, and that the way forward should be one of humility, policy diversity, selective and modest reforms and experimentation. One of the big lessons learnt is that "institutional quality" is more important for economic growth than policies (especially those which seem to work

and regions, frustrated with post-colonial governments' economic failures, corruption and ethnic favouritism, to revolt. Governments started spending most of their shrinking budgets on the military, to improve security and political stability, halting educational, healthcare and useful infrastructural projects, and ultimately stalling economic development. The result was a downward spiral of pauperization and violence, often interlaced with environmental degradation. The result of all this was the displacement of millions of people caused by classical Refugee Convention "grounds", but also by poverty and marginalisation, chronic stagnation of human development, deprivation of the effective enjoyment and exercise of human rights, ecological crises and the effects of natural disasters aggravated and rendered unbearable by the previous factors.

In the following sections, we explore some of the economic and ecological factors which drive migration. We discuss refugee movements in section 3.3.2.

3.1.2 Economic Links between Countries, Migration and Development Theories

Local Catholic bishops´ conferences and their commissions have often commented on the negative impacts of "globalisation" on certain sectors of the population of poorer countries. For instance the bishops of the US and Mexico comment negatively on the impact of NAFTA on farmers and small

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only on paper or in a totally different cultural context), and some of the Washington Consensus policies actually weakened "institutional quality" and as a result produced economic regression (World Bank 2005, 3f). Some apologists of these policies like to note that "rapid economic growth in China, India, and a few other Asian countries […] resulted in an *absolute* reduction in the number of people living in extreme poverty. […However,] with high levels of trade protection, lack of privatization, extensive industrial policies, and lax fiscal and financial policies through the 1990s, these two economies hardly looked like exemplars of the Washington Consensus" (Rodrik 2006, 975). Meanwhile, during the 90s, it became evident that GDP growth was not a very good indicator of human development; for instance, many oil-producing countries increased their GDP but did not make significant advances in human development. Work by economists such as Mahbub ul Haq and Amartya Sen eventually incorporated the notion of "human capabilities" to produce more adequate indicators, such as the Human Development Index (HDI) and the Inequality-Adjusted HDI (IHDI).

businesses in Mexico (USMX-SNL 60), and one of the documents issued by the Episcopal Committee on Migrations and Travelling People of the French Bishops´ Conference makes the following observations:

> *Multinationals and large shareholders manipulate Governments and public opinion through their media and their armies of legal experts. They strongly influence the World Trade Organization which promotes the dumping of agricultural materials, ruining farmers and agribusinesses of developing countries. They use agreements on intellectual property rights related to trade (covering genetically modified organisms and medications) to further their interests, preventing the empowerment of farmers and the access of disadvantaged masses to medicines, both needed to solve the problem of poverty. They entice the World Bank, through the banks, to finance large projects which provide benefits for them, but often not for all people concerned (Comité épiscopal des migrations et des gens du voyage de la Conférence des évêques de France 2004, A:3).*

This take on contemporary international relations and economic realities may sound excessively pessimistic or critical to some readers. What most economists seem to agree upon, however, is that "Washington-Consensus" policies imposed in the 1980s and 1990s on developing countries did not work. Reputable economists like 2001 Nobel laureate Joseph E. Stiglitz (2003), former senior vice-president and chief economist of the World Bank, have harshly critiqued the policies practiced by the IMF at the end of the XXth century, and the World Bank (2005) itself has officially recognised some of the mistakes of those years, when the interests of lenders were considered much more important than the actual development of poorer countries, and international institutions ended up dictating polices that were detrimental to economic growth in the global South. As improved transportation and communication technologies made connections between poorer and richer countries easier and cheaper, and as the poverty gap between the global North and South became wider, the

pressure on citizens of poorer countries to migrate north became bigger and bigger[89]. Yet, as we shall see below (section 3.3.3), in a world where practically everything is allowed to move freely across borders except human beings, such migration is quickly made "illegal", and becomes problematic.

To avoid such a "problem", development economists have for several decades insisted on the importance of development aid to narrow the gap between rich and poor countries, and minimize migration, which was seen as problematic for receiving countries (especially after the 1973 recession) and also for most sending countries (since, in very poor countries, only very skilled persons could afford to migrate, until recently, and the "brain drain" which resulted seemed to further undermine development). The thesis was: "it´s *either* development *or* migration, and we would much rather have the former". Since the 2000s, however, many economists have started to argue that — from an economic perspective — migration is generally beneficial both to receiving countries and to sending countries, and that its usefulness as a tool for development cannot be disregarded and denied any longer (UK House of Commons 2004; Clemens 2011; Pritchett 2006, 1f). Their thesis is "we need both development *and* migration; in fact, you can rarely have one without the other." Let us

[89] Lant Pritchett (2006, chap. 1–2), a socioeconomist who works for the World Bank, notes that two "irresistible" forces that drive human migration today are the *gaps in unskilled wages* and the current *"Everything but labour" form of Globalisation.* Pritchett shows that in the 19th century people were ready to move in great numbers if they could earn twice the salary — adjusted for purchasing power parity — they earned at home. Today there are differentials often as high as 10 to 1, so the pressure to move is enormous. Furthermore, the peculiarity of the "New Globalisation" is that, while goods, capital, information, tourists and businesspersons are allowed to move quite freely across borders, labour movement is strongly restricted. Compared with the 18th century, it is much cheaper and easier (in terms of cultural, social, and psychological adaptation) to migrate today, but for many people it has become legally impossible and potentially deadly.

briefly examine these claims from the two perspectives: those of receiving countries and those of sending countries.

Let us first look at the economics of migration from the point of view of **receiving** countries:

1. Receiving countries tend to have low birth rates and, given their **demographic futures**, they need to ensure their labour force is large enough to sustain pension schemes and social services, and maintain the populations of certain regions (which are shrinking, demographically) at a high-enough level to make services sustainable, and goods and transportation affordable through economies of scale (Pritchett 2006, 26f; Kunz and Leinonen 2007). At present, given the demographic expansion in emerging countries, labour is readily available on world markets, but the rate of growth of the world population is slowing, and in a number of decades it may prove harder to maintain the size of the labour force in wealthy nations without (a) actively attracting (unskilled and semi-skilled) labour from poorer countries, (b) increasing birth rates, (c) improving automation technologies and/or (d) scaling down pension schemes, social services, and services to depopulated regions (cf. The European Commission - Ageing Working Group 2012)[90].

[90] The US is generally considered to have less of a problem with ageing than most European countries, given its relatively small welfare state and growing population. However, the growth of the US labour force has slowed down considerably in recent years, and this accounts for "most of the slow recovery in employment, and nearly all of the slow recovery in output" after the Great Recession (Stock and Watson 2012). Studies show that the very fact that there is population growth in the US owes much to regular and irregular immigration, and that immigrant homes are more likely to provide children with both mother and father figures than the homes of native-born Americans: "According to [our] estimates, some 45% of unauthorized immigrants live with a spouse (or cohabiting partner) and child or children, compared with 34% of legal immigrant adults and 21% of U.S.-born adults" (Passel and Taylor 2010).

2. Continued Employment Growth in "**Productivity-Resistant, Low-Skill, Hard-Core Non-tradable Services"** entails an increasing need of low-skilled and semi-skilled labour in developed countries. While computerized automation has reduced the size of the labour force needed in some factories, and may eventually become sophisticated enough for certain delicate agricultural work, the information age also means that we need more delivery persons, store and warehouse assistants, food preparation workers, cooks and restaurant servers, janitors, receptionists, gardeners and landscape artists, packers and hand packagers, home health aides, security guards, etc. These jobs cannot be easily outsourced abroad or performed by robots (Pritchett 2006, 34f); they are in themselves dignified jobs, though generally shunned by citizens of wealthy nations due to low pay, poor working conditions and low social standing usually associated with these jobs. Employer sanctions aimed primarily at avoiding exploitation (rather than deporting irregular immigrants!) could help improve the working conditions and pay associated with these jobs, raise the social standing of such jobs, and maybe attract some more native workers into these expanding sectors of the economy (Lee 2009). It is important that advocates of immigrant rights do not look at these jobs with disdain, and focus their critique on the problem of exploitation. Many first-generation immigrants may have valid reasons to want to do such jobs in a developed country, even if they are "overqualified" and if, in an ideal world, they might put their education to better use in their home countries.
3. The "lump of jobs" theory, claiming that there are only so many jobs in a developed economy, and that employing immigrants causes natives to lose their jobs, is fallacious (DeVoretz 2004). By increasing population size, immigration creates new jobs; by making the jobs re-

ferred to in (2) competitive in developed countries, immigration contributes to the stabilization or expansion of certain parts of the economy, which then creates new higher level jobs (in training, management, administration, etc.) typically sought and filled in by natives. A famous debate between economists George Borjas and Michael Card on the **impact of immigrant labour on the employment and welfare of native workers** in the US has shown the complexity of making such measurements and their dependence on historical contingencies, local laws, and on certain assumptions used in the modelling. The general conclusion is that "while labour immigration has a minimal or even positive impact on the receiving economy as a whole, it seems that its impact on a small but vulnerable segment of the population is undesirable" (Castles and Miller 2012; cf. Kleinman 2003; Boeri et al. 2005, 638f). The rational solution to this problem, of course, is to mitigate these negative effects by helping local economies negatively affected by immigration and channelling more immigrant labour through the formal economy and legal immigration system, rather than to attempt to stop irregular immigration by expensive and potentially deadly border control measures with limited effectiveness.

4. Studies regarding the impact of immigration on **public finances** give complex results. Immigrants — even irregular migrants — obviously pay sales taxes, payroll taxes, and others taxes that target them directly; in most countries they contribute to healthcare, pension and unemployment benefit schemes without being able to use these services when they need them. Local governments in democratic countries with some minimal commitment to human rights need to provide some education for the children of destitute immigrants (even irregular immigrants, especially if such children are citizens by birth right) and emergency

medical services. In countries like the US, following a simplistic and crassly-self-interested calculus based on the "Simon principle"[91], the access to such rights for irregular migrants has been progressively restricted in recent years, in an attempt to make all immigrants a net contributor to public accounts on *all* levels of government. Most studies in countries which provide free basic services to all immigrants (through some sort of firewall that allows everyone access to basic human-rights services independently of immigration status) conclude that immigrants have *a negligible or small net positive* effect on public finances on the *national or federal level*, but a *small net negative* effect on local public finances, particularly in countries where poor regions or neighbourhoods (with overstretched public services) are mostly left alone to deal with the influx of refugees and poor immigrants, the benefits of whose labour accrue in other neighbourhoods and regions (Yuengert 2003, 39; J. L. Simon 1996; Ugur 2007, 82–83). The effect of "irregular" and "economic" immigrants, however, is probably much more economically positive than what emerges from such studies[92]. For instance, several recent studies in the U.S concluded that, while unskilled labourers (such as labour immigrants), on paper, pay no income taxes, reductions in their hourly wages (or lack of compensation for inflation) account for a substantial portion of corporate income tax

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[91] "If the marginal immigrant makes a non-negative contribution to the treasury, you continue to admit immigrants until the contribution goes to zero" (DeVoretz 2004; cf. J. L. Simon 1984); alternatively, if you cannot or do not want to stop the inflow, you reduce treasury expenditure on immigrants. The US eliminated immigrant access to welfare in the 1996 Welfare Reform.

[92] Economists often limit themselves to compare the *actual* tax contributions and use of government welfare services by foreign-born and native-born, which tend to distort the picture considerably. A more suitable method should distinguish refugees (which are admitted for protection) from labour migrants (who are somewhat expected to contribute to the economy), estimate contributions over a lifetime, and compare the state of public finances in the presence of immigrant labour, with that in its theoretical absence. This would give us much different picture from the one above.

payments[93]. This means that, without the availability of low-skilled immigrant labour, local and national governments would find it very hard to maintain or increase revenue from corporate taxes.

5. Immigrants tend to accumulate wealth after arrival (through savings) and by the second generation (through education), as shown by empirical data from Canada; this indicates that immigration "raises the capital labour ratio in the destination country and may have possible spill-over effects on the resident population" (DeVoretz 2004). Some authors, such as Bowles and Colton (2007), argue that immigrant entrepreneurs have emerged as key engines of growth for many cities in developed countries.
6. One key issue discussed in the literature is the impact of immigration on social welfare states. We discuss this further in section 3.6.
7. Because of the above, there is renewed enthusiasm, today, for **temporary migration** and new guestworker programmes; this is sometimes called "circular migration". One could imagine international instruments and agreements to facilitate this (e.g. the WTO´s GATS Mode 4 or a new multilateral organization, such as the "World Migration Organization" proposed by Ugur (2007, 87f)) though the current trend favours bilateral accords (e.g. the European "Mobility Partnership" system) which ultimately are most beneficial to receiving countries. Of course, there is a problem here since labour-exporting countries want the permanent emigration of surplus low-skilled workers and the temporary emigration of the

[93] A 2009 study conducted by the Federal Reserve Bank of Kansas City (Felix 2009) concluded that "from 1992 to 2005, a one-percentage-point increase in the state corporate tax rate decreased wages 0.52 percent, on average", and a similar study conducted by the US Treasury in 2007 found that "labor bears a large burden from [corporate] tax, possibly exceeding the revenues collected from the tax" (Gentry 2007).

> highly skilled, while labour-importing countries seek the opposite, and the asymmetry of power in international forums has ensured that the latter get what they want, at the expense of the former´s needs (cf. Appleyard 1989). Given the global "surplus" of low-skilled labour on the international labour markets, the demand side gets to impose all sorts of restrictions on the entry of low-skilled labourers (and easier deportation of irregular migrants and overstayers), while poor nations are not in a position to negotiate fair guestworker schemes that protect the rights of their citizens. As we have seen above, this may eventually change, as wealthy nations realize their need of unskilled and semi-skilled labourers, but for the moment, where it proves politically difficult to provide a fair legal regime to bring in such labourers, employers can readily find irregular migrant workers to satisfy their needs (Castles and Miller 2009, 67f).

All this shows that, from the point of **receiving countries**, immigration (at least at current rates) is generally economically beneficial; at best, it can be *very beneficial*, at worst (e.g. during a grave recession) its impact is *neutral* (provided negative externalities on low-income households and poor neighbourhoods are mitigated). In most developed economies, this conclusion also holds in the presence of considerable irregular immigration of low-skilled labour, though such a mode of immigration is undesirable (especially for social, legal and ethical reasons). For example, it is estimated that $2.6 trillion would be lost from US cumulative GDP over 10 years if all unauthorized immigrants in the country were deported (Hinojosa-Ojeda, 2010). The well-funded efforts of anti-immigrant "think-tanks" to prove otherwise are usually discredited by reputable economists; unfortunately their clientele is not lacking, and this ensures a continuous supply of half-truths and distorted statistics that serve the agendas of certain politicians and the media. Of course, economic benefits and

costs are not the only ones to consider from a political or ethical standpoint; the economic benefits accruing to wealthy nations through liberal immigration policies is probably the least relevant of ethical criteria when discerning what a just immigration policy should look like. Yet, many citizens in wealthy nations simply assume, on the basis of false data and the principle that "charity begins at home", that a "more open" border policy will automatically make them or their country poorer, and on that basis refuse even to consider more substantial ethical arguments against immigration restriction.

Let us now look at the economics of migration from the point of view of **sending** countries:

1. The first benefit to note is **economic remittances**. As foreign development aid has been attacked from many sides in recent years, and as the number of emigrants increased, remittances have become the main source of external income for many countries, exceeding both foreign aid and foreign direct investment. In some cases, remittances could be spent exclusively on foreign consumer goods (weakening the local economy), and making families dependent on "easy money" and even to buy weapons that fuel conflicts, especially in unstable and very corrupt emerging countries. In general, however, they have multiplier effects on the local economy, help improve education and healthcare, and allow more prudent families to accumulate some capital which they can invest (Castles and Miller 2009, 59f; World Bank 2006, 88f).
2. The second thing which is receiving increasing attention is **social remittances**, that is, the transfer of attitudes and capabilities by migrants when they visit and return to the country of origin. Some of these attitudes and capabilities are indeed conducive to development (e.g. saving, investing in business ventures and the education of children, incorporation of

information technology into one´s lifestyle) though there are negative effects in the process: some critics see this as a new form of cultural colonization, and the "cool and comfortable" lifestyle of returnees may transform the migratory process into an unavoidable "rite of passage" for most young adults in certain regions (Castles and Miller 2009, 62–3).

3. Economists and international agencies are also reconsidering previous estimates of the negative effects of "**brain drain**", especially in countries with education systems which are not too weak. A good percentage of migrants do return at some point (especially if remittances help the country to develop and increase work opportunities for the highly-skilled), so there is also "brain circulation" and "brain gain". Furthermore, many skilled people have good reasons not to migrate (especially if they earn decent salaries) and actually do not. Remittances from highly skilled migrants are often spent on the education of their families (and have a multiplier effect on education systems), and the prospect of a high-earning job abroad provides a good incentive for families to invest in the education of children. Of course, much depends on the level of development of the sending country and its educational system[94]; some authors insist that we need to evaluate the issue according to the country in question. We know all too well that developed-country governments want to retain the highly skilled migrants and want low-skilled to return home permanently, yet the best policy for emerging countries is probably the opposite, i.e. sending back skilled migrants, and not the low-skilled (Castles and Miller 2009, 63f). In any case, there is little

[94] The institutions of some countries are so poor and weak that they cannot afford any amount of "brain drain", which renders these institution even weaker (especially the loss of skilled medical personnel, in countries with low densities of skilled professionals). However, certain countries have regimes so corrupt, repressive and incompetent that they force their best minds to flee, even when these would rather stay.

chance coercion could work to stop brain-drain in a globalising world economy; even if one rich country forces a skilled worker to return home at the end of her contract, another country will surely take her in. The challenge for emerging nations is to turn this reality into a development opportunity, and to reform one´s institutions to retain a healthy number of skilled workers.

4. Migration is also beneficial to poorer nations due to a phenomenon which has received little attention by economists until recently (Pritchett 2006, 44), which can be called the **ghost-zombie phenomenon**. "Ghost-enabled" countries/regions allow people to move out in a time of economic decline, and seek new economic possibilities by migrating to other countries/regions experiencing economic expansion, just like the famous ghost towns in American history and films[95]. "Forced-Zombie" countries/regions are those from which people cannot freely emigrate in time of economic hardship and downsizing, especially when a dwindling economy is expected to provide for the needs of a growing population. At any given time, large countries with diversified economies, like the US or (more recently) border-free regions like the most of the EU, have zones which need workers and others which are shedding them, cities which are growing and others which are shrinking; movement is relatively easy and prevents concentrations of unemployed people and localized pauperiza-

[95] Pritchett himself grew up near Idaho City which was once a booming frontier town and a magnet for gold prospectors and today has a population of less than 500. There were whole regions in the US which became "ghosts" when mining declined or agriculture became mechanized and required less labourers. What happened with those people? Most of them moved to other cities or regions of the US.

tion[96]. However, Westphalian sovereignty also creates "zombies", that is, cities, regions and countries which are relatively small, have excess population and yet, in the case of an economic collapse, cannot become "ghosts" because of impermeable international borders and immigration restriction in most other countries which could offer employment to their citizens[97]. Migration helps to prevent the formation of zombie regions and nations, and in this way helps countries to develop.

As can be seen from the nuances above, the link between development and migration is complex (Appleyard 1989), though most evidence points in the direction of considering migration as an important tool for development. In most cases, emigration does seem to aid development of poorer countries, if institutions can adapt to the pressures and changes that emigration provokes. Similarly, immigration is economically beneficial to receiving countries, especially if leaders are courageous

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[96] Similarly, one hundred years ago, many developing European countries were allowed to become "ghosts" when their economies collapsed (e.g. the Irish potato famine), since there were nations such as the US which readily welcomed their unemployed and impoverished population as immigrants to populate their booming cities and rural towns.

[97] For instance, fifty years ago, Zambia could sustain a relatively large population due to its copper mines, but when the price of copper fell and the country´s economy could not sustain such a large population, people could not move out. Rather, the population continued to grow, meaning that most people simply became poorer and poorer, and Zambia became an economic "zombie" (Pritchett 2006, 58). To be sure, the pressure on the people of Zambia to emigrate is enormous. In a theoretical "United States of Africa" with a diversified economy, Zambian miners could simply move to a factory job in, say, Ivory Coast, or find work in the tourist hot-spots of Mozambique. In the real world, they have rarely done so until very recently, because of the cultural and language differences, and the international borders, but also because the economy of Africa is not very diversified (the colonial powers did little to promote industry and services in Africa; at times they chose to destroy local artisan traditions to make the booming factories in Britain or France more profitable). Though Labour mobility between African states has nonetheless increased in recent years (cf. Kunz and Leinonen 2007; Peberdy and Crush 2007), most sub-Saharan Africans are not very keen to move to an agricultural or mining job in another African country impoverished by demographic expansion and by falling prices on the (oft manipulated) international markets. Rather, the African migrant is pushed to move to a first-world economy where he can often earn five times as much (or more) in real terms than in his homeland and where jobs are relatively easy to find for those willing to work hard (except, maybe, in times of global economic recession).

enough to confront xenophobia, wise enough to effectively relieve social tensions and to ease the pressure on social and educational institutions in poor neighbourhoods and regions, and far-sighted enough to ensure proper integration (especially of "irregular migrants" who, at some point, can/should no longer be threatened with removal) and clamp down on discrimination. While many economists are realizing this, some remain cautious and sceptical (Borjas 2001).

Most experts, however, believe that nothing short of "totalitarian-style" control and repression can effectively stop or restrict emigration or immigration in today´s world, and if the movement cannot be prevented, one cannot but aim to somehow control it and maximize the benefits (Harris 2007). Furthermore, it is important to note that the "development *or* migration" doctrine is also wrong in another sense. Whether or not migration contributes to development, development — at least in the short to medium term — surely contributes to migration. Economic and human development increases people's capabilities and aspirations, and so, their tendency to move and look for better opportunities in other regions or countries increases (de Haas 2006).

In conclusion, it is important to remind the reader that the above reflections do not entail that more liberal immigration policies alone can solve all development problems of emerging countries. Wealthy nations can do much to help poor countries develop and reduce "unwanted" immigration by reforming trade (to give emerging countries fairer access to global markets), stopping arms exports to conflict hotspots, and including strong incentives to improve human rights in their aid and trade agreements with poorer nations (Castles and Miller 2009, 77). Emerging countries too must avoid becoming excessively reliant on remittances to fund development, since these could lead to inflation and greater inequalities unless accompanied by political and economic reform that should

include improvements in governance, institution building, investments in timely and useful infrastructure, creation of investment-friendly political and legal regimes (cf. World Bank 2006, 104f).

3.1.3 Ecological Links between Sending and Receiving Countries

In 1998, a devastating hurricane made 2.5 million Hondurans homeless. Though there was no previous tradition of mass Honduran emigration towards the US, this event, coupled with chronic economic and political problems in the country (which aggravate and are aggravated by such natural disasters) started a flow that is still going strong today. In summer 2012, I travelled part of the migration corridor from Central America to the US; over 75% of the people I met in the immigrants´ shelters were from Honduras. Many scientists link an increase in hurricane intensity over the last decades to human-induced global warming, though others dispute this (Anthes et al. 2006; Union of Concerned Scientists 2006).

Much less disputed is the fact that the depletion and near-collapse of fish stocks, such as those on the west coast of Africa, is due to intensive industrial fishing (J. B. C. Jackson et al. 2001). Marine biologists and fisheries experts have been sounding the alarm bell as increasing numbers of trawlers from the European Union, China, Russia and other countries join local African fishing fleets to scour the ocean off northwest Africa (Chavance et al. 2005; cf. Food and Agriculture Organization of the United Nations 2012, 57, 199f). The effects of such practices — whereby government-subsidized and politically-backed private interests from wealthier nations exploit the political weakness and lack of effective management of natural resources in poorer countries (Ndiaye 2011) — go well beyond the patent decimation of fish populations and impoverishment of coastal communities. Brashares et al. (2004) have linked poor fish supply in recent years to increased bushmeat

hunting in West Africa, showing that ecosystems and economies further inland are being heavily impacted, thus compounding other ecological problems such as desertification and deforestation. As the growing populations in West Africa lose their sources of food and income, it is no wonder that many young people from these nations choose to migrate North, smuggling themselves into those same countries whose fleets are plundering their traditional fishing grounds (Lafraniere 2008). A UN Environment Programme (2011, 7) *Report on Livelihood Security in the Sahel* concludes that

> *Changes in the regional climate are impacting issues linked to the availability of natural resources essential to livelihoods in the region, as well as food insecurity. Along with important social, economic and political factors, this can lead to migration, conflict or a combination of the two.*

In 1995, there were an estimated 25 million "environmental migrants", and numbers have been steadily increasing (Myers 2002). Scholarship in this fairly new area of environmental migration is gradually developing, and some of the projections are tentative, but the United Nations Environment Programme claims that environmental degradation — especially deforestation — and rising sea levels due to global warming may cause 200 million people to become refugees by 2050 (UNEP, cited in APA 2012, 16). At the *2009 United Nations Climate Change Conference* (Copenhagen Summit), the delegates failed to agree to legally binding commitments for reducing CO_2 emissions, and the *Copenhagen Accord*, establishing that actions should be taken to keep any temperature increases to below 2°C, was not adopted but simply "taken note of". Time is running out for *mitigation*; many countries will simply have to accept that they will be suffering from the negative effects of climate change in the coming years, and will have to *adapt* —one of the major adaptation strategies, obviously, is migration (Castles 2010, 239f). Not taking a decision is itself a decision: by refusing to adopt *mitigation strategies* and leaving *adaptation* as the only alternative, wealthy nations

have decided they want people to move around the world seeking land and jobs. Instead of asking industry and business to cut emissions, they have tacitly accepted the moral duty to provide jobs and welfare for environmental migrants, both at home and in emerging countries. There will probably be even more Convention refugees in the coming years, since environmentally-induced migration and human displacement is also known to destabilize certain regions in poorer countries and fuel conflicts.

To be sure, many environmentalists have exaggerated the implications of global warming and the numbers of displaced persons in an effort to prod governments and voters into meaningful action; their strategy seems to have backfired (Castles 2010, 242). Their use of the term "environmental refugees" irked those who refuse any dilution of the Convention definition of refugee, fearing restrictions in protection; their tendency to postulate environmental *mono-causality* for the migration of millions of people made them clash with migration scholars who like to underline the *multi-causality* of migration decisions. In many cases, displacement of people will be local or regional, and may simply "disappear" in urbanization statistics. However, terminological qualms, multi-causality and invisibility do not make the underlying problems go away. Certain states in the Pacific Ocean have good reason to be worried that they may eventually disappear underwater, with their citizens becoming stateless persons (Moore and Smith 1995). Kiribati is trying to buy land on Fiji's main island, Viti Levu, to relocate its population, while the former president of the low-lying Maldives, Mohamed Nasheed, became world-famous for his efforts to make the international community more aware of the vulnerability of countries like his. Indeed, one may say that the Westphalian system is ill-equipped to deal with a world of disappearing landmasses and nation-states.

3.1.4 Excursus: Theories of Migration

I have just discussed two reasons for the recent increase in the volume of migrants: ecology and economics. I have shown how they are linked to each other, and to conflicts which generate refugees. Though I have sought to underline the complexity of the inter-related factors which drive mass migration, the account is still incomplete and partial. So as to better understand why people migrate, I will here present the major theories of migration discussed and used in recent literature, following the classification of Massey *et al*. (1999, chap. 1–2) and Castles and Miller (2009, chap. 2).

Labour is a major factor driving migration, and many classical theories focus on this aspect. The *Neoclassical Theory* of *Migration* (NTM, which links push and pull factors to supply and demand on a relatively free labour market) has its origins in the models of Ernst Georg Ravenstein in the 1880s, and has captured the imagination of many scholars and politicians. However, most economists and demographers consider it too crude and faulty to apply it as such today. In certain situations, people refuse to emigrate even when the "push" is considerable, and most migrants do not move to or even settle in the countries with the greatest "pull". Labour is a very peculiar market and it cannot be considered "relatively free". This is why, since the 1960s, other theories have been proposed which amend, enrich or even replace the neoclassical theory. These include the application of the *Segmented Labour Market Theory* (SLM) to migration studies (in the works of scholars such as Michael Piore, Saskia Sassen and Alejandro Portes) — which allows a shift to the study of the behaviours of the actors in the processes of migration (Gordon 1995) and focusses on the demand side — and the *New Economics of Labour Migration* (NEL) approach (J. Edward Taylor) — which focuses attention on the migratory decision-making of social groups, rather than individuals, and hence on the supply side.

Labour, however, is but one reason (though admittedly a very important one) why people migrate and states admit immigrants. This is why some scholars have developed other approaches to the phenomenon of human migration which bracket, to some extent, the state of international labour markets today, and focus on history and international relations (which may or may not indirectly include economic considerations). One such approach is the *Historical-Institutional Approach* (HIA, developed by authors such as Stephen Castles, Robin Cohen and also Saskia Sassen) which argues that the unequal distribution of economic and political power in the international economy has led to a "patchwork" globalisation where certain regions and polities could be locked into an "economic underdog" state for many decades and reduced to producing migrant labour for more politically powerful and economically dynamic regions and polities. This approach is based on political economy theories such as *Dependency Theory* and *World Systems Theory* which underline the importance of past wars, colonization, market hegemonies and Cold-War political and economic interference in explaining the economic situation in the world today (Castles and Miller 2009, 26f).

Given the partiality of HIA and economic approaches such as NTM, other theories have been developed in recent years, such as *Migration Systems Theory* (MST, with roots in geography), *Migration Networks Theory* (MNT, with roots in sociology and anthropology) and *Transnational Theory* (TNT). All of these theories seek to reflect the fact that migration tends to build dynamic bridges between countries: diasporas and expatriate communities bring in or send back migrants to the countries of origin, depending on the circumstances. These approaches tend to incorporate the ones mentioned

above, and reflect on micro-, meso- and macro-structures[98] that interact to make migration a self-sustaining process, once started. These more recent theories also help us to better understand why "temporary worker schemes" or "guestworker programmes" inevitably open the door to settlement, since labourers are not simple commodities which could be exported and imported at will:

> *The migratory process has certain internal dynamics based on the social networks which are at its core. These dynamics can lead to developments not initially intended either by the migrants themselves or by the states concerned. The most common outcome of migratory movement, whatever its initial character, is settlement of a significant proportion of the migrants, and formation of ethnic communities of minorities in the new country. Thus the emergence of societies which are more ethnically and culturally diverse must be seen as an inevitable result of initial decisions to recruit foreign workers, or to permit immigration (Castles and Miller 2009, 47).*

One may be skeptical about the explanatory power of some of the above theories, but the trend in migration scholarship today is to underscore the complexity and multi-causality of migration decisions. The economic motives (the search for jobs, for a better standard of living) which were central to the earlier theories (and which made movements seem mostly "voluntary" and "free") are now linked to more complex causes; such causes, when compounded as in the case of poor migrants from emerging countries, make the decision seem — at least in part — "necessary" and "forced" upon the migrant by the situation she is living in. As we have hinted above, the proximal reason explaining the decision of poor immigrants to migrate today is often pauperization and socio-political disenfranchisement, but the distal reasons may be varied: environmental degradation, conflict and violence, economic collapse, natural disasters (which in the absence of effective institutions make the situation unliveable), and so forth. Receiving countries may have a lot to do with the causes of these phenomena, and hence with what ultimately drives much international migration.

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[98] These structures go from small social networks, which make migration safer and information accessible to migrant families, to the huge machinery that drives the world economy and international relations.

3.1.5 Conclusion: The Changes Do Not Warrant Immigration Restriction

The discussion of the different theories of migration indicates that we need to explore other reasons for the recent increase in the volume of international migration, but our discussion on economics and ecology allows us to sketch a provisional conclusion at this point. The economics show that, in general, there is no real "global immigration crisis" that could justify denying the right to immigrate of all potential immigrants, or to increase immigration restriction measures. The flows reflect (a) increased integration of regional and international economies, (b) flawed development policies imposed by the West on developing countries in the 1980s and 1990s, and (c) the "ecological crisis", which is the real crisis relevant to our discussion here. All these reasons point to the need of allowing greater freedom of movement and freedom of contract, and of reducing restrictions on immigration.

3.2 Globalisation: Technologies Have Changed

A second argument in favour of reducing immigration flows, and adopting harsher immigration restriction measures, is based on the thesis that "globalisation" must be tamed, and national sovereignty reinforced against neo-colonialist attacks. New technologies have made it easier to travel today, but the fact that mass migration has been made possible does not imply that it is desirable or that the technology makes integration any easier. Let us briefly explore the phenomenon of "globalisation" and its impact on international migration.

3.2.1 What is "Globalisation"?

The word "globalisation" is used and abused by many people in everyday language, but what it really denotes is the subject of intense debates. Held *et al.* (1999, 2f) distinguish three groups of analysts: *hyperglobalisers*, *sceptics* and *transformationalists*.

1. **Hyperglobalisers** like Kenichi Ohmae (e.g. 1996) claim that in these last few decades have entered a new era where the dynamics and rules of a truly global marketplace dominate international trade and relations, eroding the power of national governments and creating a global civil society.
2. **Sceptics** like Hirst *et al*. (2009) reply that "globalisation" is mostly a myth that wants to give the impression that the *inter*-national economy has now become *ultra*-national and entered a phase where nobody is truly in control, and so cannot be rationally governed or ordered ethically toward some good through a political project. Obscure market dynamics are the new Moiras which will henceforth bear the blame and merit the praise for the ills and benefits of a "fully integrated" global economy. Certain globalisation sceptics (e.g. Petras and Veltmeyer 2000; 2001) argue that the world today is actually less interdependent than in 1890, that nation states are still very powerful and that the new jargon simply serves as a smokescreen for imperialism. Other sceptics underline the power of nation states today, but observe that governments are more and more afraid to use their power to redress the huge differences in wealth and development between regions and even within their own countries. They are afraid that short-term instability on the world markets or change in credit ratings would wreak chaos and make politicians unpopular at home.

3. **Transformationalists** like Anthony Giddens (2002) place the accent on the increasing level of technology-driven interconnectedness among individuals and peoples and the changes this brings to politics and economics: it opens up new and exciting possibilities but also causes upheavals, uncertainty and fear, as people and institutions struggle to adapt to the change.

Some authors, while accepting the globalisation theory in general, caution that "for most poor countries "globalisation" is a much less primary phenomenon than sovereignty, and even the most aggressively liberalizing countries have yet to overcome the disintegration consequences of sovereignty" (Pritchett 2010, 285). Thus, when dealing with emigration from such countries, we need to be careful not to place excessive importance on the globalisation hypothesis[99]. In this dissertation, I adopt a position somewhere between those of the sceptic and the transformationalist. I find the position of Hirst *et al*. (2009) generally convincing and helpful, since it places the current age in a larger historical perspective, though I do not share some of the pessimism of this view and would not like to dismiss too quickly the impact of the changes and transformations happening in our world.

In itself, the interconnectedness of peoples is by no means a recent phenomenon; in our age it has been spurred on by technology but also hindered by uncertainty and new forms of fear of the oth-

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[99] Pritchett (2010, 263) quotes J. M. Keynes´ famous description of the world as seen from upper and middle-class London in 1914, just before World War I destroyed that first experience of "globalisation": "What an extraordinary episode in the economic progress of man that age was which came to an end in August 1914! …in[to] the middle and upper classes, for whom life offered, at a low cost and with the least trouble, conveniences, comforts, and amenities beyond the compass of the richest and most powerful monarchs of other ages. The inhabitant of London could order by telephone, sipping his morning tea in bed, the various products of the whole earth, in such quantity as he might see fit, and reasonably expect their early delivery upon his doorstep". Then, as today, such "globalisation" was an experience of the interconnectedness of the world which not everyone had access to.

er. This interconnectedness has always been intricately linked with mass migrations. Before modernity, as empires rose and fell in the course of history linking peoples and territories, goods flowed from one area to another of Eurasia, and there were times of great population movements as people escaped persecution, sought economic opportunities in new imperial capitals and centres of trade, escaped ecological and other disasters that caused crops to fail (volcano eruptions, earthquakes, mini ice-ages in Northern Europe, locust invasions, blight infestations) and repopulated areas previously devastated by famines, plagues, and so on. Let us delve a bit deeper into the history of human mobility and interconnectedness to place the "novelty" of globalisation in historical perspective.

3.2.2 Sovereignty and Internationalization in the 2nd Millennium CE

3.2.2.1 Mass Migration before Westphalia

Most citizens of the US (but also of Canada, Australia, Chile and Argentina) willingly admit that they are the descendants of immigrants. Many would also admit that these modern states were built on mass migration which displaced the natives, and at times exterminated local tribes through the spread of disease and through massacre campaigns, thinly disguised in old history books as heroic "self-defence" battles against "hostile" Indians or aboriginals. Europeans would similarly admit that the Western Roman Empire collapsed due to mass migrations from Northern and Eastern Europe. What most seem to ignore, however, is that this displacement of peoples has been happening all over the world throughout human history, such that there is no country in the world today that was not "built on migration". Scientists such as Jared Diamond (e.g. 2005, chap. 17) combine data from Linguistics and Language Distribution Analysis, Archaeology, Paleobiology, Genetics and other disci-

plines to explain why even the remotest islands in the Pacific have experienced population displacement, even before the arrival of the Europeans, during migration eras such as the Austronesian expansion.

Historians studying documents from the second millennium CE help us to see how even this last millennium of human history has been a time of great human mobility, and that circuits of trade and human population movements were the norm, rather the exception, before the modern notion of state sovereignty was crafted at Westphalia. Dirk Hoerder (2002) provides a fascinating account of how cultures and civilizations have not been only in conflict, but also in contact, over the last centuries. In the 13th-century world system, for instance, the Normans had linked up Sicily with Britain and Scandinavia, the Mongols had connected Constantinople to Beijing, the Italian Maritime Republics linked Crimea, Alexandria and the western Mediterranean, and various groups of Arab and Chinese traders linked the Arabian Peninsula to East Africa, India, China and South East Asia through a number of trade and migration circuits. The Hanseatic League was also taking shape, as well as a trade circuit in the Sahel region of Africa; furthermore, all of these systems were interconnected. Santiago de Compostela, Rome, Jerusalem and Mecca commanded vast and relatively safe road networks travelled by pilgrims, traders and armies alike. Then, a mini ice-age in the 14th century led to crop failures, economic depression and famine in many countries in the Northern hemisphere and crippled the world economy. Forced migration and political destabilization made hundreds of thousands of people more vulnerable, and hence easy vectors for the spread of various diseases and plague epidemics. This lead to a great decline in the population of western Europe, and by the end of the 14th century, as the situation stabilized, the most fertile regions of the conti-

nent and the big commercial centres needed labour, and began attracting fugitive serfs from the south and the east (Hoerder 2002, 71f).

In this context, feudal lords in many countries enacted anti-migration ordinances, seeking to reduce the flow of people *out* of their dominions, and hoping to avoid having to pay higher wages to keep their servants working for them; even so, the migrations were hard to stop and eventually weakened the power of the feudal lords and led to the consolidation of monarchies and cities through urbanization. The movements were not limited to agricultural workers. Peddler-merchants, travelling journeymen, skilled craftsmen (e.g. masons and miners) and mercenaries travelled long distances to offer their services the highest bidder; they had children (and mistresses) in distant cities and carried new brides with them across Europe after their first wives died in labour. Maids, apprentices, pilgrims, clerics, religious missionaries and slaves, too, were highly mobile, especially in the Mediterranean region. In the south of Europe, Jews and Muslims were among the migrants, and Orthodox Christians from eastern Europe moved west as the Ottoman Empire expanded. Major European cities thus became multicultural, multi-ethnic and multi-religious, while states such as Venice which stretched from Italy to the eastern Mediterranean brought together Italian, Dalmatian, Albanian, Greek, Persian and Turkic peoples, to name a few (Hoerder 2002, 80f).

Starting in the late 15th century, however, things started to change in Europe. While the Ottoman Empire expanded and became relatively multi-ethnic and multi-religious through the *millet* system, and promoted state-managed migration systems to stimulate economic development, Western European nations sought to forge national identities through exclusion. Decades of expulsions and forced conversions of Jews and Muslims in the south were paralleled by the adoption (or rejection)

of the various Christian doctrines of the Reformers in northern and central Europe by princes and monarchs seeking autonomy (or protection) from the Pope and the Holy Roman Emperor. In the process, European borders became less and less porous, and national identities started taking shape as rulers forced religious minorities to convert or migrate. Cultural and religious diversity started to be considered as problematic. Labour migration circuits in Europe broke down and regional economies were devastated by marauding armies, as people were forced to choose where to live according to their religion, and the cultures prevalent in the centres of power became "national" and hegemonic. This process, however, also generated religious migration and eventually reinforced a nascent migration to the Americas (Hoerder 2002, chap. 4–5). Hoerder´s book follows mass migration movements as the European colonies spread and grew: slave migration from Africa, movements of people in the Indian Ocean during colonial times, resettlement of Latin America by Iberian peoples after the population collapse of the late 15th and early 16th centuries, the settlement of Australia and the African Cape, the Fur Empires and subsequent agricultural settlement of North America and Siberia.

The peace of Westphalia (1648) defined borders and consolidated national identities in Europe. It did not, however, seal the frontiers of Europe and the old world. In fact, as prosperity and economic development returned to certain regions of Europe, labour migration flourished once again in the continent, starting with mass migration and circular migration to the newly-independent and nominally Calvinist Netherlands, which promoted toleration and welcomed Jews, Lutherans, Anabaptists and Catholics, as well as French Huguenot refugees (especially after the Edict of Fontainebleau in 1685), and rapidly became one of the wealthiest nations in the world, dominating trade in the Far East, the North Sea, even in most of the Atlantic Ocean. The Dutch East India Company, the first

multinational corporation, monopolized trade in Asia for two centuries and moved goods and people around the globe as it established an extraordinarily diverse system of colonies and trading posts. Other European nations, starting with Britain, sought to compete with the tiny Dutch nation, and emulate its economic model. Mercantilism quickly came to shape policymaking in many European courts: following this economic doctrine, competing sovereign nations scrambled to hoard all the resources they could lay their hands on, luring skilled labour from other European countries, and accumulating unskilled labour by large-scale colonization of Asia and the Americas, and by importing slave labour from Africa and elsewhere to the colonies. Historians like Klaus Bade (2003) trace migration patterns in modern European history, from the independence of the Netherlands to the 1990s, following movements within Europe, early emigration to the colonies, the mass migration to the Americas, Australia, the Cape and North Africa in the 19th Century, and immigration into Europe in the 20th century. The later chapters of Hoerder´s book seek to do the same, not only for Europe but for the whole world.

Mercantilist territorial units eventually gave rise to nation-states, as Westphalian notions of sovereignty spread through Europe and the Americas in the late 18th and early 19th century, and through Africa and Asia in the 20th century. The Westphalian system of nation states constitutes one of the big paradoxes in human history: while constructing self-contained national states that feel threatened by the prospect of mass migration, it laid the economic and technical basis for massive human population movements and even stimulated these movements, especially since the mid-19th century with the Industrial Revolution and early capitalism. However, its drive towards cultural homogenization and the separation of peoples generated pogroms and death camps, and a host of nationalistic movements that led to decolonization, especially in the 1960s. Decolonization meant new

pogroms and death camps as the newly independent countries sought homogeneity and internal regions sought independence.

3.2.2.2 The Legacy of Westphalia

The dangerous nationalistic ideologies fed by the Westphalian political construct have made us see the global political reality through a severely distorted lens. The French Directory and Napoleon defied Westphalia and promoted a politically violent, culturally hegemonic and economically fragile form of cosmopolitanism that was first cheered by intellectuals and then made an object of a pan-European *damnatio memoriae*. Thus, during the Napoleonic Wars and especially after the 1815 Congress of Vienna, national myths and histories were fabricated by Romanticist intellectuals by piecing together bits of local folklore; in a strong reaction to the cosmopolitanism of the French Revolution, these state-sponsored "historians" sought to give strong identities to the new European states so as to preserve the "balance of power" and ensure the loyalty of the citizens to their new or re-established rulers. The strategy, first invented by German philologists, but soon copied all over Europe, was to paint over centuries of population movements by the supposedly "scientific" establishment of legitimate (or *de facto*) "moments of primary acquisition" and linking those "legitimate conquerors" to the main ethnic and cultural groups present within the land in the 19th century, and hence create the illusion of a continuous nation of stable inhabitants over many centuries (Geary 2003, 12f). French intellectuals too copied this with a vengeance, and contemporary historians like Noiriel (1996) have shown how even great historians like Fernand Braudel were engulfed by the *esprit du temps*.

Centuries of migration, racial hybridization and cultural heterogeneity in Europe were thus obliterated from the collective memory as children were made to believe that they were the direct descendants of the companions of Alaric, Clovis, Alboin or Theodoric, and or even the extended family of the Viking chieftains, Vercingetorix, William Tell, Romulus and Remus or the German folk heroes. As ethno-cultural nationalism[100] with its myth of common ancestry spread throughout the world, people came to believe that migration is a marginal phenomenon in human history, that interconnectedness between peoples is something very recent and that the mass movements of people due to "internationalisation" (and more recently, "globalisation") is unprecedented. Nationalism coupled with the construction of national "races" and "cultures" spread like wildfire. By the end of the 19th century, a brand of ethno-cultural nationalism became popular even in such a patently diverse country as United States, and some American intellectuals were mythologizing the Pilgrim Fathers and advocating migration restriction policies, in spite of the growing labour demand of American industry. They quickly succeeded in banning immigration from China (Chinese Exclusion Act, 1882) but had to wait until the 1920s (Emergency Quota Act of 1921 and Immigration Act of 1924) for

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[100] Many authors seek to distinguish ethno-cultural nationalism (based on the myth of common ancestry, which produces ethnic and nativist patriotism) from civic nationalism (based on the myth of a shared commitment to a common residential homeland and the common act of popular sovereignty that constituted the body politic, which produces "constitutional patriotism"), cf. Brown (2000) and Guibernau (1996). In his classic text, *Man and the State*, Jacques Maritain (1998, chap. 1) makes a similar distinction between nation/national community and body politic/political society (which includes the state); the former is based on (hypothetical) blood relations (an act of nature), while the latter is based on an act of reason (entailing tacit consent to relationships of justice and civic friendship which serve that *good* which is *common* to a well-defined political group). Often, however, these two types of nationalism coexist in tension or complement each other. Noah Pickus (2007) and Rogers Smith (1997) show how even in the history of a country like the US, which is patently built on immigration, two nationalisms are present: one assumes that there is an exclusive list of "acceptable" races, creeds and cultures that separates "true" American citizens and acceptable migrants from the rest, the other assumes that being "American" means subscribing wholeheartedly to the US Constitution and its civic ideals. Both forms of nationalism have shaped the complex history of immigration policy in the US and its formidable deportation machine (Kanstroom 2010; Rocha 2010).

immigration from Southern and Eastern Europe to be drastically restricted by law (cf. R. M. Smith 1997, chap. 11).

3.2.2.3 Westphalian Sovereignty Challenged by the Return of Mass Migration

The above discussion shows how, a century ago, in the age of steamships, railways and global empires, people in the West were made to think that mass migration and internationalization were "new" and "potentially dangerous" developments in world history, in spite of the fact that there were countries like Italy with a fifth of their population living abroad, and others like the US which were absorbing huge amounts of immigrants compared to their population size[101]. These ideas slowly sank in. Nationalisms and xenophobia led to the craziness of World War I and of the Treaty of Versailles which ended it: mistrust of the other after the "Great War" crippled world trade, halted economic growth and labour migration, and led to even more radical forms of nationalism and xenophobia in the 1930s. Today, in the age of the internet, cheap air tickets, multi-national companies and free trade agreements, many of our contemporaries are once again tempted to think that "globalisation of labour" and mass migration are new and potentially dangerous phenomena. It has become hard even for intellectuals to adopt a critical historical perspective, and realize that it is rather the sovereign nation-state — with fixed borders, a stable body politic and a simplified system of authorities and laws (that are hegemonic within that territory) — which is a relatively new con-

[101] In 1910, the US had a population of 92,228,496 and granted Legal Permanent Resident status to 1,041,570 persons; that is about the same as in 2010 (1,042,625 persons) when the resident population was 308,745,538. This means that, proportionally, the US was integrating three times as many legal immigrants *per capita* in 1910 as in 2010. (Cf. U.S. Census Bureau 2010; Department of Homeland Security 2010.)

cept and reality (Carlson and Owens 2003, 11–19), fraught with its own dangers and horrors, as the events of these last two centuries amply demonstrate.

The *idea* that one could carve out a space on the surface of the planet which is mono-cultural, mono-linguistic, mono-racial, autarkic, free from external influences and unified by one religion under one "absolute" ruler was inconceivable before the European Wars of Religion and Westphalia; once it was born, however, it grew into a very powerful and seductive idea that has shaped world history (Philpott 2001). Cities and states which have had some significance in human history were never monolithic in the way that absolute sovereignty posits them, nor did they ever aspire to be so, except during certain fits of violent xenophobia (e.g. Muslim and Protestant iconoclasms, St. Bartholemew´s Day massacres, anti-Jewish pogroms, the Boxer Rebellion, the Momoyama Period) that marked times of political transition, economic hardship or religious intolerance. And while *absolute* national sovereignty is a chimeric idea which no sensible politician today (except maybe in North Korea) believes is possible or even truly desirable, the *aspirations* of autarchy it creates are still powerful, and many political and juridical structures are still based on the narrative (in part a *fictio juris*) that modern states are *absolutely* sovereign.

It is this chimera that is conjured up when we speak of borders and immigration. Yet, not only is political sovereignty a "relative" thing, but has been seriously challenged in recent years. Authors like John Kelsay (2003) argue that state sovereignty is being challenged today **from "below"** (e.g. by cross-border or international fundamentalist and ideological groups, multinational corporations formally based in the state, regions demanding more autonomy but not independence), **from "above"** (e.g. by certain decisions to intervene in cases of conflict backed by the UN General As-

sembly or Security Council, by the growing clout of international institutions such as the WTO), and **from "alongside"** (especially with the development, in recent years, of the doctrine of the "Responsibility to Protect"). The latter development is especially significant from a legal point of view; as Seyla Benhabib (2004, 10) argues, "state sovereignty is no longer the ultimate arbiter of the fate of citizens or residents. The exercise of state sovereignty even within domestic borders is increasingly subject to internationally recognized norms which prohibit genocide, ethnocide, mass expulsions, enslavement, rape, and forced labor".

In sum, **the central aspect of what we call "globalisation" is this series of challenges to Westphalian sovereignty**. In this context, international migration, too, is a feature of a "globalising" world, since it has become yet another component in a growing list of challenges to Westphalian state sovereignty. The massive movements of people in the 19th and early 20th century, and the transportation technologies which facilitated these movements, are not included in the term "globalisation" since they mostly happened within global empires and did not pose a great challenge to Westphalian sovereignty.

3.2.3 Politico-Military and Cultural Links between Sending and Receiving Countries

The fragmentation of global empires and the multiplication of international borders between nations, borders which have become increasingly difficult to cross (for some people, at least) clashes with the reality of a world which has always consisted of interconnected and interdependent peoples. We have discussed above some of the **ecological** and **economic** links between countries, which have made the world more interdependent in recent years, and hence challenge absolutist

notions of sovereignty. We can mention two further kinds of links between sending and receiving countries that affect the phenomenon of migration: (a) **political and military issues** and (b) **cultural ties**. These links show that decades and centuries of interdependence between peoples, for better and for worse, cannot be swept away by the drawing of a new international border, and the adoption of a new immigration restriction policy. Globalisation is, in many ways, a continuation and an expansion of links between peoples which may have been put into question by independent movements in the 20th century, given the injustice inherent in colonialist forms of interdependence, but which need to be recognised and re-established (hopefully in ways which are far more just) in the 21st century.

3.2.3.1 Political and Military Issues

First, let us start with the **political and military issues** that foment fear and poverty, and influence migration decisions. A quick look at the UNHCR annual Statistical Reports, or at a history of US military involvement in Asia, is sufficient for anyone to realize that practically every war is accompanied by subsequent movements of people (Rumbaut 2005). Many such persons are not directly persecuted, but they may feel personally threatened by the violence. Often, they resist moving since they do not know where to go, or hope that the worst is over, until the situation is compounded by economic and other factors which eventually force them to leave.

The US and the Soviet Union fought many proxy wars all over the world during the Cold War period, claiming to “protect freedom” or “fight imperialism”. Following the Truman and the Monroe Doctrines, the US supported military juntas in Latin America in the 1970s, offering training and equipment to oppressive security forces that fought “dirty wars”; after democratization in the 1980s and

1990s, and the devastating effects of Washington Consensus policies, former soldiers and rebels joined criminal syndicates which perpetuate the terrorist tactics and violence of the 1970s in novel forms and for novel reasons. Similarly, many contemporary conflicts in Africa and Asia have roots in colonial-era policies, and have been fuelled by foreign military aid given to oppressive regimes or to rebels, in view of protecting the trade and investment privileges wielded by certain wealthy nations in these countries; the participation of developed countries in these conflicts today is often justified as actions "in support of freedom and democracy", "in support of security and stability", "in the context of a global war against terrorism". Throughout this period, the US (aided, at times, by its Western allies) also fought direct wars, many for ethically dubious or unacceptable reasons, and some for reasons which may be justified by a modern *jus ad bellum* theory such as that of Waltzer (2000).

In all these cases — and especially in the cases where wealthy and powerful countries violated the borders of weaker nations simply to promote their own interests or to appear to be "doing something" about international communism or terrorism — there is an ethical responsibility to help the regions and persons affected by the conflict to return to situations of sustainable peace, functioning institutions and stable economy. Furthermore, a proper understanding of *jus post bellum* (cf. Bass 2004) cannot absolve the victor from taking some responsibility for the migrations generated by the conflict, during economic reconstruction and as part of reconstruction itself. Even "ethical" military interventions to enforce UN sanctions (under the doctrine of *Responsibility to Protect*) cause the displacement of people and generate refugees and migrants, and the international community cannot simply ignore the plight of these persons.

Political and military links between countries, of course, are not limited to conflicts and wars. For instance, this type of link between France and its colonies has generated a history of migration from France to the Maghreb and sub-Saharan Africa both during the colonial period and after decolonization (as settlers, investors, experts, aid workers, retirees, and so forth) , and from these regions to France during World War II and the post-war reconstruction (mainly as agricultural and industrial labourers)[102].

3.2.3.2 Cultural Ties

Secondly, let us say a word about **cultural linkages** between nations which generate migratory movements. Most prospective "economic" emigrants (and their families) do not decide where to go by consulting statistics which tell them which country will pay them most for their work. They seek to go to countries where the language is familiar, where laws are similar, where qualifications are recognised, or exams for recertification are similar to the ones at home (Castles and Miller 2009, 96–124). They are attracted to the places where the favourite soccer teams are based, and especially to cities which have a thriving community of compatriots and possibly relatives (Del Grande 2008, 83–95). Most of these cultural linkages were not started by people from poor countries. During colonial times, children in Africa and Asia were taught at school that their nation was now part

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[102] Some local church documents have made valuable reflections on these links: "Many countries in sub-Saharan Africa and the Maghreb have given much to France, defending its freedom and helping its reconstruction. This country owes a historical debt to all those who shed their blood and gave their strength for its well-being. However, France maintains a policy of ambiguous military cooperation with its former African colonies. It has supported dictators to defend its geopolitical, economic, and commercial interests, instead of helping transitions to democracy desired by the people of those former colonies. Migrational mobility is today necessary to maintain the economic, cultural and political ties between the countries associated with the history of France" (Comité épiscopal des migrations et des gens du voyage de la Conférence des évêques de France 2004, A:1).

of the great British, French, Dutch, German, Belgian, Italian, Spanish or Portuguese civilization, that such or such a language and literature was *the* "civilized" language and "true" literature. National curricula, even after independence, were based on books and educational practices of Cold War "big brother" countries, like the US or the Soviet Union, or former colonial powers[103].

3.2.4 Technology and Transnationalism

Political, military, and especially cultural links between peoples facilitate tourism, investment and all forms of bi-national cooperation between developed and emerging countries. They even allow the citizens of wealthy nations to be more mobile and "transnational" today than during colonial times, if they so wish. They also allow some citizens of poorer nations to travel, adapt to life in developed nations with a certain ease, and maintain sustained and significant links in two or more places, thus forming transnational communities which live across borders. Of course, advances in transport and communications technology, and the diffusion of cross-cultural values — some of the marks of contemporary "globalisation"— enhance this process. Migration scholars believe that "transnational communities currently embrace only a minority of migrants, but may on the long run have enormous consequences for social identity and political institutions in both receiving countries and countries of origin" (Castles and Miller 2009, 48).

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[103] For instance, twenty-five years after Maltese independence, most of my school books were still those used by students in Great Britain (I had to memorize British history and geography, struggle with math problems that assumed knowledge of cricket and British railways, learn Italian and French pronunciation from material designed for British children, etc.), and public exams in Malta were still being set by the University of London, Cambridge or Oxford. For decades after independence, everything "modern" in Maltese culture pointed to Great Britain; this was obviously not a choice made by the Maltese people: there are links built in history which are too hard to break, and which no reasonable administrator would dare to break, expect some fanatical nationalist.

While migrants and refugees with a high level of education are the best equipped to inhabit more than one cultural world, even poorer migrants with little formal education find ways to adapt and adjust to new cultures. Their access to the culture of a receiving country is often mediated by their traditional life-world, with its religious beliefs and practices. Valuable research conducted among Somali women in Melbourne, Australia, shows how their Muslim faith helps them to find their bearing in a very Westernized cultural milieu. “Islam is articulated through women´s use and construction of space, daily practices, forms of interaction, and modes of thinking about their lives. Further, Islam offers a meaningful framework of practice and ideology that sustains women during the hardships of exile, displacement, and resettlement and in times of emotional distress” (McMichael 2002, 171).

3.2.5 Conclusion: The Changes Do Not Warrant Immigration Restriction

Globalisation challenges sovereignty. It forces us to recognise the interdependence among peoples, and question a pervasive system of international borders which compartmentalize the human race. Of course, if not shaped politically and morally, globalisation could lead to the re-establishment or perpetuation of unjust relations of interdependence, such as those referred to as “neo-colonialist” and denounced by the Anti-Globalisation movement. Yet, the solution cannot be found at the level of the nation-state. We cannot expect national governments to “tame” globalisation by imposing unilateral restrictions on the movement of money, ideas, culture, goods (including contraband arms and drugs), pollution or epidemics. Similarly, we cannot expect unilateral restrictions on the movement of human persons to produce effective and desirable forms of migration management (Ghosh 2007).

Globalisation pushes us to question claustrophobic forms of nationalism which engender xenophobia, and to take a new look at world history and see it as a history of interconnectedness between peoples. It is time to overcome the Romanticist nostalgia of some non-existent golden age of absolute sovereignty, which makes people see mass migration as unprecedented and troubling, as an emergency requiring draconian measures of border control which can easily dispense with human rights protections and other "moral qualms".

3.3 Irregular Migration: The Mode of Entry and Sojourn Have Changed

For many people, especially in countries "built on immigration", what has changed in recent decades is that, whereas past generations of poor migrants entered the country legally, many immigrants today enter illegally, sometimes using the services of smugglers and traffickers. Globalisation and the technologies it provides have also facilitated global terrorism, sometimes linked to immigrants. Consequently, in the minds of the "native" population, immigration has become linked to crime, in what has been called "crimmigration" (Stumpf 2006), and this link has become a major argument in favour of immigration restriction (Heyer 2012, 134–139). To understand better the reality of irregular migration, we here present some legal aspects of contemporary migration and law enforcement in developed countries. We discuss international terrorism further in section 3.5.1.

3.3.1 Convention Refugees and Forced Migrants

3.3.1.1 Modern Legal Definitions of "Refugee"

Many of the persons who enter Europe "illegally" request asylum. Yet, according to international law, refugees have a right to enter a foreign country to seek asylum. Let us start with this group of migrants: can we call them "illegals" and associate them with criminals? Following the definition in

Article 1 of the 1952 *UN Convention Relating to the Status of Refugees,* a "classical" convention refugee is a person who (1) has well-founded fear of being persecuted on the basis of the following 5 grounds: race, religion, nationality, membership of a particular social group or political opinion; (2) is outside the country of his nationality (i.e. has crossed an international border); and (3) is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution. Furthermore, (4) the perpetrator of this persecution is usually assumed to be a state or political institution (to avoid having people threatened by simple criminals from applying for refugee status)[104]. (5) Finally, the individual needs to show that the persecution is somehow targeting them directly; a villager whose family is killed as "collateral damage" in a government bombing campaign targeting random villages "which might be harbouring terrorists" is *not* entitled to protection according to international law[105]. The limitations do not end there. In the original text of the UN Convention, the term "refugee" was limited to people displaced by events that happened in *Europe* and before the *1st January 1951*[106].

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[104] In some countries, such as the UK, non-state actors (such as guerrillas, insurgents, terrorist organizations and crime syndicates) are taken into account only when certain conditions obtain, such as when there is a deliberate or culpable failure, on the part of the state, to provide adequate protection to their citizens from dangerous non-state actors (cf. Hathaway and Foster 2003; Wilsher 2003).

[105] For this reason, authors like Gunning (1989) argue that the definition of refugee should be expanded, at least to be made to coincide with that provided in the Organization of African Unity's 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa* (see below).

[106] Asylum seekers displaced by more recent events or from countries on other continents could not apply for the status of "Convention refugees", but only for protection afforded by particular countries with a broader definition of the persons eligible for sanctuary. The 1967 *Protocol* removed these temporal and geographical limitations *from the definition of refugee*, but allowed signatory countries to maintain a geographical limitation *when granting asylum* in the country.

All of these legal limitations entail that a refugee is a very particular kind of "migrant"; in fact, international law seeks to make a clear distinction between a "Convention refugee" and other types of migrants that is historically and politically prudent, even if not always sociologically or ethically sound. Yet when first proposed in the late 1940s, this distinction was heavily encumbered with the unbearable lightness of the ghosts of refugees (and of political opportunism) past, present and yet to come.

1. **Refugees past**: In the 1930s and 1940s, in spite of much political rhetoric in their favour, Jews and others persecuted by the Nazi regime found it very hard to enter and reside legally in Western countries because the draconian migration restriction policies implemented during the Depression years made no exceptions for these kinds of "migrants"[107]. The drafters of the 1952 UN Convention knew that their countries had seriously failed these persons, and had them in mind when trying to define a "refugee".
2. **Refugees yet to come**: As noted above, when signed, the Convention did not offer an international law framework to cater for future (or "non-European-event-related") refugees, but it was hoped that the definition of "refugee" established by the Convention would be enshrined in national legislation that concerned the admission of aliens in the future. Drafters hoped that in the ratification process, national legislators would create a firewall that would keep their country´s borders permanently open to asylum seekers, especially in times of

[107] At the 1938 international meeting in Evian, France, which sought to resettle some 300,000 Jewish refugees recently pushed out of Nazi Germany, the only country that made a serious offer was the Dominican Republic, which accepted to settle 100,000 refugees as farm labourers. Nations like the US or the UK made vague promises, but did not change their restrictive immigration laws which allowed in only "Jews with means", and refused entry to "anyone likely to become a public charge" (Marfleet 2005, chap. 6).

immigration restriction. In particular, the most powerful delegations behind the 1952 Convention — France, the US and Britain — were expecting future Cold War "refugees" from the Eastern Bloc, mostly persecuted intellectuals and protest leaders (in relatively small numbers) which could staff their universities and oil their anti-Soviet propaganda machines. This meant a definition of "refugee" that was wide enough to cater for these desired migrants, and hence included more than the victims of pogroms and state-sponsored genocide (which constituted most of the "refugees past").

3. **Refugees present**: In 1952 there were many people who were being persecuted or who risked persecution, as well as stateless and destitute people who had been moved around during the war. In practice, the Convention had little to offer to the bulk of these people. There were "counter-revolutionaries" being hunted down in countries like China, but these people were excluded by the geographical limitation of the Convention. There were Soviet gulags holding thousands of people considered "Nazi collaborators" and other political dissenters; the Convention was not intended to provide these people a path to freedom. In fact, many of the people in the "Gulag Archipelago" were Russians forcibly deported by the US and UK after the Yalta convention in 1945; by the time any of these prisoners could reach the West and file an asylum claim, the gulag system had been wound down and eventually dissolved. Hence, technically, soon after the convention was ratified in many countries, the "source of persecution" had ceased and unwanted gulag refugees could be deported once again to the USSR.

The archetype of the "refugee", in the minds of the French and American drafters of the convention and of the legislators ratifying it, was therefore the German Jew on his way to Auschwitz, and the

Eastern-European dissident journalist being hunted down by the Soviet NKVD. This is a very restrictive and peculiar delimitation of the world of forced migration, which, ironically, seems dictated by the self-same political opportunism that provoked the Jewish refugee pushback crisis in the 1930s which the Convention was seeking to remedy. Roughly, a person is a "refugee" only if they can argue that their displacement has been clearly and directly causally linked to (state-sponsored) acts of persecution, actually experienced or perceived as imminent. In 1952, well before "crimes against humanity" resurfaced in a strong way in Asia and Africa later on in the 20th century, this definition of refugee seems ultimately to cater for a particular class of migrants: middle-class deemed quite desirable by Western governments. Indeed, it conveniently offers a whole series of caveats by which a bureaucrat could easily refuse the asylum application of unwanted (especially poor or uneducated) migrants. A poor refugee who could not afford to escape persecution promptly or an uneducated refugee who could not prove direct persecution could thus be easily rebranded as an "economic migrant" or "bogus asylum seeker".

Let us however consider two other definitions of "refugee". According to the Organization of African Unity's 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa,* a refugee is "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality". According to the 1984 *Cartagena Declaration Relating to Refugees* (signed and ratified my most countries in Latin America), refugees are "persons who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which

have seriously disturbed public order". These definitions are much wider and capture better the reality of refugees — old and new. Yet they all share the notion of persecution or threat caused by human violence. They therefore embody a separation between so-called "negative" and "positive" human rights, or between the 1st and 2nd generations of human rights. Refugees, according to these contemporary definitions, are people whose *political and personal freedoms* have been severely threatened through violence caused by specific groups of humans, but not people *seriously deprived of their socio-economic rights* through poverty caused by generic human action or inaction (cf. Marfleet 2005, 144–7).

3.3.1.2 A Contemporary Distortion of the Notion of Refugee

The above legal definitions constitute a *contemporary distortion* of the notion of refugee, owing much to US scepticism on socio-economic rights in the post-war period. It is a *distortion*, since, from an ethical point of view, it is not entirely clear why a person fleeing famine or an ecological disaster is less entitled to international protection than someone who discovers his house has been bugged by the Stasi or whose hometown has been raided by rebels or government forces (but who could find relative safety in some other part of his country). It is *contemporary*, since, before 1952, people fleeing a natural disaster or leaving cities bombed during the war were also called "refugees", even though the terms "asylum" and "sanctuary" are more evocative of voluntary persecution (Gunning 1989, 41; Marfleet 2005, 97f)[108].

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[108] The "classic" reference of the term "refugees" (from the French "réfugiés") were the Huguenots fleeing France in the 17th century due to direct persecution, limits on economic freedoms, land expropriation and political disenfranchisement. British authorities championed their cause while, at the same time, adopting similar repressive policies against Catholics in Ireland; inspired by "progressive" ideas such as those of John

My point here is not to question the Convention´s remit to protect those "hard-core refugees" targeted by the modern-day pogroms, genocides, and forced labour camps which have returned to haunt humanity, especially since the 1970s, in countries often destabilized by poverty or external interference. These people obviously need protection, and most of them usually find it by moving to a neighbouring region in the same country, or to a neighbouring country. Unlike the European states in the 1930s, many states in sub-Saharan Africa and the Middle East today, in spite of their lack of means, have opened their doors to people persecuted in neighbouring countries and are effectively keeping them out of harm´s way. If these are the only "refugees" we really should care about, wealthy nations should be sending billions of dollars to assist the countries hosting these people. Only a trickle of these refugees actually makes it to Europe, North America, or Australia, and files an asylum claim in these countries. Some even argue that a good number of the people who actually do make it so far are mostly escaping the poverty, marginalisation and discrimination in what we may call "relatively safe third countries", rather than the original source of persecution in their home country which is usually quite far behind. In reality, I believe that the situation of

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Locke´s "A Letter Concerning Toleration" (originally published in 1689), the Anglican Crown was willing to grant religious freedom to foreign Calvinists, while insisting, with Locke, that local Catholicism should not be tolerated. Ultimately, the British government sought to attract skilled Huguenot labourers, wealthy merchants and aristocrats from across the Channel to outcompete France economically (Marfleet 2005, 102f), while both neighbours vied for world dominance. Knowing that British workers would resent this mass immigration of labourers and artisans from France, the British crown and the Anglican church set in motion their well-oiled anti-Catholic propaganda machine to evoke pity for these "persecuted Protestant brethren" and, at the same time, to insist on how economically profitable this immigration was, at least by mercantilist standards. What should probably be lauded in this whole affair is that the British authorities at the time did not try to distinguish those attacked by non-state and state-inspired *dragonnade* attacks, and the "phony asylum seekers" seeking better economic opportunities up north, and that they had the honesty and courage to admit that their hospitality was (at least in part) economically motivated, and to use all the means available to address the popular apprehension regarding these "French invaders" (ibid.).

these people is far more vulnerable than what such cynical commentators would ever admit, but this objection points to some very serious shortcomings of the current system.

Experts today speak of "mixed flows" of people heading towards Europe, Australia or North America, people who cross borders irregularly because they would never be given a "tourist" or other visa to travel to a wealthy nation. Such flows are considered to be "mixed", in the sense of comprising classical convention refugees, forced migrants, "forced economic migrants", "empowered economic migrants"[109], people seeking to join their families in destination countries and seasonal labourers. Yet, in reality, if *migrations* are "mixed", the *motives* of the migrants (and asylum seekers) are even more mixed and complex. For many migrants and refugees, stable middle-income countries like Mexico, Egypt, Libya or Malaysia are originally seen as possible *destination* countries. They later become *transit* countries for those few who decide to move on toward a high-income country, because of insecurity, xenophobia, discrimination, ill treatment by security forces and lack of opportunity in these countries. Though refugees have a right to file an asylum claim wherever and whenever they want, and often refuse to do so in middle-income countries, one could argue that a person, persecuted in her own country, who spent several years working in Mexico or Libya and suddenly decided to move to the US or to Italy — mainly because these countries offered better employment opportunities and human rights protections — is moving *primarily as a migrant, not as a refugee*. The person may have been originally fleeing persecution, but *de facto*, she *did* find protection *of some sort* in the middle-income country, and her more recent displacement was not really due to the original persecution.

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[109] See sections 3.3.2 and 5.3.3.2 below.

3.3.1.3 Should We Reframe the Issue in Terms of "Forced" Migration?

To be sure, some people living in these middle-income countries really suffer from persecution at the hands of criminal gangs and oppressive police squads which target immigrants (and in this sense, such countries are not truly "safe third countries"); irrespective of their original reason for moving to Mexico or Libya, these persons have become forced migrants in those countries. Yet, a person from Somalia and a person from Ghana who were both seriously ill treated or persecuted in Libya would not be treated equally in Europe: the Somali would be recognised as a refugee since she cannot return to safety in her country, while the Ghanaian would not.

This situation explains why many people in wealthy nations think that most "asylum seekers" are "fake", or, if their story of persecution is true, they did not *really* have to come this far to seek *protection*. They argue that these people come to Europe, North America or Australia not because they couldn´t find protection closer to home, but because they want protection in a country that offers *access to a whole range of human rights, and especially those socio-economic rights which the Convention seems to disregard*. From this, some will conclude: "if we don´t want to let other "economic migrants" in, why should we let such "refugees" in? Why should we not rather send them to some safe refugee camp or city, say in Kenya, and pay the Kenyans to keep them fed, educated and occupied (at a much lower cost) until the situation in their country changes and they can return home?"

In a sense, such a line of thought is not entirely wrong, since the Convention does not give refugees the right to decide *where* they will be relocated and offered protection: the country deciding an asylum claim may send the refugee to another safe country and "subcontract" the protection regime. Authors like Hathaway (2011b) argue that this "solution", if well implemented, could be

cheaper, benefit far more refugees (and not only those with the means to reach wealthy nations), avoid the many social problems related to integration and prove less politically challenging to implement; adopting it may actually help us "save international refugee law" at a time of mounting rejections of asylum due to political populism and xenophobia[110].

Many others would, of course, reject such a "solution". The governments of wealthy nations are already very reluctant to help refugees, in spite of seeing them on their streets and sometimes seeking their votes in elections; as noted above, they have, for many decades, been letting poor nations carry most of the burden of hosting refugees. How much less caring would they be should the refugee problem become "invisible" and protection be farmed out to poorer countries? Furthermore, as we shall see below, the economies of wealthy nations — whether they admit it or not — are dependent on migrant labour, while the economies of poorer nations are overburdened with excessive labour supply. So why should the labour markets of poorer nations be forced to integrate these persons, or why should refugees be corralled in camps with closed and stagnant economies and made to depend on aid for years and years, when wealthier nations could actually benefit economically from taking them in and integrating them? From this perspective, the solution would rather be the following: "We obviously should let these people in, but then, we should also extend our offer of hospitality (and possibly membership) to at least some of those other migrants who are

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[110] "While international law allows each individual to determine for herself where to *engage* the protection process (based on accessibility, an assessment of safety, or simply personal preference), state parties are entitled to share-out among themselves the duty *to provide* protection" (Hathaway 2011a). Lawful transfers are however limited to situations in which it is "established that the third country will treat the asylum-seeker (asylum-seekers) in accordance with international standards, will ensure protection against *refoulement,* and will provide the asylum-seeker (asylum-seekers) with the possibility to seek and enjoy asylum" (UNHCR - Executive Committee 1998).

being denied access to basic socio-economic rights in their home countries, or are fleeing ecological disasters". In other words, we should expand the notion of "refugee" to what it was in popular language before the Convention, and so include forced migrants of other sorts and not only those considered "refugees" in the very strict sense that the very influential American and French delegations adopted when drafting the 1952 Convention.

Should we therefore consider all "forced migrants" as refugees? Some authors, such as Hathaway (2007), insist that we should not conflate the two. Others, like (Betts 2010) suggest a "soft law" framework to include more categories of forced migrants (for instance, those fleeing ecological crises and natural disasters). Many refugee law experts involved in the defence of human rights, such as Katrine Camilleri[111], believe that, *ideally*, we should revise the 1951 convention and its definition while, recognising that, *in practice*, given the current international political climate which is not conducive to a broader definition, any attempt to modify the 1951 Convention through diplomatic means may actually backfire and yield an even more restricted definition[112]. The UNHCR has called for new international instruments to fill in the gaps in protection of certain forced migrants, but doubts that the call will be heeded:

> *A broader international framework providing guidance for the protection of those displaced across national borders for environmental reasons could help states to understand and meet their responsibilities in this area. At present, there is little political support for a new binding international instrument, but UNHCR has indicated that it would be prepared to work with states and other actors to develop a guiding framework or instrument to apply to situations of external displacement outside those covered*

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[111] Dr Camilleri is the current director of JRS Malta and recipient of the 2008 Nansen Refugee Award by the UNHCR. She discussed her position on the matter with me in an interview in July 2012.

[112] Fortunately, the *sensu stricto* definition has been somewhat expanded in recent years through legal interpretation in national and regional human rights courts, and some regional blocks, such as the EU, have instituted limited "humanitarian protection" regimes.

> *by the 1951 Convention, and in particular to displacement resulting from climate change and natural disasters (UN High Commissioner for Refugees 2012, 28).*

The conclusion is that, while the *status quo* in international law is eminently problematic, most human rights advocates would not want to tamper with it. Admittedly, great advances in international human rights legislation have occurred in other areas in the past 60 years as ethical reflection and public awareness chiselled against past *realpolitik* stances, but reflection and awareness concerning forced migration has not advanced greatly after being jolted forward by the guilt feelings of the 1940s and 1950s.

3.3.2 "Forced" and "Empowered" Economic Migrants

3.3.2.1 International Law and Immigration

"Migration", whether "forced" or not, is a scary word in international forums and new legal instruments related to this important phenomenon, other than those intended to restrict it, are typically shunned by wealthy and powerful migrant-receiving countries. For instance, more than twenty years have passed since the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* was adopted by UN General Assembly resolution 45/158 on the 18th December 1990, but it has not been ratified by any of the major prosperous receiving countries. Some would justify this attitude by referring to the 1948 Universal Declaration of Human Rights, saying that in this document, *asylum* is a human right (art. 14.1), *exit migration* is a human right (art. 13.2) but, apart from refugees, nobody has any *right* by international law to *enter* a foreign country. On the basis of such legal observations (rather than rigorous ethical argumentation) most politicians or international lawyers today do not see their country as *morally bound* to admit anyone but refugees in the strictest sense of the term; other migrants, forced or not, may be admit-

ted out of *supererogatory charity* or *enlightened self-interest*, or simply left on the other side of the border if the country so wishes.

The only new international instruments in the field of immigration which have been widely adopted are the Palermo Protocols regarding Trafficking and Smuggling[113], which supplements the United Nations´ *Convention against Transnational Organized Crime*, adopted by General Assembly resolution 55/25 of 15 November 2000. Modern slaves traded by traffickers are indeed forced migrants, but are not considered refugees; some countries like the US have recently issued "trafficking" visas to encourage victims to report their captors and testify against the traffickers, instead of threatening them with deportation as "irregular immigrants". However, the Trafficking Convention, according to several experts in international law, lacks the instruments to effectively combat modern slavery; rather, it seems designed to provide the perfect ethical warrant for wealthy nations to employ draconian measures of border control, which often target less harmful human *smugglers* (rather than brutal and well-organized *trafficking* cartels) and the clients of these smugglers, many of whom are refugees or forced migrants (Hathaway 2008).

In the best of cases, a *smuggler* may offer a "professional" service, and truly earn the fee or other form of remuneration she asks for when helping a person cross a border clandestinely[114], given the

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[113] The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, was adopted by General Assembly resolution 55/25 of 15 November 2000 and entered into force on the 25th December 2003. The *Protocol against the Smuggling of Migrants by Land, Sea and Air*, adopted by the same resolution, entered into force on the 28th January 2004.

[114] Some persons and organizations even smuggle refugees or migrant "friends" across borders for free; this has created problems for European lawmakers who did not feel such people are truly smugglers, or that they should be considered criminals (Gortázar Rotaeche 2006, 231). In some countries, like Mexico, directors of

risks the smuggler takes to help a possible refugee enter a country to seek protection. In the worst of cases, a *trafficker* could be a brutal slave-driver who forces people across borders and sells them to criminals to staff brothels and underground sweatshops, or leaves them stranded in the middle of a desert once he gets his money. On the ground, the distinction between these two extremes is not always so crisp, but blanket criminalization generally serves to shut down less-organized smuggling networks run by fishermen and small families (which are easy targets for law enforcement agents pressured by politicians to produce quick "results") and force more and more vulnerable people into the hands of trafficker networks, run by crime syndicates and drug cartels. In this way, the new Convention and its transposition into the criminal laws of most countries have become instruments serving powerful anti-immigration lobbies, instead of tools to protect vulnerable victims (Gortázar Rotaeche 2006, 231). The Convention does little to deal with the modern slave trade, and instead of effectively providing protection to a new class of forced migrants, it is being used to deny protection to poor "classical" refugees by making it almost impossible for them to reach a safe country in the developed world.

3.3.2.2 The Complex Causality of "Forced" Migration

The reluctance to adopt international legal instruments that effectively promote the rights of forced migrants by allowing them to enter another country where they can make a living and provide for their families probably comes from the fact that developing a solid and coherent definition of "forced migrant" (and of their rights) necessarily entails putting into question the notion of "eco-

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Christian charities have been accused of "smuggling" and imprisoned in the past, simply for offering food, water or lodging to clandestine migrants.

nomic migrant". The causal nexus between ***persecution*** on the basis of the classical "Convention grounds" and the ***actual act of leaving one´s country*** may be more or less *direct* and can generally be framed with relative ease in a narrative that avoids mention of economic gains and losses. However, the nexus between *causes* like ***environmental degradation***, slow-acting ecological disasters, generalized ***civil war***, institutional collapse, ***economic meltdowns*** and some natural disasters, and the *effect* of ***finding oneself forced to migrate*** usually is mediated *very clearly* by an economic process of pauperization and by the desire to escape poverty when a person decides it has become unbearable. **In other words, at the borders of a wealthy nation, a forced migrant** (who has transited a middle-income country and is not escaping genocide) is **inevitably seen as a forced *economic* migrant**.

Let us take the hypothetical case of a woman who enters Europe or the US illegally and, who, after many years of training in migration studies, is asked to give the reasons behind her original decision to migrate, with relative weights. She might say that she left her home region "30% because of the effects of overfishing, 15% because of the effects of desertification, 10% because of the decrease in potable water supply and incipient drought conditions, 10% because of persistent threats by criminal gangs, 20% because of the effects of civil war in a neighbouring region and 15% because her children are not receiving any decent schooling and risk joining gangs, militias or fundamentalist groups"[115]. Of course it is very unlikely that a real migrant would say such a thing to a journalist or case officer a few days after the harrowing ordeal of travelling and entering a Western country ir-

[115] Though these weights have been invented for the sake of the argument, several authors such as Castles and Miller (2009) and Marfleet (2005) document the complexity of causes behind people´s decisions to migrate.

regularly. Though, upon analysis, all of these complex causes are forcing her to migrate, she will probably say that she could no longer *afford* to buy fish, vegetables and clean water at the market, to pay the extortion rate imposed on her little peddling business, or to send her kids to a private school where they can learn something and be safe.

Yet, the developed country she may have entered irregularly may be partly responsible for the environmental degradation (due to the massive amounts of greenhouse gases it produces which contribute to global warming), the gang violence (having deported violent criminals to a country without the institutions to deal with organized crime, and giving the gangs easy access to sophisticated weaponry), the civil war (having allowed its mining corporations to arm different sides of the conflict; having used divide-and-rule politics as a colonizer of the country in the past) and the lack of a decent public education system (having forced the country to accept a structural adjustment programme that was unduly harsh and implied drastic cuts in the education budget).

The distinction we need to focus on, therefore, is not the one between a "forced" and an "economic" migrant. **The relevant distinctions that fair law-making would seek** are those between (1) a "forced economic migrant" and what I call an "empowered economic migrant", on the one hand, and between (2) *a* forced migrant knocking at the door of a country which is partly responsible for his plight, and a forced economic migrant who is looking for better economic opportunities and a higher standard of living in a country which has little or nothing to do with the causes of his desire to migrate, on the other hand. The second distinction is based on history and bilateral relations and points to the fact that the fairness of domestic immigration policies needs to be evaluated in particular local and historical contexts rather than simply deduced from blanket cosmopolitan rights

and norms. The first distinction seeks to take into account the idea that not everyone has a *fundamental right* to enter and stay in another country, not everyone is "forced" by persecution, poverty, environmental and other factors to seek basic personal and economic freedoms in a foreign country. Some immigrants are already sufficiently "empowered" in their home country to live a dignified life there; hence, in certain cases, receiving countries may refuse entry to such immigrants. The distinction is not merely *economical*; it is based on *ethical* considerations regarding what a dignified life entails, and what it means to be "forced" to migrate or to be "empowered" at home and hence considerably "free" to migrate or to stay.

We will need to refine this distinction in future chapters, using philosophical and other ethical arguments. For the purposes of this chapter, the notion of "basic sustenance" (linked, by authors like Til (2007), to incomes of less than $2 per day, with some adjustment for Purchasing Power Parity) gives us a rough and ready guide to distinguish those who actually finds themselves *forced* to emigrate for "economic" purposes (which are usually the epiphenomena of more serious underlying causes of emigration), from those who are *not so forced* by their circumstances to migrate but are rather *empowered* (via capital and skills) to seek a better life in a more prosperous country. Several authors would agree (as we shall see in the following chapters) that all nations have some duties concerning the well-being of the former, even if they are not members or citizens. This duty, of course, becomes much more acute when the receiving country is somehow involved in and responsible for some of the poverty and deprivation being suffered by the migrant.

I do not elaborate this ethical reflection further at this point, but before proceeding to discuss what many people call "illegal immigration", I would like to point out that *a fair discussion of the illegal or*

irregular acts of immigrants cannot be so easily separated from a discussion of the moral standing of civil law itself. Most legal systems in Western nations know how to deal with convention refugees and with "empowered" economic migrants, but risk construing most non-refugee claims as cases of the latter kind; in this way, wealthy nations come to consider themselves legally and morally entitled to keep all these immigrants out, if they so wish. Following this reasoning, they adopt migration restriction legislation that leaves forced migrants and refugees few options other than irregular entry. And this problem brings us to the crux of the legal conundrum of irregular immigration.

3.3.3 Irregular Migration and Positive Law[116]

3.3.3.1 Irregular Migrants: A "Band of Invaders and Conquerors"?

Why do so many poor forced migrants and "classical" refugees today contract the services of people smugglers to get into a country to request asylum or humanitarian protection? First of all, legal entry is not an option for most of these people; being poor people from poor countries, they would never be given a visa to enter a safe country in the developed world "legally". "Asylum" or "Protection" visas for possible refugees do not exist; tourist visas in poor countries are issued only to those who can show they can afford the luxury of a vacation; migrant worker visas are extremely hard to come by, especially if you don´t have a sponsor who offers to employ you in the receiving country (which is not the case for most forced migrants). Secondly, given the beefed up border control re-

[116] I use "irregular migrant" to designate three major categories of persons intending to live outside their home country indefinitely or for a long period of time: (a) those who enter a country *clandestinely*, (b) *overstayers* and those who violate visa conditions, and (c) children born to parents in the two previous situations. Things are actually much more complex than this; cf. Düvell (2008) for a more complete classification and an insightful analysis of the concepts and terminology used.

gimes, forced migrants have little chance of making it alive across the Mediterranean, the Sonora desert, the Indian or Pacific Ocean today without help from the "professionals".

Of course, not all irregular migrants are refugees or forced migrants, but some are, and they have a moral — and sometimes legal — right to cross the border to safety. Yet, in many countries, "irregular immigrants" are automatically classified as "unwanted immigrants", and met with hostility rather than recognition and compassion. In Israel, for instance, the sons and daughters of irregular migrants build monuments to the clandestine migration of their grandparents[117] while having little sympathy for the "new illegals" from Africa[118]. Israeli law is extremely strict on immigration and classifies migrants from Eritrea (whom most Western countries recognise as refugees) as "infiltrators"[119]. In 2008, Israel granted asylum to just one refugee, and in 2009 to only two. A historian would note that Israelis may have good reason to be suspicious of refugees. The history of Palestine shows how the unchecked immigration of destitute refugees could become a movement of conquest, whereby former natives were reduced to a social underclass or became refugees themselves.

To be sure, the Jews flocking to Palestine after World War II had few other options; one can understand their desire to claim and control a nation-state of their own after hundreds of years of perse-

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[117] At the entrance to the Clandestine Immigration and Naval Museum in Haifa, Israel, "illegals" are celebrated with a monument called "Kesher Hadorot". Similar monuments can be found in Ashdod (*Monument to the "Struma" and "Mefkura"*), Tel Aviv and Tel Achziv (*Ha 'apala Monuments*). Inspired by the writings of Theodor Herzl and Max Nordau, Jews from all over the world started pouring into Mandatory Palestine in the first half of the 20th century, often clandestinely, and eventually claimed the territory as theirs.

[118] Israeli mobs have attacked African neighbourhoods in Tel Aviv (for instance, on the 24th May, 2012) asking for swift deportation of Black immigrants.

[119] In 2010, the Interior Minister Eli Yishai claimed that irregular migrants pose an existential threat to Israel (Weiler-Polak 2010).

cutions as "minority nation" in "foreign" lands. Yet, illegal immigration as a strategy for conquest has been used in the past by many powerful nations who had little reason to snatch someone else´s territory. Nobody dares ask today whether the migration of thousands of European colonists to the Americas, South Africa and Australia was done respecting the law of the (colonized) land. After independence from Europe, the land-grab mentality did not disappear in these new nation-states. The United States, in particular, indulged in irregular migration to expand its borders, and not only into Amerindian territory[120]. Many of the Western politicians who today evoke images of "invasion" and "conquest" when speaking of irregular immigration will find very few or no cases that could illustrate this link today, but can amply demonstrate this possibility by referring to the acts of encroachment of their ancestors.

3.3.3.2 Irregular Migrants: A "Bunch of Criminals"?

Indeed, the irregular immigration which is the object of fear-mongering and heated political debates in many developed countries today is much more benign than that which contributed to enrich these very nations or create these polities in the past. Of course, people who, in their lives, have never really *needed* to cross a border, or were never *refused* a visa, may quickly conclude that "irregular" immigrants are "bad" or "dangerous" people, people who supposedly "broke the law".

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[120] Before the Louisiana Purchase (which was itself an unexpected and highly "irregular" transaction – cf. Nugent (2009, 65f)), Jefferson planned to annexe territory to the west bit by bit, by encouraging Americans to settle there, revolt, secede and join the Union (Herring 2008, 103). That strategy was eventually used against Mexico: Americans settled in Texas ignoring the conditions of settlement and refusing to pay taxes; when Mexico closed the border, the settlers brought in hundreds of clandestine migrants, revolted, declared independence, and joined the Union. When Mexico tried to get back its territory, US used its military might to quash the Mexican army and annexe one half of the territory of Mexico in 1848, including the "Bear Flag Republic" declared by 33 American settler families (and some other "migrant workers") in Alta California. Hawaii was annexed in a similar way later on in the 19th century.

As mentioned above, there has been a tendency in recent years to conflate immigration law and criminal law, with a purpose to exclude people, in what has been called the "crimmigration" crisis (Stumpf 2006). Some authors insist today that we should never call these migrants "illegals": persons cannot be "illegal", though their actions may be. Others take one step further and call into question the supposed "illegality" of the act. In fact, clandestine entry to claim asylum by those entitled to protection is today tacitly assumed to be an *unavoidable part of the process* of seeking asylum, the legality of which is recognised by the Refugee Convention, especially when legal entry is rendered impossible by severe carrier sanctions and border controls. If a *national* border regime blocks the access to a fundamental right guaranteed by international law, it is the border regime which is at fault, not the asylum seeker[121]. Of course, an irregular border-crosser exercises agency when she violates flawed and unjust immigration laws: she is not unaware of the formal "illegality" or her action, and (except in the case of human trafficking) nobody is physically forcing her to cross the border. This is why authors like Rocha (2010, 276–285) frame certain illegal entries and visa overstays as legitimate acts of civil disobedience.

Analogously, in many countries, one may say that irregular labour migration is tacitly sanctioned by lawmakers who enact migration restriction laws and quotas in recession years and then refuse to relax or enforce these laws when the economy improves and *requires* migrant workers. In this way, they consciously create, through a legal contraption, a pool of disposable, exploitable, cheap and compliant labour shaded from the protection of the law, which benefits the employers who finance

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[121] As we noted above, given that there is no visa category which allows poor forced migrants to enter a country to apply for asylum, international law assumes today that asylum seekers will cross the border irregularly, forge documents or file an incorrect visa application: in this case the "illegality" is tacitly sanctioned by international law (Hathaway 2008, 35f).

their political campaigns (Marfleet 2005, 170–175). At the same time, by refusing to relax immigration laws and allowing in as many migrant workers as are actually needed by the economy, these lawmakers may personally exploit the situation. On the one hand, they can portray themselves as "tough on illegal immigration" by enacting stricter (but not necessarily enforceable) border laws, spending more money on border control (without effectively "sealing" the border) and ostensibly harassing migrants, so as to win votes from the native-born working classes. On the other hand, they might even be receiving campaign financing from employers who benefit from irregular immigration and lobby against effective enforcement (e.g. via employer sanctions that actually work); this lobbying ensures that strict immigration restriction rules are not enforced in ways that deprive the economy of the immigrant labour it needs.

In this situation, the legislative apparatus is perverted, and becomes a tool with which to violate the human rights of immigrant workers needed by the economy. It is surprising that so few people realize that the really "dangerous" persons, here, are these lawmakers and politicians, rather than the immigrants. They can afford to draft policies that entail the detention and deportation of hundreds of thousands of irregular immigrants, causing great suffering, simply because they assume others will come and take their places, and so, local industry and business will continue to run as usual. They can afford to allow tens of thousands to drown or die in the desert because they assume there will be enough migrants who will manage to cross, all the same. No wonder some critics claim that the "irregularity" (or "illegality") in irregular migration is the brilliant new feature of yet another immigration regime instituted and intended *by the law,* and mainly serving the purpose of creating scapegoats, artificially selecting those migrants who are more "smart" and "fit", and facilitating post-entry social control (cf. Kanstroom 2000).

3.3.3.3 Irregular Immigration in the US: Another Exploitative Immigration Regime?

Aristide Zolberg´s book, *A Nation by Design* (2008), argues that "irregular migration" in the US is simply the newest immigration instrument of a series of exploitative immigration regimes devised by US Law as a "mixed settlement" that seeks to mediate between employers´ and economic planners´ demands for foreign labour (to keep wages low and to develop a huge and under-populated country) and native workers´ staunch refusal to open the border any wider. Zolberg lists four such regimes in the history of the US: (1) *African Slavery and German Bonded Labour* (from colonial times until the 1860s), (2) *Chinese Bonded Labour* (from the Civil War until the 1920s), (3) "*Bracero" guest worker programs with Mexico* (from the end of World War I until the 1960s), and (4) *Undocumented Migration* (1965 until the present day).

US Immigration Law has a complex history (Pickus 2007). In the past, racial and cultural constructs of the excluded other served unabashedly as the discriminating factor between different types of immigrants. Sometimes these policies were even rationalized by "race science" (Rocha 2010, chap. 2–3), for instance Samuel George Morton´s craniometry and polygenism. Hence, certain immigrants were excluded from becoming true citizens on the basis of race (African-Americans), while others were kept out of the country through draconian immigration restriction measures also on the basis of race (Chinese, Southern and Eastern Europeans). When racial arguments became taboo, a geometrically proportional and "colour-blind" preference system with restrictive ceilings — one which did not reflect the history and economic reality of migratory movements in the Americas — was

devised and maintained for half a century, until the present[122]. The system placed immigrants from Mexico and Central America and the Philippines, as well as those from populous countries such as India and China, on the same level as immigrants from other lands which have had little or no political, economic, historical, cultural or migratory ties with the US This can be read as an ingenious yet unrealistic attempt to exclude the former, which ended up forcing millions of people to enter the US illegally. This clever contraption allowed American politicians and voters to say that the problem with most immigrants from Mexico and Central America is their "illegal status" rather than their "race", and hence construct a massive deportation machine (cf. Kanstroom 2010; Kanstroom 2012; Rocha 2010) while, for many decades, avoiding any effective curbs on the flow (such as effective employer sanctions) that could create labour shortages and thus force a comprehensive overhaul of the current system.

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[122] Although the 1965 immigration reform changed the preferences of The *Immigration and Nationality Act of 1952, (Title 8 US Code, "McCarran–Walter Act")* substantially, the 1952 *Act* still provides the current regime with its legal framework. Currently, the *Act* provides a global allotment of 675,000 "green cards" (i.e. immigrant visas for non-refugees) per fiscal year (485,000 for family-sponsored immigrants, 140,000 for employer-sponsored migrants and 50,000 so-called "diversity" visas). Furthermore, officials may not distribute more than seven percent of those among applicants from a single country (cf. *§ 202, § 203, § 204* of the *Act.).* That means that, according to the *Act*, Mexico can get a maximum of 9,800 worker-sponsored green cards per year, as can a tiny country with no tradition of labour migration to the US (cf. Carmona 2012). Obviously, these figures seem ridiculous compared to the present need for labour from Mexico and Central America, and to the current number of applications for family reunification. In spite of some changes in the law to allow in more family-sponsored immigration, the backlog for countries like Mexico and the Philippines is quite impressive. For instance, in January 2012, US Embassy in Manila started accepting interviews of Filipinos to adjudicate petitions to grant immigrant visas to adult siblings of US citizens submitted on or before October 8, 1988. Since the 1965 reform, US legislation has sought to satisfy some of the huge demand for foreign labour by granting temporary (non-immigrant) worker visas, thus repackaging previous guestworker initiatives such as the "Bracero Program". To date, the H-1B system has an annual cap of 85,000 (of which 20,000 must have advanced university degrees); the H-2B system (non-agricultural) is capped at 66,000. The uncapped H2A (agricultural) and TN1 (Professionals from Canada and Mexico) too are limited by requirements and bureaucracy: only 55,384 of the former and 4,971 of the latter were issued in 2011 (U.S. Department of State 2012). This last figure is emblematic of how little NAFTA means in terms of freedom of movement of persons.

When faced by this history, one realizes that irregular immigration from Mexico and Central America comes as no surprise. Temporary labour migration between the US and Mexico has been going on for centuries (one third of the area of the lower 49 states was, in fact, part of Mexico until 1848). During World War II, the US promoted this migration through the Bracero Program that established migration chains between the two countries. These chains were very difficult to sever when the programme was halted in the 1960s, in preparation for a major legal overhaul that allowed a great increase in immigration from most countries while restricting immigration from Mexico (Calavita 2010). Analysts project that had the 1965 restrictions on immigration from Mexico been effectively enforced in subsequent years, many US agribusinesses and industries which depended heavily on cheap seasonal labour from Mexico and Central America would have gone bankrupt or moved south of the border, thus giving a boost to the Mexican economy while crippling the economy of many Southern US states. That would have quickly created a strong lobby to reinstate the Bracero Program or relax the restrictions on immigration from Mexico. Rather, US politicians opted not to enforce the laws, while not legally allowing in more permanent immigrants from Mexico and not re-establishing an effective and realistic temporary migration scheme for Americans living south of the Rio Grande. For many decades, the message sent to Mexican labourers was clear (and it was explicitly stated by US employers who, until the 1980s, could not be penalised for employing irregular migrants): “ignore the law, it´s just a political game: we need your labour and the government has no real intention of deporting you” (cf. Calavita 1994, 145f).

The *Immigration Reform and Control Act* of 1986 (IRCA) introduced employer sanctions and other measures, which on paper, were supposed to reduce irregular immigration[123]. Further measures against irregular migration were incorporated into the *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996 (IIRIRA). Removals of unauthorized immigrants and residents rose gradually from 18,013 in 1980, to 30,039 in 1990, to 188,467 in 2000 (Department of Homeland Security 2010), while arrivals rose from 130,000 per year (1980s), to 450,000 per year (1990-94), to 750,000 per year (1995-99), and then decreased to 700,000 per year (2000-2004) - (Passel 2005). This shows that, until the terrorist attacks of the 11th September, 2001, the Immigration and Naturalization Service (INS) did little to restrict the flow of irregular immigrants into the US Then "irregular immigrants" suddenly became conflated with "terrorists" (most of whom had actually entered the US legally!), and the successor agency to the INS, the Department of Homeland Security (DHS, created in 2002) embarked on a programme of mass deportation. While the House and Senate debated and shot down one immigration reform bill after the other (cf. Hing 2006, 28f; LeMay 2006, 117f; 169f), removals rose to 246,431 per year in 2006, under the Bush administration, and to 395,165 in 2009 under the Obama administration (Department of Homeland Security 2010)[124]. Meanwhile, net mi-

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[123] In general, employer sanctions are rarely enforced. Instead, US employers have become accustomed to report to the Department of Homeland Security (DHS) those workers who assert labour and employment rights, to "get rid of them", after knowingly employing these workers with obviously counterfeit immigration documents (and being informed by Social Security that the names and Social Security card numbers of the employees, as registered upon employment, do not match). In these cases, instead of punishing employers for breaking the law, the DHS rewards them by removing the "troublesome" workers (Lee 2009).

[124] The DHS´s immigration enforcement programme, *Secure Communities*, has been greatly expanded under the Obama administration and allowed most of this increase in deportations. Several states and counties (including Washington, D.C.) have nonetheless resisted the introduction of the programme, arguing that it interferes with local policing and inevitably leads to racial profiling (Center for American Progress Immigration Team 2012, 5).

gration from Mexico fell to zero or less (due to return migration), according to a recent Pew Hispanic Center report (Passel, Cohn, and Gonzalez-Barrera 2012)[125].

President Obama´s first term in office coincided with beefed-up enforcement or "deportation on steroids". It may have been an effort to appease moderate Republicans and build bi-partisan support for a comprehensive immigration reform bill to allow these migrants in regularly. At the time, certain states like Georgia sought to outdo the federal government and have tried their own version of "enforcement on steroids" with tough new immigration laws which are seriously hurting their economies (cf. Baxter 2011); others like Mississippi (in April 2012) tried to pass similar laws but failed, in part due to intense lobbying from businesses that noted the devastating effects of Georgia´s new law and did not want the experiment to be repeated in their state. In fact, the enforcement binge started to vanish as the economy gathered steam and in June 2012, the Obama administration decided to stop some of the removals, in particular, of young irregular migrants[126]. A new comprehensive immigration reform bill passed the US Senate on the 27th June 2013, at the time of writing, but may be stalled in the House of Representatives.

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[125] "The standstill appears to be the result of many factors, including the weakened US job and housing construction markets, heightened border enforcement, a rise in deportations, the growing dangers associated with illegal border crossings, the long-term decline in Mexico's birth rates and broader economic conditions in Mexico" (Passel, Cohn, and Gonzalez-Barrera 2012, 6).

[126] A new directive from President Obama, signed on the 15th June 2012, allows certain undocumented immigrants — those who can prove they came to the country under the age of 16 and have already lived in the US for at least five consecutive years — to stay in the country without fear of being deported (Foley 2012; 2013). The young people who might be allowed to stay cannot be older than 30 and must be either still in school or graduated from high school or obtained a general education development (GED) certificate. Obviously, this is not a law, and can be repealed by Obama or his successor whenever they wish; furthermore it does not offer a true legal status, applies to relatively few people, and only highlights the urgent need of comprehensive immigration reform legislation.

3.3.4 European Policymaking

3.3.4.1 The Push towards a Common Asylum and Immigration Policy

If irregular migration can be seen as a new and exploitative immigration regime, where immigration restriction laws do not really keep people out but serve mainly to make people vulnerable, what could be an alternative system? How could wealthy nations allow immigrants in legally and respect their basic rights? European policymaking, with its multilateral approach, can shed a light on this, at least in certain proposals and aspirations which exist much more in theory than in practice. On the ground, many of the immigration laws in European countries today are so restrictive that most refugees and low-skilled economic migrants are forced to enter Europe irregularly and go through the asylum system to be granted "humanitarian" and "subsidiary" protection (and, in very few cases, "refugee status"). This flow of immigrants is then expected to fill in the job vacancies in Western Europe which citizens of the new EU member states stopped filling few years after accession.

Only since the Amsterdam Treaty (1997, in force since 1999) has the Council of the EU been equipped to legislate (at the "Community" level) on the issues of migration and asylum, and in spite of being asked to do so in earnest, particularly in the Tampere Summit (1999), progress was very slow until the changes in voting rules in the Nice Treaty (2001, in force since 2003) and the adoption of the Hague Programme (2004). Since the Lisbon Treaty (2007, in force since 2009), migration,

asylum and border control issues can be decided through the qualified majority voting procedure, and do not require unanimity[127].

Most of the regulations and directives coming from the Council of the EU in these last few years deal with border control, asylum and irregular migration. Legislation on labour migration and on the reception of third-country nationals fleeing natural disasters and ecological crises is being proposed only very recently. The Single Permit Directive (2011/98/EU), for instance, is one of the first major European legal instruments allowing third-country nationals working legally within the EU to enjoy common rights and obtain work and residence permits via a single procedure. It had been proposed by the European Commission back in 2007 and took five years of gruelling diplomacy to adopt (Pascouau and McLaughlin 2012); member states still have until December 2013 to transpose the Directive into national legislation.

For decades, labour migration in Europe came mostly from neighbouring countries, and the typical way of "regulating" it was first to help the neighbouring country build its institutions and develop economically, hence reducing migration pressure on its citizens, then allow the country to join the European Community, and eventually removing border restrictions. When ten new Eastern European and Mediterranean countries joined the bloc in 2004, and Romania and Bulgaria in 2007, some feared that Western Europe would be "invaded" by migrant workers from these new members, yet

[127] The Treaty of Lisbon also gave legal teeth to the European Charter of Fundamental Rights; one of the fruits of this is the Racial Equality Directive (2000/43/EC). Cf. European Union Agency for Fundamental Rights (2010, 20).

this did not happen[128]: these countries, stimulated by well-channelled aid and prospects of EU membership, developed rapidly and were able to provide decent employment and standard of living to their citizens, who then felt less need to emigrate to other European countries after accession. Rather, it was these countries at the periphery of the bloc which have had to deal with problems of labour and asylum migration from outside.

3.3.4.2 The Dublin Regulation and Fortress Europe

In the early 2000s, EU-15 countries thought that they would have more than enough labour migration to meet their needs coming from the new members, and started a process to secure the external borders of the Union against economic migrants from the outside, creating what is often referred to as "Fortress Europe" even before the 12 new countries joined; the rise of populist xenophobic political parties in a number of EU-15 countries, international terrorism and noticeable increases in arrivals of asylum seekers and clandestine immigrants (accompanied by media hype) spurred a host of policies and initiatives intended to drastically reduce immigration of third-country nationals (Lahav 2004).

By the late 2000s, the new EU member states, forced to deal with irregular migration and asylum via the Dublin II regulation (approved just before their accession, and imposed on them by the EU-15 as part of the *Acquis*), became the biggest champions of "Fortress Europe". Furthermore, with the lingering Long Recession since 2008 and the massive unemployment resulting from the austerity measures imposed to reign in deficits and calm the markets after the recession, the old member

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[128] In 2006, nationals of the new EU member states represented less than 1% of the labour force in the EU-15 countries (Kunz and Leinonen 2007, 143).

states have not seen much need to press for new legislation to encourage and regulate labour migration from outside the EU. However, given that the EU cannot continue to expand indefinitely, and in the long run needs labour migrants to grow economically, maintain its welfare state and deal with demographic decline (Kunz and Leinonen 2007), it will need effective community-level legislation and institutions to deal with "economic" and "environmental" migrants from third-countries. Over the last few years, a number of partnership agreements have been signed with individual countries and regional groups (namely EU-Africa, Eastern Partnership, EuroMed Partnership) and it is thought that as the partnerships develop, the EU will have to allow some freedom of movement to citizens from these countries.

In this context, one must recognise that common policies on asylum (e.g. regarding minimum standards of reception, family reunification, rights of third-country nationals), enforcement by the European Commission, rulings by the European Court of Human Rights and targeted disbursement of EU funds have indeed coerced and cajoled countries like Greece to make some improvements to their oppressive asylum laws and seriously inadequate reception structures[129]. However, humane and forward-looking directives on these common policies proposed by the European Commission were time and again watered down and made more restrictive and less effective as they went through the Council. The evolution of the Family Reunification Directive (2003/86/EC) and the Single Permit Directive (2011/98/EU) are prime examples of this (Pascouau and McLaughlin 2012;

[129] In 2009, the European Court of Human Rights ruled that the conditions of detention in Greece amounted to degrading treatment and thus violated Article 3 of the European Convention on Human Rights; this was a blow to European politicians seeking to push back and corral asylum seekers in "safe third countries" on the margins of the EU (such as Libya) since, in some cases, even EU countries (such as Greece) cannot be considered truly "safe" (cf. European Union Agency for Fundamental Rights (FRA) 2010, 127).

Gortázar Rotaeche 2006, 226f; Comité épiscopal des migrations et des gens du voyage de la Conférence des évêques de France 2004, B3). Furthermore, Europe also adopted "non-arrival measures", such as the Carrier Sanctions Directive (2001/51/EC), which are clearly intended to prevent people from applying for asylum (Gibney 2005).

3.3.4.3 Immigration Restriction Laws Enacted at the National Level

In the meanwhile, given the current political climate, national migration policies have become more and more restrictive (Lahav 2004), as the EU institutions (pushed by the governments of Chirac, Sarkozy, Berlusconi and others) forced and cajoled member states to criminalize people-smugglers along with traffickers (2002/90/EC), penalize those who employ irregular immigrants (2009/52/EC) and enforce a strict returns policy (i.e. deportation regime – 2008/115/EC). To complement this, between 2001 and June 2008 the Council of Justice and Home Affairs Ministers (JHA) has authorized the Commission to negotiate Readmission Agreements with sixteen countries.[130] Development aid is often tied to the signature and implementation of such agreements (cf. 1905/2006/EC). While recent policy proposals, such as the GAMM (Global Approach to Migration and Mobility) have pointed towards facilitating regular immigration from partner countries, member states are reluc-

[130] These are: Albania, Algeria, Bosnia and Herzegovina, China, the Former Yugoslav Republic of Macedonia, Hong Kong, Macao, Moldova, Montenegro, Morocco, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. On paper, the Readmission Agreements must comply with the 1951 Geneva Convention and with the EU's other human rights commitments. This means no illegal immigrant can be removed, expelled or extradited to a country where there is a serious risk that he/she could be subjected to the death penalty, torture or other inhumane or degrading treatment. It is however well known that many of these countries have dismal human rights records as can be seen from Amnesty International and Human Rights Watch reports. Journalists like Gabriele Del Grande (2008; 2009a) have regularly documented cases of returnees being tortured, beaten up and left to die in the desert by the security forces of some of these countries.

tant to move in this direction, and the EU seems to be confined for the near future by its Byzantine system of national immigration regimes.

Most Western European countries, in fact, have moved from easy migration promotion (during World War II, the post-war boom years, the 1980s boom in Italy, the 1990s boom in Spain) to excessive migration restriction (during recessions) and then, after failing to ease migration policies during times of growth, have become reliant on irregular immigration employed in the underground economy, coupled with periodic "amnesties" to allow the integration of these immigrants into the mainstream economy and society. Some countries had very well-organized and efficient systems to manage temporary workers (e.g. Germany´s *Gastarbeiter* system) which were abruptly written off when, in recession years, politicians "discovered" the obvious: that human beings are not quite like cargo trains which can be moved across borders at the push of a button[131]. One wonders how brilliant German experts could meticulously design and implement an efficient guestworker scheme, while ignoring history and sociology to the point of conning themselves into think-

[131] Britain, France, Switzerland, the Netherlands and Sweden had significant guestworker programmes after World War II, but the case which is most discussed in the literature is the (West) German *Gastarbeiter* system, which in 1973 was catering for 2.6 million workers in the Federal Republic of Germany (BRD) through bilateral agreements with Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia and Yugoslavia (Castles and Miller 2009, 100). Workers were employed on 12-month contracts, accommodated in hostels or dormitories, and treated as a disposable commodity. Most went back "home" at the end of their contract, but some formed bonds with employers and neighbours and started to call Germany "home"; the BRD government could not resort to the sort of coercion used by the World War II Nazi foreign worker programme. The German-born and German-educated children of Turkish guestworkers could not easily be "sent back" to Turkey during the 1973 recession and the resulting *Anwerbestopp*; nor would German employers let their dedicated and skilled Turkish employees and friends go back home when the authorities blew the whistle (cf. Castles and Miller 2009, 176f). Germany had to eventually reform its laws to give these unexpected settlers the right to permanent residence, and eventually give up its *jus sanguinis* system to allow their children and grandchildren access to citizenship. During the *Anwerbestopp* and after, migration continued, mostly in the form of family reunification.

ing that none of the "guests" were there to stay, and that the complex reality of human mobility could be completely tamed by efficient bureaucracy.

Other countries did the very opposite, and put very little effort into managing migration until the 2000s: Italy has a history of doing little or nothing to allow migrant labour in regularly, not enforcing deportation laws, and resorting to amnesties when the amount of undocumented migrants became a concern.[132] In 1998, it finally adopted a "functioning" system of yearly labour immigration quotas[133], but the slots are usually taken up by immigrants already in the country irregularly, and employers are not used to hire "people they don't know" from abroad, such that it is virtually impossible for a person from a poor non-EU country to find a slot and a sponsor to migrate legally to Italy from the outside. Italian migration policy, in practice, works this way: if you want to get the documents to "immigrate" legally into Italy, you first have to get there *without* the documents: you

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[132] Before the 1998 "Turco-Napolitano Law" (40/1998), Italy simply accepted its porous coastal borders as a fact. Upon apprehension by law-enforcement agents, most irregular immigrants were simply given a paper which ordered them to self-deport within 15 days (cf. "Martelli Law" 39/1990). The 1998 law then provided for deportation, but many irregular migrants appealed deportation and went underground during the appeal. In July 2002, a strict law on deportation, the "Bossi-Fini Law" (189/2002) was introduced requiring that illegal immigrants be ordered to leave the country within five days, during which time they are to be kept in Italian custody. Nonetheless, the authorities on the ground find the law too harsh and demanding to implement, and do not strictly follow the detention and deportation procedure (only around 38% are actually deported). Given the problems caused by such a huge undocumented population living and working underground, between 1986 and 1998 the Italian government held 4 amnesties, granting citizenship to about 700,000 people (cf. Gramaglia 2008). More recently, the Berlusconi government rejected amnesties and portrayed itself as an anti-immigration champion valiantly fighting the smugglers and traffickers on the high seas; in fact, while labour migration dwindled (mostly due to economic decline), the number of legal immigrants continued to increase through family reunification and the granting of asylum and humanitarian protection while little was done to improve integration. Furthermore, among the newly-arrived irregular immigrants, 63% are overstayers, 24% have entered Italy via its European neighbours, and only 13% have crossed clandestinely from Africa (Del Grande 2008, 124).

[133] The 1990 "Martelli Law" (39/1990) did provide for quotas, but until 1998, governments used to set ridiculously low quotas year after year, and make the permits available in the very last days of the same year they were supposed to cover (Sciortino 2009, 4).

need to enter clandestinely or overstay your tourist visa, find an employer, get a job, and only then fill in the documents, while pretending you have just come in regularly from the outside (cf. Sciortino 2009, 11).

3.3.4.4 Conclusion: A European Migration Management System?

In conclusion, I believe that Europe's efforts towards common legislation in matters of immigration and asylum, protection of rights of third-country nationals, helping its neighbours to develop (economically, democratically, in the respect of human rights) and seeking to manage labour migration through partnership agreements are laudable. They provide — at least on paper — concrete means to improve the reception conditions and the accountability of certain European nations and an alternative model of international relations that could eventually replace past paternalism and self-interested arm-twisting. Furthermore, Europe´s traditional expansion policy, which links free trade with free movement of persons and institution building, is certainly more ethically commendable than the one used in other economic blocks, such as NAFTA. The European Common Market has indeed helped poorer neighbours develop rapidly, become members and rise to be the political peers of the more powerful and wealthy European nations; this model could be emulated, *mutatis mutandis*, by other continents to overcome the moral and political limitations of the Westphalian model of sovereignty. Since expansion of the Union beyond geographical Europe and the historical bounds of Christendom seems unlikely, the EU will now have to find a way to turn its external neighbours — especially in Asia and Africa — into true partners and equals: this will doubtlessly be a big challenge. Surely, the freedom of movement of persons will have to be an important part of that project, if Europe wants to hold on to the egalitarian beliefs of its founders.

In the meanwhile and for the foreseeable future, Europe's image and its economy (especially in times of growth) will continue to lure many more immigrants than its restrictive common and national laws will ever allow (Gortázar Rotaeche 2006, 223f). This, of course, implies irregular migration. While the largest contingent of irregular immigrants, by far, will be visa overstayers (which cannot be targeted by fortifying borders and persecuting people smugglers), the poorest and most vulnerable migrants and refugees will have to resort to ruthless criminal traffickers to get into Europe, or attempt routes that are ever more dangerous and fatal, as billions of Euros are pumped into fortifying land and sea borders against the entry of these unwanted few. In this political context, Europe´s right-wing parties will continue to present an anti-immigration agenda on the surface, to attract voters, but will be unwilling to do anything that could starve businesses of the compliant, flexible and cheap immigrant labour they need. Hence, they will tend to combat irregular migration in ways which are mostly symbolic or extremely harsh for the visible few, but not effectual for the whole. Europe´s left-wing parties, concerned with labour discrimination and wage depression, may be willing to take more effective measures to reduce irregular immigration and to replace it with regular immigration. If the second part of this agenda fails due to resistance from voters and coalition partners, they will be tempted to abandon the former.

On the European level, the more cosmopolitan and transnationalist European Parliament and Commission will push for more balanced, equitable and forward-looking common migration laws, but the more nationalist Council of Ministers will resist or water down these proposals in the name of local or national interest. Hence, for the coming years, irregular migration will continue to provide Europe with an exploitable labour force which will help it become more "competitive" and "business friendly" by weakening trade unions, and thus allowing politicians to water down laws

that protect workers´ rights, a process which is hard to resist in a globalising world. We may have to wait a number of decades until population growth in the global South stabilizes and labour over-supply on world markets dwindles; when that happens, maybe, Europe will be much less concerned with combatting irregular migration and more focussed on attracting foreign workers and protecting their rights. Yet, this sombre horizon does not belie the urgent need of an ethical critique of European border policies, nor should it weary the hope that there will be ears and hearts ready to welcome this critique, both in the streets of Europe and in the corridors of Brussels.

3.3.5 Conclusion: Irregular Flows and Immigration Restriction

In this section, we have argued that the "illegality" or "irregularity" or "clandestinity" of the migration of many persons today is a recent social construct (Düvell 2008), whereby "undesired desirable immigrants" (a phenomenon that has existed for centuries, and certainly predates border laws and identity papers) become objects of laws which try to satisfy two conflicting publics. Lawmakers seek to appease, at the same time, those persons who find these migrants undesirable (due to xenophobia, concerns for the social and political order, fears of wage and resource competition, and resistance to wider processes of social transformation), and those who find them desirable (for economic, moral, cultural and other reasons). We could somehow compare these immigrants to alcohol during Prohibition[134]. Their "illegality" is the perverse effect of an unenforceable and morally

[134] During Prohibition, alcohol was a good desired by many; its undesirable effects needed to be addressed by regulation, education, social change, and flexible local solutions; the Anti-Saloon league was noisy and intransigent and wanted a "simple" solution which did not exist; lawmakers gave the dries what they wanted, on paper, but the Prohibition laws were either not enforceable or not enforced; the whole system was hypocritical and seriously detrimental to the enforcement of reasonable laws targeting serious criminal and civil offenses.

unacceptable law. In itself, the irregular status of many migrants today does not entail that they are "criminals" and have no right to immigrate.

This is not to say that, in the case of immigration, borders should be simply left "open" and that the "unregulated" labour market should be tasked with automatically managing the flow. Sovereign nations may, to some extent, limit the entry of "empowered" economic migrants, and of some "forced" economic migrants whose plight owes little or nothing to the actions or inaction of the receiving country. Theoretically, there might even be a limit to how many immigrants a country can integrate at a time; even though most developed countries seem to be nowhere near that limit, regulation (i.e. immigration *management*, rather than immigration *restriction*) is essential. Flexible, reasonable, fair, and non-hypocritical immigration laws — which, *at least*, offer as many "green cards" and "temporary immigration visas" as the number of immigrant workers *the labour market is actually absorbing*, and set family reunification quotas in a way to ensure *prompt reunification with members of the nuclear family* — will already help resolve a good part of the problem, without even touching on the ethical issue of a wealthy nation´s duties with regards to non-citizens living within its borders and to poor persons abroad who have been negatively affected by its policies. Of course, the problem of immigration may be bigger than what the central planning and bureaucracy of a single nation can handle on its own. Multi-lateral migration management regimes, such as those envisaged by some European policymakers, could thus be a good way forward, if they can overcome local xenophobia and political opportunism.

3.4 New Receiving Countries: Destinations Have Changed

The tensions in European policymaking signal another change in the phenomenon of human mobility. For many centuries, countries in Northern Europe were mostly immigrant-sending countries. Then, during World War II and in the post-war boom, they started receiving immigrants from Southern and Eastern Europe, and from former colonies, while insisting that these persons were only temporary labourers and that Northern European countries were not "countries of immigration", like the US, Canada, Argentina or Australia. In the 1980s and 1990s, these Northern European countries realised that they had actually become "countries of immigration": given the immigration-restriction measures taken in the 1970, many "temporary" workers decided to stay and bring their families along. In the meanwhile, countries in the South of Europe started to receive large quantities of immigrants themselves. More recently, Eastern European countries too seem to have become important receiving countries. In some cases, the change from being a net immigrant-sending country to being a net immigrant-receiving country has happened very rapidly, and has become another major argument in favour of immigration restriction.

3.4.1 "Wir sind kein Einwanderungsland" (We Are Not a Country of Immigration)

Washington DC is the capital of a nation built on immigration. The idea that immigration *in itself* is problematic, abnormal or incompatible with the process of nation-building would be a hard sell in the United States. Rather, American "anti-immigration" politicians have always argued that there are desirable and less desirable immigrants, and that the latter should be let in only if needed by the economy, and not offered full integration as citizens (cf. R. M. Smith 1997). We have seen how this theory was put into practice via a series of "immigration regimes" in the US (section 3.3.3.3,

above). Even so, the US legally admits a large number of migrants and refugees every year and effectively integrates many of these foreigners in spite of its limited welfare state. It considers the influx a normal process that has been going on since early colonial times, and prides itself on being able to build one people out of the many, *e pluribus unum*.

In contrast, most other countries in the world are struggling with the very *idea* of immigration and the issues of cultural and religious diversity that it implies. Until 1989, German politicians of all colours had for many years insisted that Germany is *not* a country of immigration (*Wir sind kein Einwanderungsland*); now, unable to deny the obvious, most limit themselves to coded expressions such as "the boat is full" or "multiculturalism has failed". At the same time, right-wing parties all around Europe, while grudgingly accepting the freedom of movement of Europeans within the Union, insist that, unlike the Americas, Europe is *not* a continent of immigration. For many people, this thesis sounds plausible; history, as we have seen in section 3.2.2, tells a different story. All the continents were built on migration and the illusion that most modern states (in the "old worlds" of Eurasia and Africa) were built from long-established native "nations" is mostly a Romanticist myth created to counter the universalism of the French Revolution. We explore this further in Chapter 4, and show that even Malta, one of the most "recent" immigrant-receiving countries, has a history which alternates periods of emigration and periods of immigration.

It is true that countries which start to receive immigrants after sending emigrants for many decades or centuries need time to adapt, build their capacity to integrate new arrivals, reflect on their national identity and recast their national narrative, so as to be able to truly include the other. Yet, as we shall see in the Maltese case, certain countries may spend decades trying to convince them-

selves that immigrants are only sojourners: they will not stay for long and so need not be integrated. Often, what lies behind the *Wir sind kein Einwanderungsland* narrative, and the reluctance to consider the possibility of integration of immigrants, is a political climate hostile to people considered "different". There is usually no problem with accepting and integrating educated white EU citizens of European descent who decide to move to new "receiving countries" in Europe. Low-skilled Arab and Asian immigrants, Blacks, and Muslims, however, are deemed "problematic" (see section 3.5).

3.4.2 The Political Climate in Receiving Countries and Naturalisation of Immigrants

Even if we were to bracket the effects of international terrorism after the "9/11" attacks, xenophobia and Islamophobia in many developed countries are grafted onto deep-seated identity crises, especially after decades of secularization, social re-composition of the concept of "family", growing mistrust in traditional institutions and increasing isolation of the self, in what has been called "postmodernity" or "second modernity" (Betz 1993). In the search for narratives which bestow a strong sense of identity, the affirmation of one´s ethnicity, religion and culture *in opposition* to that of the "other" becomes a very tempting game (Maalouf 2012). In this context, many European countries have problems dealing with diversity and pluralism even within their own history and geographical space; most are still seeking a national identity which provides unity to the body politic while not wanting to impose (or designate) one culture, language, religion as part of the "national identity" as past "authoritarian", "totalitarian" or "cultural supremacist" governments have done, though some have not abandoned past monolithic constructs of national identity (P. Simon 2012).

When civil authorities and civil society in Spain, Italy or Belgium are asked by immigrants what it means to be “Spanish”, “Italian” or “Belgian”, their reflection is already encumbered by a longstanding debate with separatists in “Catalonia”, “Padania” or “Flanders” who argue that the so-called “national” culture is just another regional culture being unfairly imposed on everyone. When Muslim communities in Britain seek to build schools and mosques and express their faith and culture in the streets of Bradford and Birmingham, Downing Street is promoting devolution and cultural rights for the Scots, Cornish and Welsh. Furthermore, in Europe, national identity is challenged from above as mobile and well-educated people become more “European” and favour the promotion of a “European” identity the contours of which are hard to define, especially if — in the absence of a European Constitution — one wants to avoid associating “European” too closely with markers like “whiteness”, “Christian heritage”, “sophisticated civilization”, and resorting to mythological constructs typical of 19th century nationalism and 20th century fascism.

Even “younger” polities with a less complex national history struggle with forms of nativism. School textbooks in Texas are willing to makes space for non-scientific theories of the origins of creation and humankind, but less willing to make space for “non-WASP” theories claiming polygenic political and cultural origins of the United States (McKinley 2010). Certain lawmakers in Arizona, Georgia and Alabama find nothing strange in anti-immigration laws that inevitably entail the racial profiling of Hispanic citizens (I. D. Williams 2011). Nativist movements, such as the Tea Party, can influence the policies of the major political parties both locally and on a national level. Similarly, Australia´s administrative detention system targeting boat people from Asia is the perfect cultural antithesis of the relaxed and easy-going coolness usually associated with the word “Australian” (Welch 2012), and occasional surges in the popularity of nativist politicians, such as Pauline Hanson in the 1990s,

indicate that the fear of Asia and its cultures, which was the cornerstone of the "White Australia" policy in past years, has not been buried too deep.

Nativism presents itself on the political scene in two ways. Nativists may form political parties which attempt to join and manipulate weak coalition governments or force mainstream parties to adopt their policies to avoid losing nativist "protest" votes to their traditional mainstream opponents (Statham 2003; Saggar 2003). They may also form non-party groups and movements which seem to influence public opinion, debates within mainstream political parties, and government policies. Non-party movements are important in Central and Eastern Europe (going from academic anti-immigration "think-tanks" to neo-Nazis and extreme-right skinhead gangs) and also in the United States and Canada (Mudde 2012). The adoption of restrictive immigration policies is not always the only or main part of the nativist agenda; for instance in countries where immigration is relatively low (e.g. Central and Eastern Europe) radical-right parties and groups tend to focus on longstanding minority groups (e.g. the Roma); in Western Europe, where immigration is important, anti-immigrant scaremongering fits into more general discourses about crime and corruption (Mudde 2012, 1).

Besides trying to block the entry of new immigrants, nativism rejects the integration of immigrants already present in the country, insisting that they do not belong there and should not be encouraged to stay. Nativists are especially adamant about not giving legal status and citizenship rights to irregular immigrants, even when experts agree that the country may reap huge benefits by doing so. For instance, studies indicate that if all undocumented immigrants currently living in the United States were legalized, $4.5 billion to $5.4 billion in additional net tax revenue would be collected by

the federal government over three years, and $1.5 trillion would be added the US GDP over a ten year period (Hinojosa-Ojeda, 2010).

Of course, there is some punch in the argument that offering regularization and, eventually, naturalisation, to irregular migrants seems to reward people for breaking the law, and is unfair towards prospective immigrants who are waiting in line to enter the country or apply for citizenship in the regular manner. Yet, when a civil society implicitly allows certain people to participate in practically all aspects of public life, and for many years accepts their labour, which contributes to the building of the nation, when membership in a society is a social reality denied only by legal technicalities and bureaucratic hurdles, these supposedly "ethical" arguments become rationalizations for ideologies of exclusion (Stumpf 2006).

3.4.3 Future Citizens, or a Permanent Underclass?

In democratic polities with a modicum of belief in equality, there is a point in the integration process where the administrative misdemeanour offense of irregular entry can no longer justify policies which keep a caste of people who have become part of the very fabric of society in the position of an underclass permanently cut off from the rights of membership. Of course, one could emulate some countries in the Middle East which seem to have little problem with exclusion and inequality. For instance 50% of the population of the United Arab Emirates is made up of non-citizens (R. Cohen 1991, 17); in such contexts citizenship becomes the pedigree of a new nativist aristocracy and the "democratic process", available only to such citizens, becomes a new form of minority rule.

Western nations, however, cannot simply tolerate exclusion and institutionalized inequality forever. Though traditional parties (especially in classical *ius sanguinis* nations) may be at first reluctant

to offer naturalisation and voting rights to migrants, it is very hard in modern democracies to exclude people with immigrant backgrounds from political participation (especially after the second generation): human rights decisions by the courts eventually push citizenship laws towards some form of *ius domicilii*, where prolonged residence becomes a title for citizenship (cf. Benhabib 2004, 202–212).

To be sure, offering naturalisation to citizens who are not socially well integrated can be tricky. New citizens can shift from being the excluded other to being the political kingmakers who may themselves support policies of exclusion and staunchly oppose the naturalisation of other immigrants. Soviet Jewish immigrants in Israel, Turkish Germans, Pied-noirs in France and immigrants in Québec have clearly influenced the outcomes of recent elections and referenda, sometimes supporting the agendas of nativist, far-right or xenophobic politicians. Local politicians and presidential candidates in the US are becoming more and more concerned with luring the Hispanic vote (Castles and Miller 2009, 287f) but this does not necessarily entail that free movement of persons across the US-Mexican border will soon become a reality: rather, some politicians suddenly feel the need of spending huge amounts of money to convince Hispanic voters that those very policies that force their cousins and compatriots to risk their lives crossing the Sonora desert are necessary to protect their jobs and keep their children safe.

Modern democracies sorely need intelligent, informed and tolerant voters who can see beyond self-interest and the interests of their clans, and are truly concerned with the common good. They thrive when peopled by active citizens who participate positively in civil society. When the inevitable moment comes when a democracy feels obliged by its own fundamental values to offer mem-

bership to yet another group of immigrants, the fruits of clever past integration policies or lack thereof return to nourish or haunt it. Marginalised, under-educated, fundamentalist or frustrated, yet powerful, swing-voters do not make very good "new citizens". Yet it is refreshing to have well-informed, bicultural, enthusiastic and often staunchly patriotic new citizens bringing fresh blood and ideas into traditional political parties and helping to overcome longstanding political gridlocks.

3.4.4 Conclusion: Being Always Ready to Receive the "Other"

Assuming that the "other" can and wants to be integrated socially, culturally and politically (see 3.5, below), and that the "other" is there and will remain there, all countries — and especially democracies — need to quickly overcome xenophobia, negative forms of nationalism or nativism, and find ways of overcoming crises in national identity and definitions of the self which are unjustly exclusive. Whether the "other" is an economic migrant, a convention refugee, a regional nationalist (seeking greater autonomy for her region), or a member of a marginalised minority group or social class, is not all that important: all need to be "integrated", even in countries with no significant immigrant flows. This is why the real distinction is not a *historical* distinction between migrant-sending and migrant-receiving countries, but a *moral and political* one, between polities which, when faced with the reality of otherness and pluralism, seek to ignore it or violently eradicate it, and ones which seek to deal with it justly. In Chapter 7, we will discuss civic hospitality and civic kinship, and show how countries can be always ready to receive the "other", in an age when population movements can reverse direction in a matter of years, rather than centuries.

3.5 Scepticism on Integration: The Immigrants Have Changed

The above reflections on the political climate in receiving countries point to another theory regarding the "new migration" in recent decades. Some believe that the new generation of immigrants cannot be truly integrated, since they are very different from previous generations of immigrants in terms of culture and religion (cf. Huntington 2004). The problem, according to this thesis, is that we have an "integration crisis". This thesis, of course, existed in the past and generally referred to Catholics in Protestant-majority countries; the history of the integration of Irish and Italian immigrants in the US shows that integration takes time, especially if a particular group of immigrants is marginalised and treated with hostility. Nowadays, the immigrants who supposedly "cannot" or "do not want to" be integrated are generally Muslim, though Christian Hispanic immigrants in the US are sometimes included in this category.

3.5.1 "Muslims Cannot Be Integrated"

3.5.1.1 "Nativist" Violence Targeting Minorities

Xenophobia, and Islamophobia in particular, have been on the increase in Western countries since the late 1970s, and recent reports by groups which monitor xenophobic attitudes and behaviours, such as the EU Agency for Fundamental Rights (FRA) (2010) and the Brookings Institute (Cox et al. 2011), are troubling. This is part of a trend of violence targeting minority groups considered racially, culturally or religiously "different", often perpetrated by people at the margins of society who feel that these people are somehow responsible for their situation of social exclusion.

Some authors have linked this xenophobia to growing insecurity felt by many people, and ultimately resulting from rapid economic and social change (Castles and Miller 2009, 263–8). Pockets of

marginalisation within the "First World" — often referred to as the "Fourth World" in France and "inner-city ghettos" in the US — which concentrate social problems in neighbourhoods with under-funded, understaffed, demotivated and poorly-trained administrations and ineffective social institutions (Castells 2000, 142) — are the least suitable places to welcome and integrate refugees and migrants, whose perceived difference makes them easy scapegoats (Huysmans 1995; Snyder 2007, 357). Xenophobic populist political parties have exploited and spurred this trend in several Western countries[135].

Many people would deny they are Islamophobes and claim that they are simply wary of potential "terrorists" and concerned about "security". We have seen above how governments have used such security arguments to justify spending billions of dollars securing borders against clandestine entry by poor migrants and refugees, when it is obvious that trained international terrorists supported by big financial networks can afford to cross borders legally, and would not risk their lives hiking in the middle of the Sonora desert or drifting in a rickety boat off Malta. Terrorism — the use of violence against non-combatants to intimidate or coerce, especially for political purposes — has a long history, and it became more spectacular and international as the second half of the 20th century unfolded. Yet, after the 11th September 2001 attacks in the US, the 11th March 2004 attacks in

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[135] Eytan Myers (2004, 2) gives a good summary of the developments in Europe in the late 1990s and 2000s: "The host of the EU 2002 summit in Seville, Spanish Prime Minister Jose Maria Aznar, said that reducing illegal immigration was 'the most important question in European politics at the moment.' His comment was largely in response to xenophobic tensions, anti-immigrant violence, and extreme-right anti-immigrant parties that have spread throughout Europe. In France, Le Pen reached the second round of the 2002 presidential elections, where he won 18 percent of the vote. The Pim Fortuyn party received 18 percent of the vote in the May 2002 Dutch elections, and became the second largest party in Parliament. In Austria, Haider's Freedom Party won 26.9 percent of the vote in the October 1999 national elections, and joined the ruling coalition. And the Swiss People's Party (UDC), headed by Christopher Blocker, gained 22.5 percent of the vote in the October 1999 Swiss national elections."

Madrid and the 7th July 2005 London bombings, terrorism has become associated with religion and with Islam in particular. In this way, it has fed into a tradition of Islamophobia which, in some countries, has a long history, going back to the Middle Ages.

3.5.1.2 Violence in Islam and International Terrorism

The causes of violence considered by many people as "extreme" and "irrational" are multiple and complex. In the 1950s and 1960s most local and international terrorist movements, bred in situations of marginalisation and oppression, were quickly categorized by journalists as "communist" or "nationalist" or "tribal". Since the 1970s, sociologists have started to observe the resurgence of politically assertive forms of religion (Toft, Philpott, and Shah 2011), and "religious violence" or "incompatible civilizations" have become easy labels to explain away some of the most complex conflicts in the world, following simplistic yet seductive theories such as that expounded by Samuel Huntington. Indeed, Islam´s new role in politics has been particularly noticeable since the beginning of the 14th century of the Hegira, the growing social divide in many oil-producing majority-Muslim countries since the 1973 crisis, the pauperization of indebted majority-Muslim countries in the aftermath of the crisis, and the increasing frustration with corrupt secular governments in these countries (Castells 2009, 13f).

In such a context, psychologically and sociologically problematic but relatively benign forms of "religious fundamentalism" — that invite believers to go to the roots or foundations of religious tradition to define one´s own identity and to find ethical inspiration for the reform of politics and public mores — are easily confused with dangerous and criminal behaviours of some extremist revolutionary leaders and groups which opt for terrorism to pursue their own political purposes. Such

leaders and groups need an ideological framework to rationalize their actions and recruit followers; Marxism, nationalism and other worldviews were used for this purpose in the past, but the best strategy today in most developing countries is to join the religious bandwagon and flaunt one´s piety. Many people in receiving countries, however, do not know enough history, sociology, political science and religious culture to avoid linking the average decent, pious, and bearded Muslim man to media images of Al Qaeda or the Taliban, unless they take the risk to have meaningful conversations with Muslims, or at least take the time to form a nuanced and well-read appraisal of contemporary Islamic religions and movements — which is probably even less likely.

To be sure, besides the rare and spectacular acts of terrorism that occasionally shock the Western World, often perpetrated by Westernized "Muslims" or "Christians" with tortuous personal histories and personalities[136] (considered despicable by most persons deeply rooted in those religious traditions), there are more ordinary forms of violence between Muslim and Christian groups, especially along the "tenth parallel" (Nigeria, Sudan/South Sudan, Eritrea-Ethiopia, Somalia, Malaysia, Indonesia, the Philippines). News stories from these countries and regions are often used to illustrate that "Islam is violent and dangerous", and "this is just a statement of fact, not Islamophobia".

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[136] Juergensmeyer (2003) tries to look, as it were, into the minds of famous terrorists who claimed to be motivated by religion, and provides some interesting insights to understand their psychology and motivations. Nonetheless, his thesis linking these persons to "cultures of violence" and such cultures to religion is not very convincing, since he does not distinguish mainstream religious groups (which have internal structures to contain violence and destructive behaviours, and to vet certain noxious interpretations of religious texts) from sects and smaller religious groups without such structures. Furthermore, he does not make a distinction between a pre-modern "respect for tradition" (which has a complex approach to tradition requiring mediation by a series of authorities and experts) and a post-modern "traditionalism" which simplifies, legalizes, dogmatizes, and democratizes tradition as a set of immediately-accessible, absolute, immutable and quasi-scientific truths not open to debate or interpretation. I believe that such distinctions are necessary to understand the phenomenon of so-called "religiously-motivated" extreme violence.

Authors like Eliza Griswold (2010) have carefully investigated the sources of this violence, and concluded that the conflicts conducted under religious insignia are also conflicts about land, water, oil and other resources, and many are rooted in local and tribal tensions which predate the arrival of Muslim and Christian missionaries and armies, and shaped the alliances they forged.

3.5.1.3 Religion as an Excuse for Discrimination

While admitting that spectacularly horrific events like those of the 11th September 2001 in the US, have made it harder for Muslims and their faith to appear "acceptable" in the eyes of their neighbours in Western countries, it is also fair and honest to say that religion has, since time immemorial, been one of the most common grounds used to corral groups for discrimination and disenfranchisement. It may be reasonable for Western countries to ask prospective Muslim residents and citizens to subscribe to certain "Western values" if they want to be part of "modern, tolerant societies"; the problem, however, is in defining *what* those values are (Erlanger 2011).

Supporters of those far-right parties who are most adamant on imposing "Western values" on immigrants are themselves not always very keen on the secularist and liberal underpinnings that these values tend to evoke. I am sure that many Tea-party supporters in the US, and many pious Christians in Europe, would find the images of gay men kissing and topless women on the beach — which Dutch immigration officials routinely show to prospective migrants so as to gauge their commitment to "toleration" (Corbett 2006) — about as unpalatable or as offensive as most Muslims do. That doesn´t however mean that these "conservative" Americans or Europeans are unfit to live in a Western society. Thus, conservative Westerners typically claim that the *real* problem with *Islam* (distinguished from other religions) is its incompatibility with democracy (rather than with

liberal or secular values). When they attempt to illustrate their point by mentioning some dictators in *Arab* and *African* countries — most of whom have a history of being propped up by Western governments and of "investing" considerable amounts of money in Western election campaigns — one is tempted to suggest that the problem with the democratization of many such emerging countries may actually lie closer to home.

3.5.1.4 Dialogue with Muslims

To be sure, in Western countries, Muslims may need to be challenged — through respectful and serious dialogue — on their ideas regarding women´s rights and social roles, the rightful place of religion in a pluralistic public sphere, and on the person´s freedom to choose or abandon their religion. Some Muslim scholars are indeed working to better understand and present the Muslim tradition on these ethical issues (cf. Hashmi 2002) and to establish the basis for such a debate. We should note that Muslims are not the only people struggling with these "values" ; indeed, many minority populations in Western countries — including ones which have been European or "Western" for many centuries — resist the "modern" consensus on these issues, so it is almost as misleading to pit Islam against the West on the basis of these beliefs, as on the basis of tolerance of racy films or support for dictators. In fact, majority populations should reflect on how *all* minorities can be effectively empowered to participate in a rich dialogue on shared values and norms in a plural society. Religious and cultural minorities, liberal secularists, mainstream religious groups and right-wing nationalists may all learn something from such a dialogue. I believe that authors like Appiah (2007, 71f) are right to insist that moral disagreement between persons with different traditions and worldviews does not make it impossible to build a cosmopolitan society together; we can agree on

the "right" and even on some sense of "the good life in the polis" without sharing the same worldviews that tell different communities why such and such practice or value is right and good.

To be sure, majority or dominant groups in modern democracies can only summon the dialogue partners that their integration policies beget: it is hard to imagine a fruitful dialogue with angry people who are constantly treated as second-class residents or citizens, confined to problematic neighbourhoods and offered poor quality education, low-paying jobs and no social mobility. Even so, I believe that such dialogue is possible, and is already happening in many communities and countries, even though it will never compete for the headlines with those acts of terror and violence that sometimes inflame public opinion and dictate knee-jerk policy reactions. Yet, it should occur to many that a frustrated, violent or mentally-unstable Muslim person who threatens or even kills a provocative journalist for "insulting Islam" is not more representative of the general Muslim population than that journalist is of intelligent and culturally-sensitive professional journalism.

3.5.2 "Today´s Second and Third Generations Cannot Be Integrated"

3.5.2.1 Acculturation, Education and the Immigrant Health Paradox

Another version of the thesis that today´s immigrants cannot be integrated is sometimes applied to second- and third-generation immigrants who grow up in troubled neighbourhoods and find it hard to escape marginalisation. One may excuse the first-generation immigrants who never manage to speak good German, or think like French people do: they try hard to establish themselves in the new country, and generally succeed. Their children, however, do not always have the same energy, courage and determination as their parents and may adopt behaviours that lead to marginalisation.

To understand this phenomenon better, let us examine some of the literature in social psychology. First-generation immigrant populations are usually very resilient, especially labour migrants who have the courage to face a new culture and refugees who are resourceful and determined enough to make it to wealthy countries; migration often implies a “selection of the fittest”. The American Psychological Association´s Presidential Taskforce on Immigration (APA 2012, 1–2), referring to numerous studies conducted in the US, concludes that first-generation immigrants “demonstrate the best performance on a variety of physical health, behavioral health, and some educational outcomes, followed by a decline in subsequent generations”; this finding is sometimes referred to as the “immigrant health paradox”. However, the full picture is more complex; some immigrants are psychologically vulnerable, having undergone trauma in the home country and during the process of migration, and having constantly to face discrimination and xenophobia in transit and receiving countries. Immigrant children may face difficulties integrating themselves in the school system and then risk marginalisation later on in a knowledge-intensive economy: many of these children are or will someday become citizens or permanent residents of the receiving country, and policies which reduce their educational opportunities are short-sighted, costly and dangerous in the long term.

Several political exiles as well as writers and poets living in “strange lands” have eloquently expressed their grief, nostalgia, their sense of alienation and their struggles with new cultures. Immigrants with less formal education are often those who suffer most, and this does at times affect their mental health (Sayed-Ahmad Beiruti 2010, 269f). Besides the *social class* of origin of the migrant, the other major factor influencing her psychology and her integration into the new society is the *context of reception*. Various studies concur in the following principle: if newcomers are marginalised, discriminated against, exploited or treated with disrespect, the stressful, insecure and

hostile environment creates serious psychosocial obstacles to acculturation; if, on the other hand, they are placed in receptive contexts (in which governments, local and immigrant communities are proactive in facilitating the integration of immigrants), the outcomes are significantly improved for both the immigrants and the receiving community (Portes and Rumbaut 2006, 201f). Melero and Dié (2010, 81f) discuss the importance of the social, cultural and spiritual needs of immigrants, as well as their need to express themselves, be able to do certain things autonomously, belong and have a stable identity, and so forth. Many of these needs are hard to satisfy in a new country and culture, with a minimal social network especially for those with little formal education. Some immigrants have to beg friends and cajole children to help them communicate with others and perform many simple tasks and errands. In an unfamiliar environment, even cooking a tasty meal or fixing a leak could become dauntingly complex tasks which could make the immigrant feel helpless, putting into question those skills which were previously an important source of pride and self-esteem.

3.5.2.2 Different Types of Acculturation

Oft-cited studies by John W. Berry (e.g. 1992; 1997; 2005) distinguish different types of acculturation based on two variables[137]: whether one maintains or not the culture of origin and whether one acquires or not the culture of the larger group in the receiving society. Acculturation is a dual process depending on the two cultural groups which may support or hinder persons and families in the process; the worst outcome is when one rejects or slowly loses contact with the culture of origin

[137] The combination of the two variables yields four "Berry boxes" which most scholars of intercultural relations generally refer to in their works, though some have tried to "think outside the Berry boxes" so as to conceptualize some of the complex relations between cultural groups which cannot be fully represented in this intuitive scheme (cf. Ward 2008; de la Mata Benítez et al. 2010).

while not adopting (or, due to stereotypes and xenophobia, not being allowed to identify with) the new culture — this is called *marginalisation.* Acculturation works best when immigrants can function with ease within, and identify with, both the culture of origin and the new culture — this is called *integration*. *Assimilation* results when one loses the cultural identity of one´s parents and family in the sending country and fully adopts that of the main social group in the receiving society; *segregation* is the opposite — when persons form (or are obliged to form) a minority group that maintains the cultural identity of their forebears while avoiding the type of contact with the larger group that would require building cultural bridges and adopting significant elements of the new culture. If poorly implemented, "multiculturalism", the ideological alternative to assimilationism, can become segregationist, if cultures are simply juxtaposed and compartmentalized, leading to claims that "multiculturalism has failed" (Falloon 2011). Nonetheless, multiculturalism could also lead to true integration if residents and citizens with migrant backgrounds are helped to acquire the best of both cultures, while retaining a critical attitude towards both and an ability to resolve cultural tensions within themselves, and if people from the dominant culture are ready to make space for, and adapt to, the culture of the newcomers, or at least some of its forms of expression (Carpenter, Zárate, and Garza 2007; Zárate et al. 2012). True integration and multiculturalism is difficult to achieve and requires daring, consistent and long-term policymaking. Natives and immigrants, especially in disadvantaged neighbourhoods, resist cultural change and may find it hard to manage multiple identities; true biculturalism can be developed only in healthy psychosocial contexts and through serious investments in education.

Even so, the advantages of true bilingualism and biculturalism have long been appreciated and sought by the upper classes for their children; hence, when those same persons insist that immi-

grant children should do away with the language and culture of their parents, the inconsistency should be obvious, and does not need to be demonstrated time and again with studies and statistics such as those discussed by Portes and Rumbaut (2006, chap. 7). Today, as in the past, almost all second-generation children in the US who speak a foreign language at home are proficient in English (though their own children, unfortunately, tend to become monolingual), so the "threat" posed by immigration to the language of the receiving country is mostly fictional (APA 2012, 3). Furthermore, the ability to *fluently* manage two language systems and mediate between two cultures is often linked with better performance in other academic subjects (e.g. mathematics in primary school, and many academic subjects in higher education, where fluent bilinguals generally outperform monolinguals)[138].

To conclude, acculturation is a mixed good; it is important for the unity and healthy functioning of a nation and the well-being of all its residents, but often, it also means that immigrant children lose their parents" optimism and drive to succeed, let themselves be more conditioned by real or perceived discrimination, and often adopt habits from poor or marginalised natives in their neighbourhoods (concerning the use of money, work practices, eating and drinking, leisure, love relationships, etc.) which are detrimental to their long-term well-being and social outcomes. In Western countries, those who do not fully assimilate but retain some of their parents' culture and habits

[138] A report by the American Psychological Association cites various studies which underscore some of the advantages of bilingualism and biculturalism (APA 2012, 55f; 27f) while mentioning some of their limitations. It insists that any serious attempt to compare monolinguals and bilinguals should take into account the social context, and should be aware that most timed standardized tests used today in education and developmental psychology are culturally and linguistically biased and misrepresent the abilities of first- and second-generation immigrants (ibid., 47f). For a discussion of the issues involved in the education of second-generation immigrant children in the context of Southern Europe, see Rodríguez Izquierdo (2010).

generally navigate better those particular, complex, pluralistic and fragile milieus where they are usually exposed to the "culture" of the "majority group" (Portes and Rumbaut 2006, chap. 5; cf. APA 2012, 27).

3.5.3 "Refugees Cannot Be Integrated"

3.5.3.1 Trauma and Experiences of Persecution

Yet another version of the thesis that today's immigrants cannot be integrated is sometimes applied to refugees, given the trauma they have experienced in the past. Refugees and refugee children are a particular group of migrants (APA 2010, 10f); the experience of surviving in war zones, living precariously and being displaced often entails that such persons endure a great amount of trauma, stress and adversity; this can be detrimental to their functioning as persons and — especially in the case of children — to their psychosocial development (APA 2010, 17). Some of these persons may have witnessed, suffered or been involved in atrocities (which may have included family and friends), been victims of rape or sex slavery, and been drafted or sold as child-soldiers; during the journey and the time spent in transit countries they may have had to face extreme suffering and deprivation (e.g. abandoned in deserts or drifting for days without freshwater in the open sea), close encounters with death (attacks by wild animals, marauding militias, shipwreck…), and many months of malnutrition, persecution, dangerous and unhealthy living conditions, torture, violence and abuse.

Though some refugees and refugee children demonstrate high rates of resilience to repeated traumas, various studies have identified a high incidence of symptoms of posttraumatic stress disorder (PTSD), depression, anxiety, somatic complaints, sleep problems and behavioural problems among

this group of immigrants (APA 2010, 26). Detention of trauma victims in prison-like conditions (e.g. when caught entering a country illegally) has been shown to make the symptoms worse (Lawrence 2004; Steel et al. 2006; Silove, Austin, and Steel 2007), and is very socially costly after release.

3.5.3.2 Traumatized Refugees Are Not an Easy Substitute for Labour Migration

In a discussion of ethical border policies, it is important to note these psychosocial realities, especially when facing the political rhetoric on “true” and “phony” asylum seekers. The so called “economic migrants” who often enter and stay in wealthy countries illegally are clearly more beneficial for the receiving country from an economic point of view: they generally work hard, are resourceful and psychologically healthy, keep out of trouble, and often give more to the community than what they receive. Refugees, on the other hand, frequently need considerable support from the community to integrate themselves and may take many years before they become economically productive.

Welcoming victims of war and persecution is primarily a humanitarian gesture demanded by a country´s international commitments, not a self-interested strategy to recruit productive labour from abroad. The presence of such immigrants in Western countries is often legal or relatively easy to legalize, yet the behavioural problems stemming from their past traumas may make it to the crime columns of newspapers and sensationalistic reports on television, and oftentimes these behaviours are easily and erroneously pinned on clandestine labour migrants, in a typical conflation of “illegal entry” with “criminal behaviour”. A country which prides itself on welcoming traumatized refugees should be willing to spend the money to provide them with care and help them integrate.

A country which merely wants migrant labourers is better served by opening its doors to “economic migrants”.

Psychologists today recognise that many of the current practices and methods in Psychology, developed to serve middle-class clients in Western or Westernized countries, may not be effective in treating immigrants who come from different environments and cultures. Immigration thus challenges the whole discipline of Psychology to adapt, try novel “ecological” approaches which defy conventional wisdom and tried-and-tested protocols (APA 2010, 7f; 2012, 78f). Comprehensive and flexible forms of treatment which involve the community, are sensitive to the culture, and recognise the role of ritual and religious symbols are slowly emerging (APA 2010, 44f; Betancourt and Khan 2008; K. E. Miller, Kulkarni, and Kushner 2006; Melero Valdés and Dié Olmos 2010).

3.5.4 Conclusion: Integration Crises Happen If We Want Them To

Muslims, Hispanics, Blacks, Asians can be integrated. So can today´s second and third generations, and most traumatized refugees. History however shows us that integration takes time, and happens over a number of generations but many people today expect policies to give results within the span of one term in public office. Of course, it may be challenging to integrate certain groups of immigrants, and social sciences help to understand why and what to do about it, even if no policy is perfect. When a country does not really try to, but lets a dynamic of fear dominate and drive certain vulnerable groups of immigrants into marginalisation, it simply makes “integration crises” more likely. Ensuring, by clever legislation, that immigrants do not end up in impoverished and dysfunctional neighbourhoods, that the 1.5 and second generation are provided with good educational opportunities, and that immigrants’ families remain strong (Parkinson 2011) certainly makes more

sense than adopting ineffective and unjustified immigration restriction policies. To be sure, civil society organizations and religious charities alone cannot provide all that is necessary for the integration of immigrants, especially in the case of Muslims who do not have powerful and wealthy religious networks and institutions to support their integration (as certain Christian groups have). Part of the solution, therefore, concerns the welfare state.

3.6 A Shrinking Welfare State: The Burden of Integration Is Shifting

Another argument in favour of immigration restriction is based on the observation that, in many receiving countries, the welfare state has shrunk in recent years. The idea is that, so as to protect what is left of the welfare state (and the poor people who need it, including second generation immigrant children), borders should be closed to poor immigrants bent on "welfare shopping".

3.6.1 A Shrinking Welfare State

Welfare states have been retrenched in many developed countries around the world in recent decades, following Reagan and Thatcher´s policies in the 1980s (Lightman 1991), even though not all areas were affected (Henderson and White 2004). Some have justified this retrenchment as a consequence of necessary tax cuts to boost competitiveness in the global market. However, many European countries resisted the trend until recently, and some authors concluded that there was no "race to the bottom" among the European welfare states caused by globalisation, though "the real constraints for policy-makers come from domestic challenges, primarily demographic changes" (Gizelis 2005). The recent "Great Recession", however, has meant deeper cuts in social protection, in many European countries as well, even though certain forms of welfare provision (especially unemployment insurance benefits and minimum income support), have significantly dampened the

impact of the crisis for millions of people (Hemerijck et al. 2012). Studies in Canada link this retrenchment to a weaker civil society: "the policy capacity of civil society organisations has been so diminished that the politics is as adrift as policy itself, at least on the federal scene. Consequently, there are few drivers for change" (Phillips 2012).

3.6.2 The Welfare State and Immigration

Some have argued that social protection requires immigration restriction, but the welfare state and porous borders are not incompatible *per se*[139]. It is true that countries with "generous" welfare states which allow all immigrants immediate access to most or all of the benefits are likely to act as "welfare magnets", however the impact of immigration on the welfare state is quantitatively modest in most European countries (Boeri, Hanson, and McCormick 2002, 89). Some authors argue that "a welfare state is more likely to cope successfully with immigration if migrants are economically advantageous and if the established population develops a sufficient degree of solidarity with the newcomers" (Entzinger 2007). Given that Europe seems to attract less "economically advantageous" migrants and has not been as successful as the US in building non-governmental networks of solidarity to support newcomers, most authors agree that European welfare states might be put under pressure by increased immigration and need to adapt. To be sure, immigrants who are typically economically active young adults, also help finance parts of the welfare system, such as pension schemes, and immigrant labour keeps healthcare affordable in many states. Immigrants also

[139] "Milton Friedman himself proclaimed that the welfare state and open migration are incompatible. As a general proposition this is obviously refuted by Kuwait (and other Gulf States and Singapore) all of which, for their citizens, have an amazing cradle to grave set of social welfare programs, often even beyond most European states. What Milton Friedman meant was that social welfare states and open migration are incompatible if migrants acquire immediate and full claims on these benefits" (Pritchett 2010).

tend to have more children than natives do, and help prevent population ageing, making welfare states sustainable in the long run.

Entzinger (2007, 129–133) proposes four ways whereby porous borders and the welfare state can be made compatible. *Enhancing integration* (to ensure most immigrants become productive citizens — as in countries like Canada — rather than outcasts dependent on welfare) is probably the best solution, though politically and economically costly in the short term. A second option could be *limiting state entitlements for native-born and immigrants alike*; this preserves the principle of equality but may be very unpopular with citizens. A third option could be a *differentiation of entitlements* (the "American solution"), that entails limiting access to citizenship and to most welfare provisions (temporarily or permanently) to irregular and/or first-generation immigrants. This will not wipe out irregular migration but places more pressure on all immigrants to find a job and integrate themselves via the labour market (ibid.)[140]. One could also envision a fourth option, *deterritorialization* of entitlements, whereby immigrants may enjoy healthcare and pension benefit schemes in their home country after many years working abroad.

3.6.3 Conclusion

The debate on welfare and immigration is a complex one. From a *social sciences perspective*, I believe we should keep in mind two things. Firstly, it is important to remember that it is traumatized

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[140] Spain had set up an effective firewall between social security and immigration (through the *Padrón* system) that was very laudable from a human rights standpoint, but has recently moved to adopt the "American" strategy. On the 1st September 2012, the Rajoy government blocked access to free health care to the 153,000 or so irregular immigrants residing in the country (Europa Press 2012). Reducing welfare expenditure may indeed help Spain pay some tiny percentage of its public debts at a time of crisis, but this strategy, in a situation of high unemployment, leaves few tools for irregular immigrants to integrate themselves effectively into Spanish society and may have disastrous consequences in the future.

asylum seekers — not irregular economic migrants — who are the most costly to countries with generous welfare states. Speaking of welfare shopping in their case is very cynical. Secondly, the welfare states of many European countries are under threat of being diminished primarily because of ageing and because of competition in international markets, not because of "welfare shopping" by immigrants. The resistance of some European countries to reform their welfare states to make them more efficient and sustainable in a more globalised world is the real issue in most cases; the impact of immigration on welfare provisions is an epiphenomenon which is a convenient subterfuge to avoid hard talk and difficult decisions on the welfare state in general (Geddes 2003). Hence the solution, here again, is not immigration restriction, but intelligent and effective welfare provision that complements and boosts the efforts of non-governmental groups in civil society to lift people out of poverty and marginalisation, while encouraging (and providing the skills) to both natives and migrants to work productively and hence keep adequate welfare provision financially sustainable in the long term.

Furthermore, from a *moral perspective*, it is true that some reflections made by theologians and philosophers in the 1950s, 1960s, and 1970s were influenced by the optimism of the boom years with its illusion of a world of unlimited resources, continuous economic expansion and endless social progress. Ethical reflection since the 1980s has made us more modest; while reaffirming the great principles proclaimed in the past (e.g. human rights) we are now more attentive to material limits and conflicting claims. The tension between welfare provision and the right to immigrate points to the need of concrete principles and priority rules to adjudicate among such conflicting claims, and this is precisely the approach which we follow in this dissertation.

3.7 Conclusion: What is New about International Migration Since the 1980´s?

Let us now draw a general conclusion from the many facts and interpretations concerning the human mobility phenomenon in recent years. In the following paragraphs, we shall try to list some of the major changes, and note whether their ethical relevance is such that we need to rethink the principles proposed by Catholic Social Thought between the 1950s and the 1970s.

- **[3/1] CHANGING DEMOGRAPHICS. Fact**: Absolute numbers of migrants have increased worldwide. More people are on the move from more countries, given pauperization and conflict in some regions since the 1970s, the effects of climate change, coupled with the technologies of globalisation (see 2/2). However, many wealthy nations are receiving far less immigrants *per capita* or per unit of GDP than in past periods of "mass immigration" and there is no indication that any *developed* country is reaching a "saturation" point where it cannot take in or integrate any more immigrants or refugees. **Ethical Relevance**: Emerging countries (and small countries on the borders of the "developed" world) need help to receive refugees and poorer migrants; wealthier nations should share more of the burdens of receiving these persons, rather than simply select whom to admit and reap the benefits. Immigrant-sending countries need to be helped effectively to develop, such that forced "economic" migration from these countries may be reduced. By themselves, these issues existed well before the 1980s, and do not call for some radically new ethical approach.
- **[3/2] TECHNOLOGY-DRIVEN GLOBALISATION AND POST-WESTPHALIAN SOVEREIGNTY. Fact**: Advances in transport and communication technologies, and better education in certain regions, permit people to travel widely and to inhabit more than one country and culture. In this context,

Westphalian — and particularly "absolutist" — notions of state sovereignty are being severely challenged from "above", "below" and "alongside" the modern state. This fact has become more pronounced with the development of modern doctrines of intervention and the Responsibility to Protect, and the debates on contemporary human mobility. **Ethical Relevance**: The technology-driven changes in human mobility are part of long term on-going human processes. It is far from obvious that "globalisation" entails huge qualitative changes in these processes and radical transformations of the human condition that require new ethical approaches to issues like immigration in the 21st century. The change in the concept of political sovereignty, however, is possibly the most important "change", though it has been in the making for many decades. While the horrors of World War II showed us some of the limitations of the Westphalian model and allowed us to expand international law and institutions, new nationalist movements during decolonization championed absolutist sovereignty. International events, especially since the 1980s, have made us acutely aware of the problems in the current system, and though there is no radically different alternative on the horizon, it has become quite clear that a more "concrete" reflection on the ethics of border and integration policies today cannot avoid engaging this difficult issue.

- **[3/3] Irregular Migration. Fact**: In immigrant-receiving countries, the technologies of "globalisation" have allowed multinational companies to move jobs abroad and depress wages. The result has been an increase in hostility towards immigrants (especially irregular migrants), draconian border control measures and immigration restriction. All of this has made entry and integration increasingly difficult for most immigrants. The increased security measures and reluctance to reintroduce fair and realistic guestworker and immigrant work-

er schemes has resulted in a huge increase in *irregular* labour migration to Western nations, often driven by demand in these countries. The current situation has benefitted mostly traffickers and smugglers, exploitative employers and far-right politicians. **Ethical Relevance**: "Economic migration" debates and laws seem to echo similar ones from a century ago; "asylum migration" and "ecological migration" debates also seem to mirror ethical reflection on the topic of "sanctuary" going back at least to the Middle Ages. Technology works on both sides of the equation and always has – it helps people to cross borders and helps authorities to close borders. The ethical questions of how open or how closed those borders should be are much older and tend to transcend contingent movement surges, new causes and local political nativism.

- **[3/4] New Receiving Countries. Fact**: Some countries (especially in Europe) have developed considerably in recent years and shifted very rapidly from being "sending" to "transit" and to "receiving" countries. Effective integration entails cultural and political shifts in these new immigration countries; this also means reshaping national narratives, adapting to pluralism, countering xenophobia and marginalisation of immigrants, and developing effective integration policies. **Ethical Relevance**: These countries are experiencing what other countries experienced in the past; the adaptation process is difficult and has always been so. Good leadership and sound moral principles are sorely needed at a time of transition. This is also an occasion to learn from past experiences of other countries. Yet, one should resist the temptation of construing one´s local circumstances as "extraordinary" and "wholly novel", and on this basis bracketing sound moral principles adopted in the past. Rather, receiving and integrating immigrants and refugees is ultimately a question of welcoming the "other" and

building a kinship relationship with her, a challenge which presents itself to all democratic polities in the course of their history, in one way or another.

- **[3/5] Scepticism Concerning Integration. Fact**: Various countries (especially in Europe) have tried (often half-heartedly) different integration strategies ranging from "coercive assimilationism" to "everything-goes multiculturalism". No country has achieved a very satisfactory integration of immigrants in the span of a generation or two, and many have insisted that the new migrants — unlike those who arrived before the 1980s — are too "culturally" different to be effectively integrated. This has been a cause of concern for many, especially with the rise of international terrorism. **Ethical Relevance**: Much of the difference is "perceived", and not "real"; this creates discrimination and xenophobia that isolate minorities and force them to be "really" different as a reaction or survival strategy. Many centuries ago, the Westphalian nation-state system sought to solve the supposedly "huge" differences between European neighbours who felt they could no longer live together; yet ever since its inception, this system has found it very hard to integrate minorities and offer them adequate political and social spaces. Past moral condemnations of xenophobia, racism and discrimination are all the more true today; furthermore, marginalisation and disenfranchisement breed communities tempted by fundamentalism and terrorism. Finally, in the past it was assumed that two generations were not enough for most immigrants to integrate fully. If we want to improve on that in the 21st century, we need learn from the past and from the best practices of others.
- **[3/6] Shrinking Welfare State. Fact**: Since the economic crises of the 1970s, many wealthy nations started to doubt whether they could afford a generous welfare state. Globalisation

has also meant an intense competition for investments, tax cuts and incentives to attract (or avoid the loss of) private investment and jobs and lower state revenues. In this context, immigrants are increasingly seen as competitors for limited and shrinking welfare resources. An increasing number of countries, thus, are making welfare inaccessible to immigrants (even regular immigrants) and are tempted to deny them basic rights (e.g. education for children, emergency medical attention); even Europe feels tempted to follow this "American solution" when dealing with third-country nationals. All of this means that social inequalities will take much longer to bridge and integration may become more and more difficult in the future. Yet, immigration is seen as necessary to support pension schemes in ageing countries, immigrant labour keeps welfare services affordable, and lower immigrant (and low-skill) wages seem to compensate for most increases in corporate taxation. **Ethical Relevance**: The welfare state and porous borders are not incompatible and can be reconciled in a number of ways. However, the tension between welfare provision and the right to immigrate is real, and points to the need of priority rules to adjudicate between conflicting claims.

This final comment helps us to see how all the above changes are ethically relevant: they do not, in themselves, justify greater immigration restriction, but they point to the need for greater discernment in policymaking. This dissertation provides rules to guide that discernment. The **deconstructive** argument above leads us to reject the following hypothesis (cf. 2.4.1):

- *Hypothesis A:* The phenomenon of labour migration has changed significantly in recent years in its ethically-relevant features, and most of the differences are real, not merely perceived. The changes warrant increasingly restrictive immigration policies.

We are led therefore to examine the alternative hypothesis (2.4.2), which will shape the **constructive** part of our thesis in the following chapters:

- *Hypothesis B:* The Catholic Magisterium is hinting at the need for a moral framework within which to adjudicate conflicting rights claims regarding immigration, and to make the right to immigrate more receivable and concrete. Moral theologians need to fill this lacuna and provide such a framework, and we can do so precisely by formulating clear priority rules.

In the next chapter, we present a case study that will help us confirm the above observations and transition to the constructive part of this dissertation.

CHAPTER 4: IMMIGRATION AND EMIGRATION IN MALTA: A CASE STUDY

4.0 Introduction

This chapter has a twofold purpose. On the one hand, it seeks to ***consolidate the general conclusions of chapter 3****, comparing migrations in human history with more recent migration, and hence* ***conclude the deconstructive part of our dissertation****. It presents a case study to investigate the cogency of the conclusions of the previous chapter by reference to a particular case. Malta´s history as an "old" European country built on immigration; its experience of almost 200 years of mass emigration and its sudden transition to become a migrant-receiving country is of particular interest to our debate.* The Maltese case demonstrates within the confines of a microcosm that some of the problems being faced today by migrant-sending and receiving countries are not so "new" after all. *On the other hand, this chapter also* ***inaugurates the constructive part of our dissertation by reflecting ethically on the right to immigrate from a historical and particular perspective****, namely by developing the* principle of history-laden interdependence *and a related* priority rule.

As is fitting, given the content, both of these arguments are interwoven and interdependent. When we read this chapter in the ***deconstructive*** *mode, Malta´s history and current political situation help us to challenge four false "givens" in the debate on irregular migration. First is the idea that most "independent" and "decolonized" peoples simply bought into the nationalism of the Westphalian vision of the world, where clear borders (such as the sea) are seen as means to separate peoples rather than unite them face to face as equal partners in dialogue (cf. section 4.2). Second is the idea that some countries are built on immigration, and others are not (cf. section 4.3). Third is the idea*

that disorganized and risky forms of mass migration (such as the current "irregular immigration crisis") are something new and are mainly due to bad will of migrants or of sending countries, rather than the lack of political will to find effective legal and sustainable channels for human mobility (cf. section 4.4). Fourth is the idea that developed nations are overwhelmed with irregular migrant arrivals and cannot but close their borders: if Malta (while being one of the smallest and most densely-populated nation-states in the world) can accommodate more irregular immigrants (and, as we shall see, it can!) then the claims of most developed nations that they cannot welcome any more immigrants or make their borders more open become quite hard to believe (cf. section 4.5).

When we read the chapter in the ***constructive*** *mode, we can see a notion of history-laden interdependence proposed as a conclusion of section 4.2, consolidated in section 4.3., and then developed into an ethical principle in section 4.4, which is applied to the current situation in Malta in section 4.5.*

4.1 Westphalian Scepticism in Maltese History

4.1.1 Positive Sovereignty Does Not Mean Having Your Own Autarkic Nation-State

Most Maltese are uneasy with expressions of nationalism and sceptical when they local newspapers publish international studies claiming it is one of the "best places on earth" to live (The Times of Malta 2011). While explaining to tourists and foreign friends the wealth of history that exudes from every little street in Malta´s old towns and villages, the Maltese put little effort into diminishing the accomplishments and greatness of the nations who colonized and dominated the Islands. One may conclude from this that Malta is a nation with a low self-esteem, and there is certainly some truth

in that. However, as we shall see, Malta is also an example of a nation which can remain critical of modern nationalism and absolutist notions of state sovereignty.

To be sure, few people could question Malta´s pedigree as an independent nation, possessing "positive sovereignty" (cf. R. H. Jackson 1993, 29f) and fulfilling the criteria for statehood stipulated in the 1933 Montevideo Convention: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. The Republic of Malta is an archipelago with three inhabited islands. It has had a stable democratic government since independence from Great Britain in 1964, after many decades of self-government under the British, and previously under the Knights of Saint John. The sea constitutes an undisputed natural border; the distance from Sicily is significant enough to claim that this is not simply part of the coast of Italy. Since the 1500s, Malta has been to all effects and purposes politically independent from Italy though technically it remained part of the Aragonese crown in Sicily (Italy) until conquest by Napoleon in 1798 (and "legal" transfer to Britain in 1815)[141]. Ninety-eight per cent of Maltese citizens consider

[141] Roger II had established an independent Norman Kingdom of Sicily in 1130 which included Sicily, Malta and the Southern half of the Italian peninsula (the "Mezzogiorno"); this kingdom was passed on to the Angevins through papal grant in 1262. In 1282 (the "Sicilian Vespers" rebellion), the island of Sicily and the Maltese islands seceded from the Angevin Kingdom of Sicily to form an independent Kingdom of Sicily, which was offered to the Aragonese. Both Kingdoms of "Sicily" (one on the peninsula and ruled from Naples, and one on the island of Sicily ruled from Palermo, the former often referred to as the "Kingdom of Naples" to avoid confusion) eventually became Aragonese (and then Spanish) possessions, and at times were ruled by the same person, but remained constitutionally separate until 1816 when the crowns were united under Ferdinand I of the Two Sicilies. In Medieval times, Malta was rented as a fief to various lords until the Maltese rebelled against Count Monroy in 1426, and Alfonso V promised the islanders that Malta would remain under direct rule of the Aragonese monarch. Yet, Malta did not get a Majorcan-style incorporation into Aragon with self-government; it continued to be effectively governed by the Aragonese/Spanish viceroy in Sicily (Palermo), and in 1530 was given in perpetual fiefdom to the Knights of the Order of St. John of Jerusalem, for the symbolic rent of two Maltese falcons (one for the monarch, one for the viceroy) to be delivered annually to the viceroy in Palermo. The Knights paid the rent but behaved as though Malta were an independent nation under their rule, and the islands quickly drifted away from the political influence of Sicily. In any

themselves Catholic, and most recognise that Maltese culture has been influenced by that of Southern Italy, but nobody doubts today that the Maltese are not Italians. Citizens speak Maltese, which is a Semitic language ultimately derived from medieval Arabic but significantly different from the current Maghrebi vernaculars and quite simplified when compared to classical Arabic. The fact of holding on to this peculiar language indicates that, in spite of centuries of colonial rule and European cultural influence, the inhabitants recognised that they had a national identity distinct from that of their neighbours and colonizers.

Yet, the Maltese do not consider themselves Arabs, Greeks or "Orientals". Malta has had very little cultural contact with North Africa or the Arab world during the last millennium[142]; the Ottoman Empire was considered the "enemy" during the rule of the Knights (1530 to 1798), who indulged in corsair warfare against the Turks and their vassals in North Africa. The main contact with the Arab world was through slaves captured by Maltese corsair ships on the high seas, and in *razzias* conducted by the Knights on the Barbary Coast, in revenge for attacks by Barbary pirates. Those slaves were eventually liberated and took on their masters´ surnames such that classical Maltese surnames today do not necessarily denote blood lineage from medieval Maltese clans.

4.1.2 Colonization from Inside, Colonization from Outside: Which Do You Prefer?

For 270 years, under the Knights, Malta experienced a peculiar form of "independence" and "colonization". The Hospitaliers, immigrant "religious warriors" who came from noble families from all

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case, after the Congress of Vienna in 1815, the Spaniards and the Sicilians accepted that the British should get Malta, after having helped the Maltese to liberate it from the French.

[142] Malta was never part of Libya or Tunisia; rather the city of Tripoli and the surrounding region was part of Knights´ possessions in Malta until it was lost to the Ottomans in 1551.

over Europe, ruled the land. They did not mind accepting “noteworthy” brawlers like Michelangelo Merisi da Caravaggio into their ranks and protecting them from facing justice in mainland Europe (Sciberras and Stone 2006, chap. 2), and they were even willing to welcome as Knights Protestant and Orthodox nobles from Northern and Eastern Europe. Yet, Maltese natives were not allowed to join this Catholic Order. The Knights built a system of heavily fortified towns around the Grand Harbour, which they sometimes called “the Convent” (Sire 1996, 73–84). Many of these nominally celibate men “adopted” a Maltese family and found a mistress within that family, hence creating a cosmopolitan and relatively prosperous bourgeois “settlement” around Valletta, somewhat similar to the Portuguese and Dutch colonial trading posts in Africa and in the Far East. The rest of the surface area of the islands was an impoverished hinterland technically governed by the Maltese agrarian nobility and ecclesial authorities through the “Consiglio Popolare” until the 18th century, when the Grandmasters became more and more paternalistic and tried to micromanage all aspects of Maltese life (Ciappara 2008). The clergy and nobility in the backcountry felt they were being progressively colonized by a sort of “maritime republic of greater Valletta”. They constantly sought to remind the Knights that the islands ultimately belonged to the Sicilian crown and were only leased as a fief to the Order of Saint John: the true Sovereign of Malta was the king of Sicily and the people could appeal to him when they were wronged by the Grandmaster. However, by the mid-eighteenth century, the Grandmasters scoffed at this legal technicality; they abolished the “Consiglio Popolare”, created new burgher noble titles for their Maltese clients and started to call themselves “sovereigns” and to behave as though they were equal in rank with other European monarchs. The “sovereign” lords of Malta even cared for the independence of other nations; for example, Grand Master de Rohan encouraged 1800 Knights and Maltese sailors to enlist in the French

Navy to fight in the American Revolutionary war (Lindsay 2011). Their naval acumen contributed to the defeat of the British at the Battle of the Chesapeake in 1781 and the Grandmaster was awarded the *Libertas Americana* medal in 1783 by Benjamin Franklin – (Olson 2004, 180–1)[143].

When Napoleon landed in Malta in June 1798, the Maltese nobility welcomed him with enthusiasm. They preferred to be part of the new France, than to be ruled by the "independent" *ancien régime* in Valletta. They yearned for liberty, equality and fraternity with the people of the most prosperous nation bordering the Mediterranean. However, the French administration embarked on a rapid and forced modernization of all the institutions on the island and reduced the number of convents and the authority of the Church, while not having money to pay the huge debts left behind by the Knights and not being able to provide sufficient food for the population, due to King Ferdinand's (of Sicily, and of Naples[144]) refusal to supply the French (Hardman 1909, 77). Soon enough, the populace of the backcountry revolted, massacred the French troops in the Maltese countryside and laid

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[143] In 1794, the United States considered the establishment of a naval base in Malta to protect their commercial shipping in the Mediterranean from the Barbary pirates, but the deal fell through (Bonello 2012). The British eventually took the base and the whole country, and the Tunisian corsairs were finally brought under control, but some Maltese mariners sought out other seas to navigate. Juan Bautista Azopardo, for instance, built a naval career as a privateer fighting for the Netherlands and Spain in South America, and was given command of the national navy of Argentina during that country´s independence struggle.

[144] Ferdinand was styled Ferdinand III of Sicily and Ferdinand IV of Naples, and then, in 1816, Ferdinand I of the Two Sicilies. At the time of the Maltese uprising, Ferdinand was planning an attack on the French in Rome with the help of Lord Nelson. The plan backfired; the French took Naples in January 1799 with the help of Neapolitan republicans, and proclaimed the Parthenopean Republic. Ferdinand fled to Sicily. The Neapolitan fleet was burnt in the chaos and could not be used to blockade Malta. In the meanwhile, Nelson destroyed the French Mediterranean fleet in Aboukir Bay, and the French found it hard to supply their starving garrison in Valletta. In the spring of 1799, Cardinal Ruffo organized an insurgency from Calabria using bandits, convicts and peasants; they massacred, plundered and burnt their way up to Naples allowing Ferdinand to return to his throne in July 1799 and brutally punish the Republicans and French sympathisers. Meanwhile, Commodore Alexander Ball made friends with the Maltese insurgents and calmly convinced them to look to London, not to Naples, for help and protection.

siege to the French garrison in Valletta. Though some nobles considered independence at that point (Cobbett 1803, 3:673–685), most Maltese sought help and protection from their ancient feudal lord, the King of Sicily (who at least could keep them from starving). Ferdinand´s allies, the British, sent their navy to blockade Valletta and together with the Maltese insurgents forced the starving French garrison to capitulate in 1800 (Gaillard 1997). The British signed the Treaty of Amiens in 1802, which (against the wishes of the Maltese) stipulated the return of the islands to the Knights, but then violated the Treaty by refusing to evacuate Malta, in defiance of Napoleon. Napoleon proceeded to violate the Treaty of Lunéville, and Britain declared war on France in May 1803 (cf. Busuttil 1965, 45)[145].

The islanders were soon persuaded that the British decision to occupy Malta was not such a bad thing (Gregory 1996). Between 1803 and 1813, the British mounted a huge smuggling operation based in Malta to sell their products in mainland Europe and work around the "Continental System" (H. S. Williams 1904, 473; Busuttil 1965, 46). Big money started pouring in and this convinced the Maltese that they had hit the jackpot on letting themselves be dominated by the British. They welcomed the first British Governor on the 4th October 1813. France and Britain´s allies eventually accepted the transfer of Malta to Britain in the Treaty of Paris (1814); the rest of Europe (including King Ferdinand of Sicily and Naples) confirmed the transfer at the Congress of Vienna. At that point, war expenditure and war smuggling ended, and Malta entered into a severe economic depression that lasted until around 1842. Very soon, the Maltese realized that their new rulers were not much

[145] This was the start of the Napoleonic Wars which lasted around 11 years and transformed the face of Europe and the art of making war.

better than the ones they had in the past. They actually became quite cynical about political novelty.

4.1.3 Political Sovereignty? Why Should a Nation Gain Independence?

On the 2nd October, 1964, *Time* magazine published an article with the title "Malta: The Most Reluctant Nation". It announced the Independence of Malta, granted two weeks earlier, on the 21st September. In 1964, the Maltese did not doubt that they constituted a *nation*, and probably more so than any of the "nations" created by historians in the 19th century (Mitchell 2003). Yet, unlike many other nations at the time, this nation was sceptical that it could have a functioning *sovereign polity* of its own. The referendum on Independence was held on the 2nd, 3rd and 4th of May 1964: 65,714 voted "yes", 54,919 voted "no", while many invalidated their votes in protest (9,016 votes were declared invalid – cf. Zarb Dimech (2011)). The Labour Party called independence a transition "from colonialism to neo-colonialism", and some people rioted during the Independence Day parade. Eight years before, in 1956, another referendum had been held, proposing the integration of Malta into the United Kingdom of Great Britain and Northern Ireland: 59% voted "yes", but the results were ignored since many people had boycotted the poll.

In the 1950s and 1960s, the Maltese were conscious that the economy of the islands was totally dependent on services provided to the British Navy, and were doubtful that the country could build a truly independent economy based on industry, services and tourism. While most of the world was under the spell of the boom years, the Maltese saw that politics was a very risky game; many would rather have limited self-government and good friends in 10 Downing Street, than revel in independence celebrations and soon be at the mercy of international creditors. The memories of an iso-

lated, dependent population on the brink of starvation during World War II were still fresh and nobody wanted to go back to the poverty and unemployment of the 1940s and 50s. The Nationalist government which — together with the Archbishop — had staunchly promoted Independence lost no time trying to get Malta integrated into Europe[146] and made it clear that independence did not mean autarchy, but simply a distancing from one particular European polity to further Malta´s ties with the others.

4.1.4 Overcoming the Rhetoric of "Independence"

Various independence movements, especially after World War II, promised a world where the governed would be truly represented by the governing, where local cultures and religions would not be looked down upon and threatened by colonizers bent on imposing their understanding of "civilization", where non-whites and non-Europeans would not be treated as inferiors. In some of the new nations, these aspirations have been realized, while others nations have actually become re-colonized from the inside by local élites, and from the outside by economic players, while generating new regional minorities within their territories clamouring for independence.

Traditional Maltese political scepticism and cynicism helps us take a step back from the enthusiasm generated by independence movements and become aware that the political ideas which circulated after World War II were not as ethically sound, truthful and liberationist as they seemed then, and

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[146] Negotiations with the European Economic Community towards forging closer ties started on the 4th September 1967 and an Association Agreement between Malta and the EC was signed in December 1970. The parties agreed to set up a customs union in 1976 and move towards a possible future integration in the EC (EC Spokesman´s Group 1970). The new Labour government elected in 1971, however, did not implement the customs union, seeking to advance Malta´s political and economic ties with the Eastern Bloc, China and the southern Mediterranean countries. Malta eventually joined the European Union in 2004 and the Eurozone in 2008.

as most of our contemporaries believe. Over the last few centuries, former colonizers not only sold manufactured goods to their colonies; they also sold them an exaggerated sense of national pride and the early-modern European dream of autarkic self-sufficiency. The spread of these same ideas, to be sure, made it increasingly more burdensome for Western nations to maintain international empires as nationalism simmered in the colonies. However, once the European nations, prodded by the new superpowers that saved them from the chaos of World War II, started to let go of some of that bloodthirsty national pride and those vain dreams of self-sufficiency, to accept less glorious geographical bounds and adopt a more interdependent view of the world (and of Europe), the old European ghosts had migrated elsewhere, to the great advantage of the "lean" and "developed" West. Now, they could "set the colonies free" while still retaining access (with some accommodation of US and Soviet interests, of course) to the mineral and human resources of the "emerging" countries (possibly more cheaply now, as the politically manipulable and weak poorer countries competed against one another to export their resources on the world markets), and without actually having to spend any money building institutions in these parts of the globe and helping their peoples to develop. As many of the colonized peoples bought the old European autarkic-nationalist ideology acritically, the colonizers gracefully or grudgingly granted them "independence", conveniently washing their hands of the development problems faced by these peoples.

The history of the 20th century could have been different; we could have had the formation of a strongly interdependent and politically unified "Commonwealth" and "Francophonie", instead of (but similar to) the European Union, by increasing regional and "national" federalism in the territories of the old empires, converting all "subjects" into "citizens", and placing all regions and ethnic groups on an equal political footing, and adopting a politics of subsidiarity. We could even have had

colonial "devolution" instead of independence, but Britain and France would have had to accept a House of Commons where whites are the minority, or a National Assembly with one third of its members being Muslim. Indeed, the fact that the Westphalian notion of absolute sovereignty carried the day and that "independence had to happen" may have more to do with xenophobia than with the justice of liberation struggles, the wisdom of nationalist ideologies or the generosity of the inhabitants of 10 Downing Street or the Elysée.

To be sure, the Maltese did a much better job at governing themselves than the Knights or the British, and the Maltese slowly became more enthusiastic about being an "independent" polity – as long as "independent" did not translate as "abandoned and isolated", but rather as "recognised as equal partner and freed to become more intertwined with others in an interdependent world". Wise economic planning, cunning use of Malta´s strategic position in foreign relations, and the well-tested safety-valve of emigration allowed Malta to gradually build a resilient economy and weather the economic crises of the 1970s and the painful closure of the British naval base in 1979, and thrive in spite of the economic vulnerabilities of small island developing countries (Briguglio 1995).

Even today, the Maltese are guardedly proud, though at times cynical, of having a tiny "independent" polity of their own; their centuries-old economic pessimism has hardly waned. Maltese nationalism was never taken too seriously in 20th century; independence was a daring dream of an élite and a cheeky request which the British conceded maybe too easily and too quickly to a nation with low self-esteem (Mitchell 2003). For most of the 20th century, "nationalist" in Malta meant "pro-Italian" and "militantly Catholic". Xenophobic ethno-cultural nationalism is a relatively recent

phenomenon in Malta, and is mostly part of the hysteria generated by the arrival of thousands of dark-skinned boat people from Sub-Saharan Africa.

4.1.5 Conclusion: A Thesis and a Hypothesis

This introductory section helped to set the scene of the chapter which focuses three great periods of Maltese history: Malta under the Knights, a period of immigration and demographic expansion; Malta under the British, a period of mass emigration; Malta after independence and the gradual return of immigration. We can, at this point, formulate the "Interdependence Thesis" which will guide us in the following sections:

> **Interdependence Thesis:** *The rhetoric of national independence should not obfuscate the reality of interdependence of human societies.*

This also leads us to postulate the hypothesis of "History-Laden Interdependence" which we will seek to document in the following sections.

> **Hypothesis of History-Laden Interdependence:** *Interdependence is not simply a general human reality, but one which is history-laden and takes different shapes as particular historical webs of relationships are spun between different polities.*

4.2 A Nation of Immigrants: Malta under the Knights

4.2.1 Immigration and Maltese Genealogy

We mentioned the recent phenomenon of xenophobic ethno-cultural nationalism in Malta at the end of the previous section. The presence of "noticeable" numbers of "noticeable" migrants has been at the centre of most political debates in Malta in recent years. Most Maltese are typically

sceptical that the economy of the islands and their generous welfare state could cope with a sustained influx of refugees and migrants. Some, however, go so far as to sympathise with extremist anti-immigrant politicians like Norman Lowell, whose British name, coupled with his Latin-sounding political party, "Imperium Europa", and the poverty of his Semitic Maltese vocabulary make critics wonder whether Maltese ultra-nationalism could ever sound convincing. Like most other Europeans, though, the Maltese have a "selective" memory and do not like to consider themselves a nation of immigrants; it will be our task in the next few pages to show that the contrary is true.

The 2005 Census report that the Maltese population carries 11,440 different surnames (Malta National Statistics Office 2006, 1–2) in a population of 404,039 persons[147]. 24.2% of the population carries one of the ten most common surnames, most of which are clearly linked to Western Europe, Greece, the Middle East and North Africa, and some of which evidently belonged to Arabs, Berbers, Jews or Orthodox Christians in the past[148]. Many of the other common Maltese surnames are present in Sicily, but are of Arabic origin[149]. Yet other names which are **relatively common** are typically

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[147] That was the population at the time of the census. The total population in Malta as at the end of 2010 was estimated at 417,617 (Malta National Statistics Office 2011, vi).

[148] Some of these very common surnames give some indication of the origins of the family: e.g. Camilleri (2nd in rank) indicates descendants of camel drivers from North Africa or the Middle East, while Grech (8th in rank) indicates the progeny of Greek immigrants. Attard (9th in rank) is thought to indicate either a Germanic family ("son of Athard") or a family of perfumers ("distiller of rose attar"), possibly of Jewish origin (Aquilina 1964). Micallef (7th in rank), one of the earliest-recorded surnames, was a surname common among Jews on the island of Gozo, and may also have been a Jewish surname. Spiteri (10th in rank) is a surname that was present in Malta since the Middle Ages but which was also a shorthand surname given to illegitimate sons of the Hospitalier Knights of Saint John ("de Ospitalieri" > "de Spit'eri"). Cf. Cassar (2003), Wettinger (1968; 1969; 1999), Aquilina (1964).

[149] Common surnames include Azzopardi ("Sephardi Jew"), Asciak or Asciaq ("son of Isaac"), Musù ("son of Moses"), Ellul ("born on the Hebrew month of Elul"), Abdilla ("slave of Allah", cf. Abdullah), Mamo (probably an abbreviation of "Muhammad"); Curmi ("Crimean"), Barbara ("Berber"), Bugeja ("native of Bejaia in Algeria"), Saliba ("crusader"), Pulis (from Apulia), Genovese ("Genoese"), Cremona (from Cremona, in Italy), Pi-

Italian, Spanish, British, Irish, French, German and Slavonic surnames[150]. The linguistic analysis of surnames thus is highly indicative of a nation built by immigrants.

History and genealogy help us complete this picture. Detailed parish records started to be kept after the Council of Trent, and in a predominantly Catholic Country, they allow genealogists to trace back a good number of the 11,440 surnames to the immigrants who introduced them to the islands. However, a number of surnames considered "typically Maltese" (including the "top 10") can be found in two 15th century rolls (a militia roster, probably from 1419, and a communal labour list from the 1480s) containing 389 surnames (a good number of which do not exist as such on the islands today); the origin of most of these surnames cannot be traced further back through parish records (Wettinger 1968; 1969). About 4% of the enlisted in the 1480s were Jewish, but Maltese Jews were expelled or forced to convert in 1492. But who were the "Christians" (96%) on that list?

Some two hundred and thirty years earlier, in 1249, Islam, too, was supposedly "expelled" from the Islands (according to Ibn Khaldun), but few historians takes this "expulsion" literally, since as late as 1241 the royal commissioner Giliberto Abate reported that the island of Malta had a total of 681 Muslim households and 47 Christian ones (Wettinger 1999)[151]. Given that a Semitic language was retained, it is doubtful that 94% of the population of the main island (the "Muslims") was expelled

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sani (from Pisa), Tedesco ("German"), Galizia (from Galicia, in Spain), Navarro (from Navarra, in Spain), Cachia ("the ugly/evil one", in Greek), Callus ("the handsome/good one", in Greek), Calamatta (from Kalamata, in Greece), England (from England).

[150] For example: Bonavia, Bonello, Magro, Pace, Flores, Herrera, White, Evans, Bannister, Jones, Lowell, Dougall, Warrington, Marguerat, Wirth, Pugliesevich. Cf. Cassar (2003), Wettinger (1968; 1969; 1999), Aquilina (1964).

[151] There were however more Christians than Muslims on the island of Gozo. The slaves and the poor were not recorded; the total population at the time is estimated at 5,000 to 10,000 inhabitants.

eight years later and replaced by Christian migrants from mainland Europe; rather it is thought that the Muslims converted to Catholicism and integrated quickly in the re-Christianised political landscape, since no political activity by Muslims (revolts, protests, petitions) is reported in Malta after 1249. Most of the Christians on the communal labour list from 1480 were descended from formerly Muslim families in 1249. Nonetheless, those 230 years of Christian hegemony saw significant demographic changes and a considerable amount of immigration into Malta and into its bigger neighbour, Sicily (Dalli 2007). Among the many happenings of those eventful years, one could mention the Sicilian Vespers revolt in 1282 that made Malta and Sicily Aragonese possessions, the repercussions of the European plagues of the 14th century, pillage by Catalan and Genoese Fleets, frequent razzias by Barbary pirates (including several raids in 1385 that drastically reduced the population of the islands), and a full-scale invasion from Ifriquiya in 1429 that meant a loss of around one third of the population (Dalli 2008). The plague epidemics and crop failures of the 14th and 15th century also affected the demographics, such that only slowly did the population grow enough to be able to somehow defend itself.

4.2.2 Immigration and Demographic Expansion

To be sure, Malta´s medieval rulers, though certainly not very tolerant towards Islam and Judaism, put more effort in trying to populate the Maltese islands than in expelling sections of a population constantly raided and sold into slavery by the Barbary pirates[152]. Italians were brought over to start

[152] In the middle ages, immigrants established hamlets all over the Maltese islands, including pirate coves, salt-pan communities and fishing villages on the coasts, but during the 13th and 14th century, most of the hamlets close to the coast became unsafe due to pirate raids and were abandoned (Hahs 2010). The settlers moved to the expanding villages at the centre of the island of Malta which were large enough to organize militias and resist most pirate raids, and distant enough from the coast not to tempt the pirates. In fact,

new settlements and the migration of merchants from Pisa, Genoa and even from Catalonia was encouraged. Sometimes, even more drastic measures were adopted. In 1146, after the fall of Tripoli, Muslim slaves were taken to Malta, and in 1224, after a revolt in Celano (Abruzzi), part of the population of the town was deported to Malta. Even before the Norman, Suabian and Angevin lords started to promote free and forced migration to their outpost at the centre of the Mediterranean, their predecessors, the Fatimid Arabs, seem to have made a considerable effort to populate the islands (Wettinger 1986; Luttrell 1987). One account by the geographer Al-Himyarī, based on reports by Al-Bakrī, claims that the islands were left uninhabited after a protracted siege in 870 CE[153], and that only in 1040 did the Fatimid Arabs undertake to rebuild the fortified city and repopulate the islands (Brincat 1995). Though some historians have questioned Al-Himyarī´s account (cf. Wettinger 1990), most concede that the islands may have experienced a period of very low population density with no formal government or literate inhabitants between the 9th and 11th century CE. The conclusion is that, just as the Americas were repopulated by immigrants after the population collapse of the late 15th and early 16th centuries, so was Malta, starting from the 11th century and continuing until the economic depressions of the 19th century.

The population grew steadily, especially after the Knights of St John were given the islands and started to fortify the Grand Harbour, protect the coastline from pirate raids and develop commerce. The number of inhabitants rose from ca.7,000 (in 1240), to ca.9,000 (in 1419), to ca.19,000

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practically until the 19th century, when the French forced the Bey of Tunisia to put an end to the pirate raids on south-western Europe, the Maltese coastlands were thinly inhabited and only one small village (Mellieħa) survived in the northern 1/3 of the island of Malta.

[153] The Byzantines defending the medieval capital of Malta (Melita, now Mdina) probably resisted until the bitter end, thus provoking the Aghlabid conquerors to destroy the city and deport its remaining inhabitants.

(in 1528), to 29,000 (in 1590), to 51,750 (in 1632), to 114,000 (in 1798), to 140,000 (in 1871) to 205,000 (in 1906) to 280,000 (in 1939) - (Vanhove 2007; Atauz 2004)[154].

Over the years, through inheritances and grants, the Knights amassed a considerable amount of property in mainland Europe and received sizeable rents from it; they used the money to employ servants and to create infrastructural projects (especially by building and continually repairing a massive system of fortifications) that provided plentiful jobs for the Maltese, especially in times of drought and crop failure (Price 1954, 1–8). They also subsidized food staples. This continuous injection of funds into the Maltese economy ensured a sustained demographic growth, and in times of prosperity even attracted immigrants from Italy. Maltese natives also became famous for making maximal use of their little parcels of arid agricultural land (albeit with primitive farming utensils) and obtaining impressive crop yields. Until the early 19th century, they had become used to buying subsidized imported food staples from the Knights and, instead, growing cotton, which was spun and woven in cottage industries and fetched good prices in Spain.

However, most Maltese households were not able to save or invest the money, since they were used to marry very young and to maintain very large families, such that in 1813 — with the Knights (and their European rents) gone forever, with the Spanish market closed to foreign cotton (and severely crippled by the *desamortización*), and with the end of the Continental System and of a dec-

[154] The Knights also brought with them in 1530 a number of Rhodeans, soldiers and attendants; during their rule they brought servants over from mainland Europe and imported hundreds of slaves, mostly villagers from North Africa captured and enslaved in retaliation for pirate raids on Malta. The slaves were eventually liberated and incorporated into Maltese society, adopting the surnames of their masters (Wettinger 2002).

ade-long boom driven by British smuggling[155] — the British and the Maltese suddenly realized that the islands were severely "overpopulated", given the fragile economy of Malta. That year, cholera struck, Maltese shipping was quarantined and the local economy collapsed. Some Maltese fields were slowly returned to food staples and added income from spinning and weaving was lost (Price 1954, 4). Mass emigration lurked on the horizon.

4.2.3 Conclusion: A History of Interdependence

The Maltese nation is the product of immigration from all over the Mediterranean. After all, there is such a thing as a Maltese "nation" because, unlike most other archipelagos in the world of comparable size, Malta´s **high population density** guarantees a minimum population size necessary to sustain a viable economy and the political institutions of an independent nation-state. Furthermore, Malta is not just a group of islands, but a **proud and coveted fortress** which turned wave after wave of immigrants into comrades-in-arms with a sense of common identity, and made the project of national independence *thinkable*, even if not immediately *credible,* to all in the 1960s. In the following section, we discuss the problems caused by Malta´s population density and fortress economy in recent history. However, it is important to note here that both the population density and the fortress identity are the products of the interdependence of peoples in the Mediterranean and beyond.

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[155] The boom attracted immigrants to Malta, including the young Giovanni di Nicolò Pappaffy (1792-1886) from Tessalonika, who arrived in 1810 and soon made a fortune importing wheat during the war. Interestingly, this immigrant was one of the very few wealthy persons in Malta who helped Maltese to emigrate by establishing the "Pappaffy Fund" in his will. By 1961, around 560 persons had benefitted from the fund (Attard 2003).

Population density in Malta in the last millennium depended on the economies of Europe, and more specifically on what are now four European polities: Italy, France, Spain and Great Britain. It increased through grain subsidies financed by agricultural workers in France, British smuggling and British investments, Italian and Spanish migration. Centuries before "globalisation theories" became commonplace, events like depression in Spain were causing the collapse of the cotton industry in Malta, and consequently, mass emigration from the Maltese Islands. Furthermore, the Maltese fortress identity was forged because there were peoples *who could afford equipping and maintaining a mighty fortress* in the middle of the Mediterranean, and those people could not have been the subsistence farmers and herdsmen of Medieval Malta. All of this lends support to the **Hypothesis of History-Laden Interdependence** formulated in 4.1.5.

4.3 An "Overpopulated" Nation of Emigrants: Malta under the British

4.3.1 Four Policy Options which Took Many Decades to Materialize

To be sure, the word "overpopulated", mentioned above (section 3.3.2), brings to mind Thomas Robert Malthus and his correlations between (a) means of subsistence, (b) population size, and (c) disorderly population control through famine, disease and vice. In colonial times, Maltese and British Malthusians firmly believed that to avoid these three undesirables, one had to (a) **increase the means of subsistence** on the Islands (a1. via *improvements in agriculture productivity*, and/or a2. via *industrialization*, and/or a3. via *subsidies and welfare hand-outs* from London) and/or to (b) **reduce the population size** (via b-1. *drastic changes in childbearing* and/or b-2. *emigration*). They became more concerned when they realized that two horrible cholera epidemics (in 1813 and 1837),

which were seen as lesser evils necessary to keep the population in check, did not really dent the constant demographic growth!

Before we explore these policy options and see why they eventually whittled down to one — a disorderly form of emigration — during most of the history of British Malta, we will simply note that while such a "Malthusian" analysis is helpful to understand both the Maltese reality and its interpretation by colonial policy-makers and their critics, Malthusianism in general is an oversimplification of human realities, especially when applied at the level of the total world population.

4.3.1.1 Improvements in Agriculture Productivity

We have made reference, above (section 3.1.2), to Lant Pritchett´s (2006) theory of "ghost" and "zombie" economies. After the 1813 cholera epidemic in Malta, the Maltese suddenly discovered they were living in a "zombie" country: their economy had collapsed but most didn´t have the money or education to leave the island in an organized way and find work abroad. The average farmer´s cotton harvest was fetching half the price it fetched in the late 18th century on the international markets[156]; his wife and daughters were earning almost nothing from spinning or weaving, and things got worse if he planted food crops instead of cotton (Busuttil 1965, 52). His cousin´s cargo ship, which was earning a lot of money in 1812 smuggling British wares into Italy was now banned from entering any port in the Mediterranean because of quarantine restrictions[157]. The co-

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[156] This was due to the Spanish ban on cotton imports and due to British economic incentives for Neapolitan and Egyptian cotton, which were causing economic hardship in their own colony in Malta.

[157] Some ports kept discriminatory "quarantine" regulations on Maltese ships for thirteen whole years after the 1813 cholera epidemic ended, because they felt Maltese shipping had become too prosperous during the war. At a time when the British had hegemony in Mediterranean, they let their own client countries and

lonial government was not offering him subsidized grain as some of the Grandmasters used to; rather, the first colonial governor started taxing grain imports (Price 1954, 4)[158]. Subsequently, when the economy fell into depression, he couldn´t find a construction job in the "City".

One possible option to deal with this economic disaster by increasing the means of subsistence would have entailed introducing modern farming methods in Malta and new cash crops. Slowly over the 18th century, the potato was introduced as a new cash crop, and farming utensils and irrigation systems (e.g. the construction of watermills) improved, but, in spite of being "low-tech", Maltese agriculture at the time was probably the most intensive and the most productive in arid lands (which is why, very soon, Maltese immigrants started making fortunes in Algeria cultivating regions deemed infertile by French and German immigrants). In the 1820s and 1830s, one could also have maximized the use of land for agriculture[159] or used the power of law to reduce the rents

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protectorates unjustly embargo shipping from one of their own colonies, and thus let the Maltese private sector collapse, rendering the colony dependent on welfare!

[158] This tax became the major source of inland revenue for the colonial administration. It was effectively a tax on the poor, since the wealthy Maltese families had a varied and balanced diet, while the poor Maltese ate little more than bread.

[159] Though some agricultural land was laying idle because of family quarrels on inheritance and landlords who were not motivated to make their land productive, nobody did anything to make this land available – the governor did not reform the rent laws, Maltese intellectuals expected the government to act, rather than their wealthy Maltese friends, and the Church did not speak out about lands lying waste. Nevertheless, the Catholic Church did become more vocal about social issues after *Rerum novarum* (1891). For example, Rev. Michael Gonzi was a senator of the Labour Party when he was nominated bishop of Gozo in 1924. Bishop Gonzi was very active in defending workers´ rights. He was knighted in 1946 for encouraging farmers to put their hoarded grain on the market to bring down the price of bread during World War II. However, after the war, as archbishop of Malta, he used all his influence to keep the (restructured and more radical) Labour Party out of power, but also pushed the centre-right National Party to adopt a social agenda inspired by Catholic Social Teaching.

being paid by the poor[160], and very slowly, some of this did come to pass, later in the 19th century and in the 20th. All in all, however, these solutions were difficult to put into practice and could offer only a temporary reprieve.

4.3.1.2 Industrialization

A second solution, effective in the long term, could have been industrialization. The colonial government, however, did not promote industrialization or even technical education that would have aided industrialization; the colonies were not intended to compete with British industry, but to provide it with raw materials and consumers[161]. The university and educated classes maintained bloated and mediocre law and medicine faculties[162] — which provided prestige but not profitable em-

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[160] At the time, some farmers could not pay their dues to the landowners and had their harvests seized; in 1840-1841 the drought made several farmers indigent and, though 1842 was a good year, many farmers wished to emigrate. In 1843, land-rents were lowered by one-quarter and this reduced rural hardship considerably; this reform gave some respite to the lower classes to recover financially, but the wealthier Maltese starting earning less in rents and were less ready to invest in the Maltese economy. In the long run, this solution only postponed and slowed down emigration.

[161] Furthermore, British colonial economists expected the private sector to take the initiative but the Maltese people were not in a position to do so in the first half of the 19th century. The huge Maltese lower class did not have any savings to invest, and could not save money in the depression of the first half of the 19th century; the tiny Maltese middle class was relatively thrifty but could save very little (Price 1954, 12–16). In any case, those who had some money saved up, including the handful of Maltese aristocratic and merchant families, would not readily invest it in a risky economy such as the local one and would not put their money together in one big industrial investment or colonial venture (Price 1954, 24). If a big nation, such as Scotland, and its landowners could go bankrupt by putting all their eggs in one risky basket — as the Scots actually did in the 1690´s (Darien scheme) — how much more could the Maltese stand to lose if they invested their capital in risky local projects? In the early 19th century, the Maltese had invested in shipping, but that investment did not bear much fruit because of unjust and irrational quarantine laws in many Mediterranean ports and attacks by Greek privateers. Malta did not have a wealthy visionary like Francis Cabot Lowell who dared plagiarize British loom designs and convince his rich friends to lend him large sums of money to build mill towns in Massachusetts; nor does it have any permanent rivers to provide cheap power for industry.

[162] We could also include the Theology faculty: some tiny villages had dozens of priests and male religious, who, at times, celebrated concurrent masses on different altars in the same churches to earn a living. These men, however, were not only seeking prestige and the possibility of having an education. Their wisdom

ployment — instead of promoting and pursuing scientific, technical and commercial education. The lower classes had no savings to invest, and the Maltese middle class was too small and too risk-averse to invest their limited capital on the islands.

4.3.1.3 Welfare and Subsidies

In the 17th and 18th century, during times of economic hardships, the Grandmasters used money from abroad to finance some new infrastructural project, and so create jobs. They had no intention of creating welfare dependency; they simply had enough common sense to realize that fortresses and naval bases do not usually have self-sustaining economies, and Malta was, for them as for the British, primarily a military outpost. The first British governors, who had seen a prosperous (fortress) economy bloom during the Napoleonic Wars, and wanted to prove their economic management skills to an administration weary of military spending, chose to do nothing to stimulate the economy but burdened it with a heavy grain tax to balance the books: they staunchly believed in fiscal responsibility, balanced budgets, small government and *laissez-faire* capitalism. In the 1820s and 1830s, this meant letting hundreds of undernourished people beg, starve or die through infectious diseases. The resources and the capital of public charities were quickly depleted, but instead of facing the facts, the administration castigated the "wasteful procedures" and "undeserving ap-

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helped the people endure dire times, and when emigration became a buzz-word, hundreds of Maltese priests and religious (including nuns) accompanied migrant communities abroad and staffed Catholic missions all around the globe.

plicants" of such charities, and announced two sets of smokescreen "reforms" to rectify the "inefficiency" of these institutions[163].

During most of the 19th century, the Maltese craved for a large scale government stimulus package from Westminster to create jobs. Yet, this was too "Keynesian" for the British rulers of Malta in the first half of the 19th century, and even though the Maltese newspapers such as *Il Mediterraneo* were already quoting the economic theories of Melchiorre Gioia and Sismondo Sismondi (which were the precursors of Keynes in Europe) against Adam Smith as early as 1838[164], the British stuck with the latter and believed that the best way to solve the economic crisis in Malta was to do nothing and adamantly avoid deficit spending. They did not even help people to emigrate in an orderly fashion by promoting primary education and literacy in Maltese (let alone in English!) or providing capital to start a stable Maltese colony. Only later on in the 18th century, after many decades of misery, the governors[165] began to question the libertarian ideology of their predecessors — mostly from a security standpoint, however — and were ready to spend some money on infrastructure to create jobs in times of dire need, so as to earn the loyalty of the natives of their military base in case of siege.

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[163] Actually, the Royal Commissioners´ Report of 1836-8 admitted that the problem was not that the charities were wasteful, but that misery in Malta was real and the charities were seriously underfunded (Price 1954, 11).

[164] See, for instance, *Il Mediterraneo* (Malta) of 5th September1838, 24th October 1938, 31st October 1938.

[165] It is easy for us to say, today, that a governor representing the top superpower should have found the means to create jobs in Malta. But even a succession of "Keynesian" governors with a lot of influence in London could not have created a new economy *ex novo* in a few years. The alternative — making the Maltese economy totally dependent on British hand-outs and government initiative — was not desirable; in fact, this was the "solution" adopted by some of the later governors and was part of the reason why the Maltese were afraid of gaining independence in 1964.

4.3.1.4 Changes in Marriage and Childbearing to Reduce Family Size

A fourth solution, also long-term, would have been reducing the rate of population increase; at the time, Malta was the most densely populated "country" in the world (960 people per square mile)[166]. One could imagine introducing drastic changes in marriage and childbearing customs, namely postponing marriage to the late teens, and using marital chastity and rudimentary birth control techniques after bearing a third or fourth child, to avoid further pregnancies. Of course, these novel and progressive ideas, which became discretely acceptable in rural Catholic France centuries before they took hold in industrialized Protestant Britain, were not necessarily more counter-cultural in a Catholic Mediterranean country than in Victorian London. Certainly, most Maltese at the time were very conservative and prudish on these matters, and resisted any attempt to introduce calculating reason in their sexual and familial affairs.

Indeed, all the solutions above were difficult or practically impossible to adopt in the political, economic and cultural reality of the early 19th century. It would be anachronistic for us to expect British administrators, Maltese nobles and village priests to have behaved otherwise. In the short term, the only real solution was emigration. Actually, emigration did not reduce population density, especially since it happened mostly in a disorganized way, but nonetheless served to reduce excess unemployment on the job market in times of crisis. Sustainable economic growth was only achieved

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[166] The birth rate (between 1823 and 1842) was high at 35 per thousand, but indigence also assured a high death rate, such that the rate of increase (6 per thousand) was actually less than that of the UK at the same period (10 per thousand). Having large families was therefore common even in Northern, Protestant countries, and in the 19th century, the resistance of the Maltese to Malthusian imperatives (marry later, avoid sex, use birth control…) was not simply a question of being "Catholic" or "Mediterranean". As we noted above, the culture change required by this solution was too hard to achieve in the 19th century, especially given the lack of effective and ethically acceptable family planning methods at the time.

after independence when the birth rate fell and the economy was diversified, and especially after the British naval base was closed and the economy was finally weaned from dependence on arbitrary military spending binges and drastic navy budget cuts by Westminster. The long-term solution which took shape after independence and turned Malta into a "Very High Human Development" country, involved a combination of birth rate decrease, industrialization and development of services, sustainable government intervention through Keynesian stimuli and generous welfare schemes, clever use of Malta's strategic position in foreign relations, and gradual economic and political integration in the European Union leading to full membership in 2004.

4.3.2 Disorganized Emigration and the Dream of Founding a Maltese Colony

4.3.2.1 One Hundred and Seventy Years of Forced Economic Migration

Like many refugees and economic migrants today, the majority of the Maltese in the 19th century loathed the idea of leaving the islands, and some Maltese intellectuals at the time were vociferously claiming that there were other options besides emigration, that people did not really need to go through the pain of being uprooted to be able to feed their families (Attard 1983, chap. 1). In an ideal world, this might have been the case. But cases such as that of Malta in the 19th century illustrate that sometimes there are no real practical alternatives to mass migration. Indeed, Malta´s modern economic history illustrates the fragility of a small, non-diversified economy dependent on the bigger market players. It reminds us that globalisation and capitalist cycles of booms and busts have a long history. It helps us to appreciate some of the difficulties faced by migrant-sending countries and regions today.

Let us start with a quick overview. After the decades of misery which followed the end of the Napoleonic Wars, described above, depressions and booms alternated in Malta in the second half of 19th century[167]. In 1901, the British government decided to spend £1 million to equip the Grand Harbour with a breakwater and this meant a short boom (1903-6) with labour shortages in Malta filled by unskilled Spanish, Italian and African labourers (Price 1954, 190). Soon enough, the mega-project was completed, the workers were laid off and this lead to depression and mass emigration until World War I broke out, and offered another economic boom to the fortress economy. The Armistice, of course, meant yet another depression as the naval base was downsized, and marked the beginning of what emigration scholar Lawrence Attard (1989) calls "The Great Exodus" towards the US, Canada and Australia. To be sure, many more people started leaving the islands than in previous decades, but the numbers were not that impressive. In the Roaring Twenties, after more than one hundred years of haphazard emigration from Malta and British rule, there was not one decent

[167] As we have said above, the Maltese economy was in a depression between 1813 and the late 1830´s, but started improving steadily during the early-1840´s with rent reform, the Mehmet Ali crisis in Egypt and some British investment in public works. As Westminster allowed the Maltese Government to reinvest more and more of its tax revenues in infrastructural projects, prosperity slowly returned to the islands, and then, with the Crimean War (1854-7), the economy boomed as the naval base created direct or indirect employment for practically all redundant workers. A slump followed the boom in 1857-8. Then came another period of prosperity (1859-65) when the local government decided to spend some of the money saved in the boom years on infrastructural projects, the naval base was kept busy with political turmoil in Italy, Greece and Syria, and the American Civil War raised cotton prices on the international markets. All of this ended in the mid-1860´s, and the decline was compounded by three years of droughts in Europe (1865-7) that forced up food prices. The recession eased in the late 1860´s with bumper crops and the opening of the Suez Canal in 1869 which increased entrepôt trade earnings in Malta. Rising food prices in Europe plunged Malta again into recession in 1873-4, which eased in the late 1870´s; in the 1880´s booms and busts alternated with the Egyptian crisis, as thousands of impoverished migrants returned to Malta in waves, and similar waves of British troops and reinforcements stopped in Malta on their way to the Nile. In the meantime, many farmers started replacing cotton with potatoes, which fetched good prices on the European markets. After another boom in the late '80s and early '90s, depression returned in the mid-'90s as new steamships were introduced that did not need to stop in Malta for refuelling on their way from Britain to Crimea or the Suez Canal.

scheme which allowed the Maltese to emigrate easily to English-speaking countries and other British colonies. In the Thirties, following the immigration restriction rules adopted after the Great Depression, a British Passport issued from Valletta was not “British” enough at His Majesty´s borders in British Canada or British Australasia (Attard 1989, 62f, 81f); meanwhile, US immigration law classified the Maltese as undesired “Southern Europeans” and set an initial quota of 14 immigrants per year (Attard 1989, 40). Thus, when World War II broke out, the strategist´s nightmare came true as the Italians and Germans besieged and blitzed the overpopulated fortress, devastating towns and infrastructure and bringing the population to the brink of starvation: of course British military experts had been predicting this scenario for decades, but migration management is very hard to implement. In spite of all the hardship, however, the Maltese did not surrender.

After the war, though some money for reconstruction was made available, the spending and personnel of the naval base and Malta Drydocks was quickly “run down” (i.e. downsized). Another severe “run down” was set in motion by Westminster in 1957, and yet another one after Malta´s Independence in 1964. The base, which since the 1800s had become the main source of direct and indirect employment in Malta, was eventually closed in 1979. Mass emigration accompanied these decisions; between 1958 and 1975, around 5,000 people were leaving the islands every year (out of a population of 305,991), such that the population actually decreased from 319,620 in 1957 to 314,216 in 1967 (Malta National Statistics Office 2011). Canada, Australia, and the U.S (with its immigration system reformed in 1965), were the main magnets; finally after 140 years, the British

government offered a decent "assisted passage" scheme that worked[168]. Education in English and technical training at the Malta Drydocks equipped many of the emigrants for their new life abroad; those left behind were gradually integrated in the new industries which mushroomed in the 1960s and 70s. By 1985 emigration had dried out, and the population had reached 345,000. The Great Exodus was over.

4.3.2.2 Disorderly Emigration, Bureaucratic Indecision and Political Complexity

We have argued, above, that irregular and risky migration patterns today reflect the general lack of political will to organize realistic migration schemes, or fair bilateral or multilateral migration management accords. The lack of political and legal frameworks makes certain people think that because of their irregular status, "these immigrants shouldn´t be here". This is not so new in the history of human mobility; it existed even before passports and travel papers became mandatory, and it was a problem even for people migrating between different parts of the one same empire in the past, with all the necessary papers and stamps. In many ways, the situation of Maltese migrants in the 19th and 20th century was similar to that of persons who today leave overcrowded slums in depressed African towns and regions and end up in Malta, which, at face value, is not the "ideal" place one would want to emigrate to. Wikipedia, Twitter and GPS satellites provide useful tools to some 21st-century migrants that should help them land "ideal" jobs in "ideal" countries, but the complexi-

[168] It is calculated that between 1948 and 1967, 30 per cent of the population of Malta emigrated (Jones 1973). Over 140,000 people left the islands on assisted passage schemes between 1946 and the late 1970s, of which 57.6% migrated to Australia, 22% to the UK, 13% to Canada and 7% to the United States (King 1979).

ties of the age-old reality of migration are ultimately political and ethical, and are not readily untangled by technology.

"The Maltese should emigrate someplace else." This thought was not only on the minds of immigration officers and of native traders and shopkeepers in North Africa put out of business by aggressive Maltese competition (A. L. Smith 2006, 92). It was also on the pen of the colonial authorities and journalists in Malta throughout this period (Price 1954). Some wanted the Maltese to stay in the Mediterranean, close to home, that they might return in better days; others wanted them to go as far away as possible and settle there permanently, claiming that there would be no better days until the "excess" population had been pumped out once and for all. Some wanted to use them to settle the vast under-populated expanses of the British Empire, and so fought to promote the English language and culture in Malta hoping that these poor villagers would ardently plant the Union Jack wherever they went; others retorted that Maltese culture was Italianate and Romance, and proposed emigration to Algeria, Brazil and Argentina, coupled with the active promotion of the Italian language in schools. Some pointed to the fact that the Maltese are a Mediterranean people who speak a Semitic Language and concluded that they should emigrate to North Africa; others labelled the Maltese "Orientals" and wanted them to settle on the Greek islands or in Turkey.

Everybody nonetheless agreed that the Maltese should settle in big numbers in one or two places and found a stable "colony", allowing for organized migration between Malta and its "major diasporas". Yet nobody agreed where and how to send emigrants in an orderly way; nobody was ready to spend the money and effort to train prospective emigrants, select suitable candidates, lend money for the passage and help the pioneers survive the difficult first years until the colony be-

came self-sufficient. Much ink was spilled on this issue, and several theories of migration were sketched in the process of seeking what modern scholars would call an "ideal" migration system, chain or process for the Maltese. The reality, which involved local, foreign and colonial politics, prejudices, fears, economic booms and busts at home and abroad, linguistic and cultural affinities, misinformation, false hopes and other human complexities, was indeed far from "ideal", and assuredly difficult to account for using simple mathematical models.

4.3.2.3 The Dilemmas of Migration Management

We have listed, above (section 3.1.4), several theories of migration proposed and debated in the last 50 years or so, and mentioned the research being conducted today on transnational migration systems and networks. Migration management is, however, not as new as it sounds, and some of the ideas in these modern theories have been the object of migration schemes and heated political debates since the dawn of modern colonial ventures[169], and possibly even in marketplaces of Ancient Greece and Rome. As the history of Maltese migration schemes in the 19th and 20th century amply shows, past bureaucrats understood that economics is only part of a very complex human equation. It is unfortunate that so many migration scholars today still do not appreciate fully this complexity. The advent of modern econometrics, for many decades, often implied adopting over-simplified models of the phenomenon to obtain workable mathematical solutions, and the shaky results of such "scientific" investigations have often contributed to impoverish and polarize political

[169] In Malta, even the Knights had considered the creation of Maltese colonies in Corsica and in the Caribbean; for this reason, the Maltese navy actually occupied or bought St. Kitts, Saint-Barthélemy, St. Martin and Saint-Croix between 1653 and 1665 before surrendering them to bigger European powers (Price 1954, 36).

debates and led to half-baked policy decisions. Colonial migration experts were, maybe, less conditioned by economic calculus and more versed in history, but that did not make their job any easier.

Migration management was a very important task of colonial administrations in the 19th century which could be called the "century of indentured servitude". In 1807, Britain ended slave trafficking and pressured other European nations to abandon the lucrative "triangular trade" system (exporting manufactured goods from Europe to West Africa, slaves from West Africa to the Americas and raw materials from the Americas to Europe); this system had meant significant forced labour migration from Africa to the Americas, and authors like Lovejoy (2011, 19) estimate that around 11.3 million people were thus coerced to migrate before 1850. Slavery itself was abolished in the British colonies in 1834. The huge demand for labour in the colonies now had to be met by other means; mass emigration shifted to the agrarian societies of Asia and Europe as indentured labour replaced slavery. The recruitment of these contracted labourers was not always "free"[170] and, in any case, many were forced to migrate due to increasing poverty in their home countries as the economies of Southern and Eastern Europe were restructured (making many agricultural workers indigent and hence "free" to migrate), and Britain and France forced Eastern nations to open up their markets to the mountains of cheap manufactured goods being churned out by their industries, causing great upheavals in the Asian economies. Potts (1990, 63–103) estimates that, in the years 1834 to 1941, the system of indentured labour involved between 12 and 37 million workers. Some of the labour-

[170] One could mention here the kidnapping or "blackbirding" of Kanakas (labourers from the Pacific Islands) for work in the Australian plantations, and the Padrone system (widespread in Italy, Greece, China, Japan and Mexico) whereby parents sold or hired children into temporary bondage to a "padrone" (boss) who shipped them abroad and exploited their labour for many years before "liberating" them as settlers. Transportation, employment and eventual settlement of convicts (e.g. in Australia) was another important form of forced migration in this period.

ers, such as the Indian and Chinese "coolies" were bound to work very hard by strict contracts for many years to "pay for their passage" before they could settle and own property; many were however motivated and highly productive, and hence this form of labour at times resulted even cheaper for employers than slavery (R. Cohen 1991, 10).

In this wider context, we can situate the efforts of British administrators and Maltese intellectuals at the time. They were trying to catalyse, all through the 19th century, a process of "chain migration", even though they were not acquainted with the transnationalist jargon in vogue today. Asian, African and Kanaka workers were not the only people on the move. Hard-working, adaptable and fecund Maltese (and Irish, etc…) natives were sorely needed to populate territories such as Canada, Australia and South Africa. Like some economists today, many imperial bureaucrats advocated (relatively) free flow of labour and open borders, and even active government promotion of labour migration, at least within the British Empire. The cultural and political obstacles were nonetheless huge, even when it entailed something as simple and strategic as reducing the population of a tiny but important fortress to avoid rapid surrender (due to food shortages) in case of siege. The basic plan, in Malta, was to found one or more successful Maltese colonies or diasporas abroad which would have the cultural, social and economic capital to start a migration chain strong enough to siphon out tens of thousands of people from the islands. They believed that such migration, besides being necessary from a strategic point of view, would remove excess labour from the market and reduce unemployment, thereby raising wages, enabling savings, creating a large and prosperous middle-class and finally raising the living standards of all. They understood that population movements are integral to developing world economies. They had read enough history to realize that whole continents could shift from being migrant-receiving regions to migrant-sending regions in the

space of one century: Europe itself needed immigration to recover from the depressions and plagues of the 14th century and then it needed to send thousands of emigrants to new, under-populated lands when its population bloomed in the 15th and 16th century. They had figured out how migration chains allowed Europeans to re-populate the Americas through what Massey et al. (1999, 45f) call "cumulative causation" and were eager to organize similar migration systems for the Maltese.

Yet, good will, erudition and great ideas are not enough. To set up the Plymouth Colony in 1620, the Pilgrim Fathers needed money and transportation, and the experiment almost failed due to the usual difficulties encountered in the first years. Scores of schemes for organized migration were drafted and proposed in the 19th century and in the early 20th century for the Maltese[171], but very few were implemented and those few were badly planned, poorly managed and aborted before they could bear fruit[172]. Maltese migration schemes generally lacked the money, transport and ini-

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[171] Price (1954) provides details of many schemes hatched to promote organized Maltese emigration abroad in view of permanent settlement. Let us mention some of those which never materialized (with dates and proponents): Euboea (1834 – Governor Ponsonby), Australasia (Australia 1834 – J. H. Frere; Queensland 1861-2 – Governor Bowen and Maltese investors; Queensland and New Zealand 1881-4 – Australasian planters), Western Cyrenaica or Tripolitania (1836 – C. Naudi; 1849 – Governor O´Ferrall; 1865 and 1869 – Emigration Committee of the Maltese Council of Government [the Cyrenaica scheme is very old and can be traced back to the first months of the French occupation in 1798]), West Indies (1825 – R. W. Hay; 1872 – Jamaican planters and Governor Grant), Crete (1885 – Governor Storks), Tunisia (1874-6 – A. Dingli and Maltese investors), Cyprus (1878-80 – A. Dingli and Governor Borton; 1925-8 – H. Grisewood), Argentina (1924 – A. Cassar Torregiani and Argentinian government), USA (Floresville, TX and Malta, MT 1910 – Apostleship of Prayer). Military migration proposals to station Maltese regiments or battalions in some colonial ports (and so create migration chains between the families of Maltese servicemen and officers in Malta and at these "Maltese" posts) similarly did not materialize; various schemes included the West Indies (1834), Gibraltar and the Ionian islands (mid-1830s), Bermuda (1839; 1848) and Hong Kong (1854). Maltese youths interested in a military career were, in fact, offered better conditions by the French in Algeria.

[172] Some schemes did see the light of day, but were shut down and considered failures after some initial hiccups. The Cephalonia experiment (1826 – sponsored by Gov. Napier and promoted by Gov. Ponsonby) failed

tial support to take off. For this reason, chaotic population movement became the norm. Maltese individuals simply left the islands seeking a suitable place to settle or earn some money, often by trial and error. The easiest way for the Maltese to emigrate in the 1820s was to pay 2 shillings (4 days´ wages) and get a passage to Djerba or Tunis on a Maltese *speronera* (trading boat), or else hitch a ride as a stowaway on a British ship heading towards the Ionian islands. From Tunisia they would move west towards Algeria (especially after French colonization in 1830) or east towards Egypt through Tripolitania and Cyrenaica, making money through odd jobs or "other means". Those headed towards the Ionian Islands could end up in Corfu, Crete, Constantinople or Smyrna. Actually, some of the first emigrants were beggars and petty criminals allowed to "self-exile" by British authorities in Malta; they travelled undocumented and this irked British consuls in Africa and French authorities in Algeria (A. L. Smith 2006, 70). Some earned little fortunes exploiting work shortages and periodic economic booms in different Mediterranean regions and rushed back to Malta when threatened by anti-Christian or anti-Maltese riots, or when they had accumulated

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because the land given to the Maltese colony was in a very bad state and needed years of work to become fertile and productive; furthermore, the emigrants were badly selected and had little farming skill. Other small experiments (financed by sugar planters) in Essequibo (British Guiana, 1838-41), Hogg Island (British Guiana, 1839-41) and Grenada (1839-41) failed for various reasons: bad selection process, disease, demands for more benefits (e.g. free rations) than what was established in the contract, and in the end, breach of contract by the Maltese labourers who felt they were being exploited. One of the most interesting schemes (that of settling large numbers of Maltese natives on Cyprus before massive Greek migration towards the island) was aborted because in 1879, while the negotiations were being conducted between the colonial governments in Malta and Cyprus, a Maltese investor, Vincenzo Fenech decided to finance a Maltese colony in a malaria-infested area near Larnaca and his investment quickly turned sour. Another scheme, financed by sugar planters in Queensland in 1883-4, offered Maltese agricultural workers around twice what they earned in Malta, but one fifth of what other Europeans earned in Australia. The scheme aborted when the Maltese immigrants refused to work as indentured servants at par with Kanaka labourers to pay their passage; rather than wait five years and settle as Europeans, most broke their contracts and left the estates to try their luck in Sydney (Price 1954, 178–84). The same problems occurred in the Brazilian experiments on coffee plantations in Fortaleza and São Paulo in 1912-3 (Attard 1983, chap. 2).

enough money to live comfortably back “at home”. This type of emigration continued well into the 20th century; small Maltese groups even settled in some parts of Palestine, in Beirut, in Sicilian and Spanish ports, and in Gibraltar. Furthermore, a sizeable community took shape in Marseilles, founded mostly by Maltese Algerians who moved to France and by direct migration from Malta. By the end of the 19th century, resourceful and adventurous individuals found their way beyond the Pillars of Hercules; small groups of Maltese emigrants were running vegetable shops in New Orleans and working on the railway projects in California while others were trickling into Canada and Australia (Attard 1983, chap. 3).

4.3.2.4 The Sociology of Disorganized Diasporas and Liminal Immigrant Communities

As we have said above, this haphazard form of emigration was obviously far from ideal, and could not serve to reduce Malta´s population problem in the long run (Attard 1983, chap. 2). The colonial government in Malta did not offer a passage out of Malta (generally because Westminster would not allow this sort of expenditure), but offered a free passage back to Malta to those who were destitute or felt threatened abroad (this was a very costly form of “charity” but was condoned in London since it did not stand out in the accounts) — cf. Price (1954, 141–8). Many people who were prone to illnesses or ill-suited to start a new life in a new country simply left to escape misery in Malta. They were full of illusions of getting rich quick with little effort in fabled foreign lands, and soon found themselves in even greater destitution in the receiving countries deprived of a supporting social network; the British consuls had to return hundreds of people back, sometimes whole families who decided to emigrate without knowing anything about the promised lands across the sea. The little Maltese diasporas in the Mediterranean — with the exception of those in Algeria, and

for some time, that in Egypt — were too small and too mobile, and were not in a position to attract Maltese migrants out of the homeland permanently. They were not in a position to initiate stable migration chains that could relieve the demographic problem in Malta. In French Algeria, many of the Maltese who fared well accepted naturalisation, married non-Maltese spouses, and did not pass on any Maltese heritage to their children (A. L. Smith 2006, 59f; 119f). Considered to be the lowest in the ranks of the European colonizers and the inferior race among the Christians, Maltese Algerians tried their best to blend in, separate themselves from the new Maltese immigrant paupers, and get rid (with limited success) of the very sticky and humiliating "Maltese" label. The same happened in the United Kingdom in the 20th century (Dench 1975, 207f).

Serious hard-working emigrants settled and found it harder and harder to return as they became parents and grandparents, and sought to forget the misery of their youth in Malta; they consciously separated themselves from the "adventurers". The latter migrants — as the caricature goes — were restless youth, who typically wanted to get rich quick and liberate themselves of the moral and religious strictures of the Maltese village, secretly hoping, however, to end their years of travelling at some point, and go back to Malta to flaunt their wealth, and sober up in the shade of some beloved and feared village belfry. Though it was not always easy to distinguish these two stereotyped groups of migrants in the first years after leaving Malta, we can say that after some time, most "serious" emigrants preferred to disperse and assimilate, rather than stick together as a group with the

more restless newcomers, working hard to shed the bad reputation earned by the first Maltese "adventurers"[173].

Given the relative paucity of the "serious permanent emigrants" in the many receiving ports of the Mediterranean and the reluctance to venture beyond the "Inland Sea", chain migration from Malta did not materialize (until the end of World War II). There was no Maltese community abroad capable of attracting and financing permanent emigrants from Malta in an orderly way in the 19th and early 20th century. By the late 1880s, according to Price´s estimates (1954, 139), around 25% of the Maltese population was living abroad, but, in general, the vast majority of those who emigrated to the Mediterranean countries returned to Malta[174]. With the advent of nationalist ideologies and decolonization, the small Maltese communities were expelled or "encouraged" to leave by confiscation of property and threats, e.g. in Corfu (1864), Turkey (1932), Egypt (1956), Algeria and Tunisia (early 1960s), and Libya (1956-65)[175]; many moved to Malta, Britain or France, or migrated again towards Canada, the US or Australia.

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[173] Andrea Smith (2006), an anthropologist, finds the proliferation of "Maltese Algerian" associations in France quite intriguing. In a way, it can be seen as a form of compensation for the lack of a visible "Maltese" community in Algeria before the 1960´s, and a reaction of some of the Pied-Noirs to their parents´ conspicuous effort to assimilate and become more French than the Algerians of French origin.

[174] Price (1954, 189) estimates that around 85% of those who emigrated between 1840 and 1890 returned to Malta. That is exceedingly high; Italian return migration in the 1890´s was around 50%, and that is considered very high by migration scholars.

[175] After Italy colonized Cyrenaica and Tripolitania, most members of the Maltese community in the territory of Libya refused to give up their British passports and apply for Italian citizenship. For this reason, they became increasingly marginalised and during World War II many were imprisoned, shipped to Italy and placed in concentration camps. The main camp was mistakenly bombarded by the Allies, but after being liberated, they received little help from the British. When they were finally shipped back to British-controlled Libya after the war, they discovered that their costly loyalty to Britain was a very bad deal: they received practically no compensation for the property lost and confiscated during the war, and were treated worse than the

4.3.3 Lessons from the History of Maltese Emigration

4.3.3.1 Disorganized Immigration is Not Necessarily the Result of Bad Governance

When reflecting on immigration from poorer countries, many people today assume that the problem ultimately lies with the government of those countries and its mismanagement of the economy. However, this is not always the case; economic mismanagement is, at times, the symptom, not the cause, of economic disasters with a very complex causality. In the 18th century, the ***local*** British colonial administration in Malta was authoritarian and paternalistic (Hough and Davis 2009), and often distant and phlegmatic, but surely not kleptocratic or incompetent[176]. The major problem at the ***local*** level was an obsession with balanced books and with rendering a military base economically self-sufficient, with no substantial external investment to rapidly industrialize the country and educate its people.

Some governors did try to argue with successive British governments that such policies made no sense, but Westminster did not see the point of allowing its colonies to become economically independent and better integrated. The more serious problem, thus, was ***not at the local level***. Unless a colony was "rebellious" and needed military and infrastructural investments, wealth was supposed to flow only in one direction, towards London; loyalty to the crown was thus exploited and pun-

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other Europeans. Libyan Independence and Gadhafi´s revolution meant that after three or more generations living in Libya, they had to leave the country for good (Cini 2012).

[176] The British governors, though they were not always brilliant leaders led by brilliant superiors, were up to the task of managing a small economy like that of Malta. To be sure, in the context of the early 19th century, their determination to make the Maltese economy run a surplus and to stick to Adam Smith´s theories to achieve economic growth, even while more and more people became destitute, can be labeled ideological obtuseness. Had they been more "Keynesian" and pragmatic, they could have spared the native population much suffering and hardship, but we would be anachronistic to demand this today, when most economists are preaching austerity and minimal government in the wake of the "Great Recession".

ished as colonies like Malta were left alone to face decade after decade of misery. In hindsight, such reasoning seems very economically and politically short-sighted. *But it did not come from incompetent local authorities*. It came from the "experts" who shaped the colonial policies of Great Britain, the major superpower after the Napoleonic Wars and, at the time, the most technologically advanced polity in the world. It is important to note, furthermore, this was not primarily due to personal evil of one person or group: there were big structural and social resistances that, in practice, excluded all the options which required a change of culture in Westminster (e.g. spending money in colonies like Malta to help them prosper in the long term) and a change of culture on the Islands (e.g. reforming the education system). The only remaining option was disorganized emigration.

4.3.3.2 How Can We Spare Other Nations from Going Through the Same Ordeal?

Rather than judge our ancestors, we would do better to reflect on how our generation is repeating the same behaviours and doing nothing to deal with the suffering of our neighbours; future generations may judge us very negatively on these matters. Free-market capitalism and its effects were relatively unknown in the early 19th century[177] and colonial administrators often relied more on bourgeois domestic habits of "living within one´s means" rather than on the theories of Adam Smith. At the end of the 20th century, however, after centuries of economic and sociological scholarship on free markets, one would have expected the international community to have offered workable solutions to heavily-indebted and collapsed third-world economies in the 1980s and 1990s; instead the World Bank and the International Monetary Fund prescribed "structural adjust-

[177] Only in the 1840s did Great Britain adopt a less protectionist policy on the mainland, with the repeal of the Corn Laws and the Navigation Acts.

ment programmes" that further increased misery and debt burdens, fomented political instability and violence, and provoked a massive wave of migrations of traumatized refugees and impoverished workers (Castles and Miller 2009, 53f; Marfleet 2005, 44f). Though local economic mismanagement may be part of the problem, some of the most problematic economic short-sightedness today comes from wealthy countries and international institutions, just as it came from the top-level colonial bureaucrats in the past. Transparency, accountability, democratization and clever policy-making are hard to foster on a local level when a whole population becomes cynical after spending decades waiting for international solidarity after an economic collapse, and being left in misery to fend on its own.

If for many emerging countries, the 1980s was a lost *decade*, for Malta, the 19th century was a lost *century* in terms of economic and social development. The problem was not population growth *in itself*, but mainly the lack of will on the part of the colonial government to consistently grow and diversify the local economy and to manage emigration properly in the meanwhile. Malta is currently one of the most densely populated countries in the world (1,322 persons/km^2), but few would claim today that the country is "overpopulated". Macau, Singapore and Hong Kong have a much higher population density and their dynamic economies continue to attract immigrants. Malta's post-colonial economy has weathered the latest economic crisis quite well and will need immigrant labour in the near future, especially when Europe´s economy improves.

Malta´s decades of mass emigration came to an end in the early 1980s. The Maltese still travel and migrate in small numbers, but no-one feels "forced" to migrate any more. High population density is not a problem. Few countries have a problem today welcoming potential Maltese immigrants.

Probably, the same will happen *eventually* for most emerging polities; the only question is how long we will have to wait until that happens. We could allow these countries to lose a century or more, as Malta did in the past. Or we could help emerging polities stabilize and grow their economies, clamp down on human rights violations, and offer a good standard of living to their citizens, while in the meanwhile offering viable and managed systems of labour migration to their people. Malta finally got that package between 1950 and 1980 after the Sir Wilfred Woods Report (1945-50): it suddenly got war reconstruction money (1947), better education, effective policies to modernize agriculture (1956 Acts), promote tourism (1958 Act) and industrialization (1959 Development Plan), assisted passage for emigrants (1948), and open doors in Australia, Canada and the US Intelligent late-colonial and post-colonial administrators like George Borg Oliver and Dominic Mintoff made the best of that package, and extended it after independence with development aid from other nations until the British naval base was closed in 1979; despite their many limitations and defects, these men put all their energies into seeking solutions to the country´s problems. Malta is now in a position to help others.

4.3.3.3 Practicing Solidarity with Others Today

After 170 dizzying years of economic booms and busts, population blooms and mass emigration, Malta´s growing economy and declining demography today seem geared once again to attract immigrants, as in the heydays of the Knights. Yet, those 170 years have made the Maltese forget that they have always been a nation of immigrants, as we have argued in section 4.2, and that immigration did not stop in the last two centuries. Even during the times of mass emigration from Malta,

some immigrants arrived and settled on the islands[178], even though many of them were refugees not settlers or labour migrants, and a good number eventually left given the economic situation at the time[179]. Like the inhabitants of all major port cities in the Mediterranean, the Maltese *are* indeed the sons and daughters of migrants, refugees, freed slaves, pirates, sailors, Jewish and Muslim converts, navy officers, colonial bureaucrats and dissolute religious men.

It is crucial for the Maltese today to realize that the islands can be attractive to others today, as they were to their ancestors in the past. "How could these people want to stay here?" "Why don´t they go somewhere else?" "They obviously want to go to the US, or Canada, or the UK" This is what many Maltese persons say about the boat people arriving from Africa, often ignoring that hundreds of other workers are arriving by plane on tourist visas and finding work in Malta. Besides the xenophobia that colours immigration debates in practically all the immigrant-receiving countries of the world today, the Maltese have other phantoms to face from their past: the ghost of Malthus claiming that "the boat is full" and the spectre of 200 years of "zombie" economy. The spirit which is hardest to exorcize is however that part of the Maltese identity which is based on an interiorized fear of invasion and on the camaraderie of a garrison constantly on the lookout for an impending

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[178] Starting in the late 19th century, a number of Hindu Sindhi families from north-western India started to settle in Malta to establish businesses through which they sold Indian and other Asian handcrafts in Malta (to the Maltese and tourists in high street shops, and to British servicemen on peddler-boats in the harbour), and bought Malta lace which they sold in Asia all over the British Empire through their family business networks (Falzon 2001). Some of these Indian families remained and integrated themselves well in Malta; others moved to Britain or back to India.

[179] Many Italians sought refuge in Malta during the upheavals of the 19th century (O. Friggieri 2012), and especially during the Crimean War boom. Furthermore, an important group of around 1,000 Russian refugees arrived in Malta on April 29, 1919 with the Russian Empress and the royal family. Most eventually left but some settled in Malta (Malta Family History 2012). Some Sindhi Indian families came to Malta after the Indian Partition in 1947, fleeing Pakistan (Falzon 2001).

assault: its voice echoes from around 60km of ramparts and fortifications scattered all over the islands. Over the centuries, the garrison mentality allowed those families who settled the islands, coming from many races, cultures and religions, to blend together into a nation and forge an identity of their own. The question today is whether they can reshape that identity to welcome immigrants and refugees as a new generation of settlers, rather than cast them as a new brand of invaders.

4.3.4 Conclusion: Duties which Follow from History-Laden Independence

During the final years of the Knights, Malta´s economy and culture was most closely linked to that of France, Italy and Spain. When Malta was handed over to the British in 1814, a new web of interconnections was spun; besides mainland Great Britain, Algeria and Egypt were the "closest" neighbours in the 19th century (in socio-economic terms), but were eventually replaced by Canada, Australia and the US in the 20th century. After Independence, Malta became more and more interdependent on the European Union.

Malta´s strategic position and peculiar history has meant complex and shifting webs of relations; other countries often have less links on their map. In most cases, however, history-laden interdependence implies that there is a handful of polities which are expected to show solidarity and to be shown solidarity in a special way in times of crisis. The way interdependency takes shape is not the most important factor here, though former colonial powers who overexploited their colonies should see themselves obliged to be the most dependable partners of their former colonies in times of need. The most important thing for our present discussion, however, is that the interdependency is clear and that it exists.

All this lends further support to the *Hypothesis of History-Laden Interdependence* formulated in 4.1.5. We can combine this hypothesis with the *Independence Thesis*, and with the moral duties implied by such interdependence to formulate the **Principle of History-Laden Interdependence**:

> **Principle of History-Laden Interdependence:** *The rhetoric of national independence should not obfuscate the reality of interdependence of human societies, an interdependence which is not simply a general human reality, but one which is history-laden and takes different shapes as particular historical webs of relationships are spun between different polities. Polities closely linked in such a web to weaker polities have a higher responsibility to help those particular polities develop and to help their citizens in times of urgent need than do more distant polities.*

Applying this to the phenomenon of migration allows us to formulate the following priority rules based on **History-Laden Interdependence**:

1. **Immigrant Entry and Sojourn Selection Rule:** Other things being equal, receiving countries have a greater duty to grant entry and sojourn to citizens of countries which are politically, socially and culturally linked to them through close bonds of history-laden interdependence.
2. **Immigrant Residency and Naturalisation Selection Rule:** Other things being equal, receiving countries have a greater duty to grant residency and naturalisation to citizens of countries which are politically, socially and culturally linked to them through close bonds of history-laden interdependence.

We continue to reflect on these rules in the following chapters.

4.4 *Independent Malta in the 21st Century: Once again a Country of Immigration?*

4.4.1 Immigration in Recent Years: Legal and Political Aspects

4.4.1.1 Immigration and Asylum in Malta Prior to EU Membership

Until the 1980s, given the economic situation on the islands, immigration to Malta was limited. Besides some investors, British retirees, returned migrants, professionals with special skills needed on the Maltese job market, and persons recently married to Maltese citizens, Malta allowed few other people to settle and to eventually apply for citizenship. Two notable exceptions were a few Sindhi Indians and some Libyans with business interests on the island. Occasionally, some persons reached Malta asking for asylum. For instance, in November 1972, one year after Malta´s accession to the 1951 Refugee Convention, 362 Asian refugees from Uganda (expelled by Idi Amin) arrived in Malta. Given that Malta had signed the Convention and its Protocol with a geographical limitation[180], Malta had no obligation to grant asylum to Asian Ugandans, but given the circumstances, it could not send them back to Kampala. It offered temporary protection for six months until the UNHCR processed their applications and resettled them in other countries. The International Catholic Migration Commission (ICMC) in Geneva asked the Emigrants´ Commission of the Diocese of Malta to help the UNHCR with the processing of the applications, and for 30 years, this church body became the local Operational Partner of the UNHCR Branch Office in Rome. The Emigrants´ Commission helped boatloads of Albanians in the early 1990´s and more than 100 Kosovars in 1999 to get inter-

[180] Cf. section 3.3.1.1, above. Malta signed the 1951 convention and the 1967 protocol in 1971, recognising that in theory there may be refugees from all over the world, but limiting itself to grant asylum in Malta only to Europeans. This limitation was lifted on the 13th December 2001.

national protection; it also worked in the shadows to help non-European asylum seekers who entered Malta with tourist visas or were smuggled in by boat to get protection through UNHCR or foreign embassies, given that these persons could be deported if caught by the police. The Jesuit Refugee Service in Malta also helped many people in similar situations, especially displaced Sudanese and Iraqi Christians, and put pressure on the government to lift the territorial limitation clause and adopt a Refugees Act with proper government structures to process asylum applications and grant asylum with all the corresponding rights to such persons in Malta.

4.4.1.2 Policy Changes Linked to EU Membership

For 30 years, however, the Maltese government made it very difficult for people to openly apply for asylum in Malta, and those who managed to get refugee status through UNHCR-Rome were pushed, by the lack of appropriate legislation and bureaucratic inertia, to approach foreign embassies to be resettled abroad. Asylum seekers were not allowed to work legally (and risked being prosecuted for working without a permit), and yet were expected to survive and provide for their family with no provision of healthcare, education, housing or adequate income by the government. At the same time, Malta went out of its way to attract wealthy retirees and foreign investors (and their staffs) to reside on the islands. Then, under pressure from the EU, when negotiating the implementation of Chapters 24 and 13 of the *Acquis*, the Maltese government finally drafted a Refugee Act[181], which was passed in 2000 and came into full force in 2002, after the establishment of

[181] Previously, asylum fell under the Immigration Act (1970).

the Office of the Refugee Commissioner in 2001 (Buttigieg 2011)[182]. This was followed by the institution of Detention Services (DS) in 2005 and the Agency for the Welfare of Asylum Seekers (AWAS) in 2009[183].

Just a few months before Malta joined the EU in 2004, Council Regulation 343/2003 — the "Dublin II Regulation" — was adopted, and Malta was expected to adopt this regulation even if it was deemed overly burdensome by the Maltese government. Dublin II seeks to harmonize asylum in the EU and limit the movement and the number of asylum applications of irregular migrants using a simple principle: an asylum seeker is allowed to apply for asylum only in the country of first entry into the EU; they will be allowed freedom of movement in the EU only if granted refugee status and if caught in another country without such a status they will be returned to the country of first entry. This means, in practice, that a small border country like Malta which receives a relatively large amount of irregular migrants and asylum seekers (compared to its territorial extension and population size) is expected to process a considerably large number of asylum applications, provide pro-

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[182] Mr Charles Buttigieg was the first commissioner; he was previously the Chairperson of the Refugee Section of the Emigrants´ Commission of the Diocese of Malta. The current commissioner, Mr Mario Guido Friggieri, is a former Jesuit and is married to an Albanian immigrant. The current director of AWAS (Agency for the Welfare of Asylum Seekers), Alexander Tortell, is also a former Jesuit who previously taught theological social Ethics at the University of Malta. Mr Ahmed Bugri, a protestant pastor originally from Ghana (who has Maltese citizenship through marriage) is the current director of the Marsa Open Centre for Migrants. It is an curious feature of Maltese politics and administration that people who belonged to Church organizations critical of the government´s asylum policies or who were personally affected by Malta´s immigration laws often ended up implementing new (and half-baked) policies regarding asylum and immigration, running new institutions with very limited resources, and being criticized by their former colleagues in faith-based NGOs and human rights organizations.

[183] For more details regarding laws and institutions in place, see Micallef (2006) and Amore (2007). K. Camilleri (2004) provides a good overview of the immigration, asylum, residence and employment laws and policies prior to, and at the moment of, EU accession. Other relevant overviews can be found in Calleya and Lutterbeck (2008) and Lutterbeck (2009).

tection to the applicants, offer welfare indefinitely (if needed) to those granted some form of humanitarian protection but not refugee status, and eventually to deport "failed" asylum seekers and unwanted migrants, avoiding push-backs to unsafe third countries. In April 2006, the European Parliament (Resolution P6_TA (2006) 0136) declared that Dublin II and its effects are not acceptable for Malta, but since then, no solution has been offered apart from voluntary "responsibility sharing" (or "burden sharing") agreements whereby some EU states have offered to resettle refugees living in Malta.

Before 2002, when Malta was negotiating the *acquis communautaire*, the migrants were "invisible" (due to the institutional and legal vacuum, and the lack of political will to stop irregular migrants landing in Malta from "disappearing" from the Islands and "reappearing" somewhere in Italy). Furthermore, the migration route from Tripoli to the little Italian island of Lampedusa was not well travelled, since safer routes were still in operation (Morocco → Spain, Tunisia → Italy). However, the Tripoli → Lampedusa route (passing through the Maltese Search and Rescue Region – SRR) steadily gained importance in the beginning of the 2000´s as one regime after another in the Maghreb region was cajoled, coerced and provided with equipment by its EU neighbours to clamp down on illegal departures of boats carrying migrants from its shores (Andrijasevic 2006). Mauritania, Morocco, Algeria, Tunisia — countries ruled by repressive regimes, with a record of serious human rights violations and of torture of immigrants and asylum seekers — were suddenly labelled "safe third countries" by the EU and started receiving migrants and asylum seekers pushed back from Europe. These migrants were in turn pushed back to Sub-Saharan Africa (Del Grande 2008; Del Grande 2009a; Médecins Sans Frontières 2005), often deposited on militarized borders (e.g. between Morocco and Algeria) or at tribal outposts in the middle of the Sahara Desert (if not simply

abandoned and left to die in the middle of the desert). By the mid-2000´s, the Tripoli → Lampedusa route became the major route in central and western Mediterranean as the Libyan economy boomed and attracted hundreds of thousands of migrant workers, and Gadhafi was not willing to stop some of those migrants and asylum seekers from travelling north by boat.

4.4.1.3 A Major Route for Irregular Migration in Central and Western Mediterranean

As the route gained importance, more and more boats started to drift towards Malta[184] or require assistance by the Maltese authorities[185]; some were rescued by the Maritime Squadron of the Armed Forces of Malta (AFM) or by commercial vessels, and landed in Malta. Between the 1st Jan 2002 and the 14th June 2011, 13,029 persons applied for protection in Malta. The first reaction of the Maltese government was to set a policy whereby all persons who enter Malta irregularly by boat are immediately sent to a Detention Centre while their asylum application can be filed. Vul-

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[184] Malta itself is not a destination; for many immigrants it is a dead end which offers no access to mainland Europe but only detention, some years of work in small and harshly competitive labour market, and eventual deportation (M. Micallef 2006, 4). Reaching the reception centre in Lampedusa, on the other hand, entails prompt transfer to Sicily or the Italian mainland, rapid release and unhindered overland travel within the contiguous Schengen Area. The Italians, of course, put little effort in keeping asylum seekers in Italy while their application is processed, as required by Dublin II, or in tracking them down to conclude the asylum determination process and deport those not eligible for protection, especially if the migrants have left the country. That makes Italy an attractive entry point for labour migration into Europe; the problem, until recently, was that Ben Ali had clamped down on departures from Tunisia, and that there is no way to get to Italy from Libya without passing through the Maltese SRR and risking being taken to Malta as soon as your shoddy and overloaded boat runs into trouble.

[185] The Italian coastguard practically considers all overloaded boats in its SRR as in danger of sinking and immediately rescues the passengers. The Armed Forces of Malta (AFM)´s current practice seems to be the following: if the Maltese authorities encounter an overloaded boat with the engine running in the Maltese SRR, they do not rescue the passengers, unless given a very explicit signal of distress or noticing that the boat is about to go under; rather, they provide water, food and fuel hoping that the boat will make it to the Italian SRR and be rescued by the Italian coastguard. This politically opportunist practice is very risky and may cost lives, but the AFM claims it is thereby respecting the freedom of the migrants who prefer to live free on mainland Europe than locked up in Malta (Klepp 2011).

nerable persons are usually released rapidly, but others may be kept in detention for up to 18 months while their asylum application is processed (the average stay in 2011 was around 6 months). AWAS manages the "open centres" where refugees and persons afforded protection are housed after release from detention until they find a job and can afford to rent a place to live, and also provides food and lodging to irregular migrants while the government seeks the means to deport them.

After a very bad experience in 2002 where "failed" asylum seekers were deported from Malta to Eritrea and were tortured and sent to hard labour camps by the government of that country shortly after arrival[186], and several years of hushed push-backs of migrants to Libya, the Maltese government became more keenly aware of its obligation not to return asylum seekers to non-safe countries, and to deport "failed" asylum seekers only if they can be returned in a dignified way (The Times of Malta 2009b). When this is not possible, these persons end up in a social limbo since, in theory, they are not allowed by law to work and to benefit from welfare, as those granted refugee

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[186] Between the 30th September and 2nd October 2002, ignoring pleas by NGOs such as Amnesty International (2002b; 2002a), Malta ordered the repatriation of 223 Eritrean nationals rescued at sea; claiming, together with the government in Asmara, that they were army deserters, not legitimate refugees (Grech 2004). The Maltese authorities simply disregarded the fact that all Eritrean youth are by law conscripted for life (with no possibility of conscientious objection), and so, even if they leave their camp or the country for a valid reason (e.g. family needs, discrimination and extreme hardship during military service, fear of persecution) they become deserters, and hence automatically subject to the regime´s torture and hard labour machine as soon as they are caught in the country or returned from abroad. After being detained and tortured in the prison of Adi Abeito, some of the "Maltese" deportees tried to escape, and were transferred to the maximum security prison on the island of Dahlak Kebir and left to dehydrate in the scorching heat, being given 1 litre or less of contaminated water a day to drink (Chyrum 2006; Human Rights Watch 2009). Others were sent to hard labour camps, for instance in Gel'alo by the Red Sea where they were coerced to build a "hotel for tourists", working barefoot in the desert with other Eritreans deported from Libya (Del Grande 2009b). Several persons died, while some escaped and were again arrested, tortured and taken to the prison at Sawa (Chyrum 2006). Others escaped again and eventually made it to Europe where they have been granted asylum and resettled in Canada, Northern Europe and Australia.

status or subsidiary protection do. These migrants may remain in Malta for many years before they can be returned to their country "in a dignified way"; in the meantime a *modus vivendi* solution has been found whereby "temporary humanitarian protection" (THPN) is given to some of these persons[187].

Arrivals by boat peaked in 2008 when most asylum seekers arrived in small boats, but dipped considerably in 2010 following an infamous agreement between Italy and Libya in which, after years of cajoling, Gadhafi´s government finally promised Berlusconi that it would take drastic measures to stop the boats leaving the Libyan shore or push them back from the sea[188]. Only two boats reached

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[187] After living four years in Malta (i.e. after three years living out of detention and, usually, working irregularly), and after the asylum determination process is completely terminated (2nd rejection on appeal), migrants who cannot be promptly returned to their countries may be given a renewable one-year contract to live and work legally in Malta, on a case-by-case basis, at the discretion of the Refugee Commissioner. This "THPN" status is usually granted if the person can afford private accommodation in Malta, can communicate in English and Maltese and has been certified by the police to be of "good conduct and character" (M. G. Friggieri 2011).

[188] The agreement, signed in 2009, inaugurated the "Italian Pushback Policy" whereby migrant boats were intercepted at sea by the Italian coastguard and taken directly back to Libya without being allowed to make an asylum claim. Libya was deemed by Italian and European politicians a "safe third country" fully equipped to process asylum claims fairly, even though it was not a signatory of the 1951 Refugee Convention or its 1967 Protocol and its police and army were widely known to commit rampant human rights violations. Furthermore, the UNHCR office in Tripoli was not officially recognised by the Libyan authorities (in fact, its existence there was deemed "illegal" and its officials were expelled in June 2010 (The Tripoli Post 2010)). The Italians, nonetheless, claimed that Libya was signatory to the 1969 Addis Ababa Convention governing aspects of refugee problems in Africa, even though this convention provided no real protection for asylum seekers in Libya. On the 24th February 2012, the European Court of Human Rights unanimously found that the pushbacks constituted a breach of article 3 of the European Convention on Human Rights that prohibits "inhuman or degrading treatment"; it also found Italy´s argument that Libya was a "safe third country" inadmissible and ordered Italy to pay compensation to several Somali and Eritrean asylum seekers (Sansone 2012). One should note, however, that Italy and Malta had been discretely pushing back boatloads of asylum seekers and migrants to Libya for a number of years before the 2009 agreement. Tareke Brhane (2011) was pushed back by the Maltese authorities in 2006; in 2011 he escaped by boat once again, made it to Lampedusa, and then published his harrowing experience of abuse in the notorious Libyan prisons (from which he was released when he became very ill and abandoned in the desert to die). Jesuit Refugee Service Malta

Malta in 2010, and only 28 persons applied for protection. The Arab Spring brought an end to this agreement. In 2011 the numbers shot up again as the Gadhafi regime allegedly pushed sub-Saharan Africans to cross to Italy *en masse* to create alarm in Europe and avoid sanctions[189]; Gadhafi claimed that he was the only one who could stop a "massive invasion" of Europe by Sub-Saharan African immigrants. Though the "invasion" did not materialize, a spike in arrivals was noted that year, especially after the insurgents in Libya started targeting black Africans and projecting them as "mercenaries" and "spies" serving Gadhafi, causing more and more immigrant workers to flee Libya by sea. By summer 2011, Italy and Malta were back in the "alien-invasion hysteria" and "asylum panic" mode of the mid-2000s. Meanwhile, the voyage became more and more deadly[190]. In 2011

(2009) also published a number of personal stories witnessing to the abuse and torture of migrants and asylum seekers in Libya, as has Asinitas Onlus in Italy (Segre 2008) and others.

[189] On the 7th March, 2011, while Britain and France were drawing up a resolution for a no-fly zone over Libya, more than 1,000 asylum seekers arrived by boat in Lampedusa in just 12 hours, two days after Colonel Gadhafi warned that Europe would be "invaded by thousands of migrants" if he were removed from power (Valdiguié 2011; Flanagan 2011). Harbour officials later claimed that after the no-fly zone was declared, migrant workers were rounded up by the police in Tripoli, herded onto large boats and forced to depart towards Europe; at least one such overloaded boat sank in Tripoli harbour claiming the lives of 200 people (Coughlan 2011). Gadhafi´s scaremongering echoed claims by the Italian Interior minister, Roberto Maroni, on the 2nd March, claiming that there were 1.5 million irregular migrants in Libya headed for Europe (Sacchelli 2011; de Haas 2011). Earlier, Franco Frattini, the Italian foreign minister, spoke of an "exodus of biblical proportions" with 300,000 people heading for Lampedusa and Malta (Frattini and Arachi 2011). Sure, there were about 1.5 million migrant workers in Libya at the time, lured by the construction boom there, but not guaranteed any rights or legal status by the regime (Hamood 2006, 19f); very few of these persons were transit migrants heading for Europe (Bredeloup and Pliez 2011). Needless to say, the immigrant tsunami did not materialize. According to the European border control agency, Frontex, migration flows from Libya along the Central Mediterranean Route actually stopped for many months after Gadhafi´s regime fell (Frontex 2012, 5), and despite having echoed Maroni and Frattini´s estimates in early 2011 (Euronews 2011), the agency finally admitted that many of the migrants had "been forcibly expelled from Libya by the Gadhafi regime", and so were not originally transit migrants headed for Europe (Frontex 2012, 5).

[190] In May 2007, a boat carrying 53 people was spotted and photographed by AFM aircraft but then went missing. In August 2008, an AFM boat rescued 7 survivors from a semi-submerged dinghy; the other 71 passenger had perished. Italian journalists like Gabriele Del Grande (2008; 2009a) have documented several incidents of tragic loss of life at sea in recent years.

alone, counting only confirmed cases, more than 1,500 lives were lost in the Mediterranean (Strik 2012, 6). On more than one occasion, Italy and Malta challenged each other on who should take in migrants who were stranded, in distress or had just been rescued by unequipped private third parties in the Maltese SRR but very close to Lampedusa[191]. While the political authorities bickered, migrants were left to cling to tuna pens for days and some even died from dehydration, being denied timely life-saving medical attention[192].

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[191] To further enhance safety at sea, amendments were adopted in 2004 to the 1979 International Convention on Search and Rescue (SAR) and 1982 United Nations Convention on the Law of the Sea (UNCLOS), placing more responsibility on the country manning a particular SRR. Malta raised objections to these amendments, claiming that they could be interpreted as imposing on a state the obligation to disembark rescued persons on its own territory and offer assistance to all those rescued within its SRR; the previous versions of the treaties demanded only that the country *coordinate* search and rescue efforts in its assigned region and the practise was to take the rescued persons *to the port of call closest to the reported incident*, whatever country that port belonged to (cf. Amnesty International 2009; Klepp 2011). In practice, given the size and shape of the Maltese SRR (which stretches from Tunisia to Greece, and harkens back to a time when Malta housed one of the best-equipped military bases in the Mediterranean), most incidents reported in this region occur closer to Lampedusa, Tripoli or the Tunisian coast than to Valletta. Malta has therefore refused to ratify the amendments, claiming that the older practice makes more sense to deal with emergencies, that its bigger neighbours are better equipped to launch rescue operations close to their shores, and that the obligation (following the Dublin II regulation) to process asylum claims and offer protection and welfare to all irregular migrants found in distress in its SRR is overly burdensome, given Malta´s limited resources. Italy, however, has ratified the amendments and has on various occasions sought to disembark in Valletta persons rescued close to Lampedusa but within the Maltese SRR. Italy has suggested that Malta reduce the size of its SRR and transfer some of its SAR responsibility to its neighbours, but Malta has refused to consider this, given that the SRR corresponds geographically to the Flight Information Region (FIR), from which Malta is earning around € 8.23 million per year (Klepp 2011, 545). Nonetheless, if Malta were to equip itself and take up wholeheartedly its SAR responsibilities under the 2004 amendments and its asylum responsibilities under Dublin II, this would probably cost much more than what it rakes in from its FIR.

[192] In May 2007, 27 immigrants were left clinging to tuna pens on the border between the Libyan and Maltese SAR since the Maltese trawler towing the pens refused to take them onboard. They were eventually saved by an Italian vessel and then, for three days, the three neighbouring countries refused to take them in; meanwhile, one person died of dehydration (Viviano 2007). In mid-April 2009, Malta refused to accept 140 migrants rescued by a Turkish vessel in the Maltese SRR, claiming that the nearest port of call was Lampedusa and instructing the vessel to take them there. Italy resisted but finally gave in after 4 days, when European Commission President José Manuel Barroso intervened (Pop 2009). Later that month, Italy refused to let a Maltese military vessel disembark 66 migrants on Lampedusa; they were rescued in the Maltese SRR, but only 23 miles from Lampedusa. In May 2011, 61 immigrants died at sea while Italy and Malta ignored their

4.4.1.4 Mandatory Administrative Detention in Malta

It is important to note, at this point, that there were many other foreigners in Malta during this period, having come by plane or ferry on a tourist or student visa; a good number found employment in the shadows and overstayed their visas as construction and tourism boomed with accession to the EU; their presence was tolerated and their work was useful to raise productivity and prevent excessive inflation. Recent statistics show that 66% of foreign workers in Malta come from the EU and only 7% of the workforce hails from sub-Saharan Africa (Debono 2013). Yet the boat people, mostly of Sub-Saharan African or Asian origin, were systematically detained in sub-standard conditions (in dilapidated colonial-era barracks)[193] for up to 18 months, treated as criminals and at times denied prompt access to urgent medical treatment. Protests by the detainees were quelled with excessive force by poorly trained and equipped soldiers, police officers and later by detention service staff. Dark-skinned people walking the streets (even tourists) were typically seen as clandestine migrants and "bogus" asylum seekers.

Even so, in this period, around 60% of the boat people were actually given refugee status or subsidiary protection. The government thereby implicitly admits that most of these persons violated im-

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distress signals and refused to rescue them and while fishing boats and NATO ships from 6 countries (which were intensely patrolling the area to enforce an arms embargo) passed by and "saw nothing". Given that the first distress signal came from the Libyan SRR, it seems that everybody *expected* that the Libyans should take care of it, yet nobody even bothered to inform the authorities in Tripoli: Libya was in the midst of a civil war, under embargo, and had no SAR capacity. By the time the boat drifted back to the Libyan shore, almost all the passengers had died of dehydration and starvation (Strik 2012). In June 2012, another incident was reported where a rubber dinghy with 55 immigrants from Libya was left to drift for 15 days in one of the world's busiest shipping lanes: the vessel eventually ran ashore in Tunisia with a sole survivor (Connett 2012).

[193] There are three detention centres, situated on the island of Malta in Ta' Kandja, Floriana, and Safi (Barracks).

migration laws out of necessity to seek safety, and are not criminals. Furthermore, this high rate of protection (compared to 25% average in the EU-27) is a tacit admission that the horror stories told by most of these asylum applicants are true or credible. Most people seeking asylum in Malta do indeed come from conflict zones or places where they reasonably feared persecution and underwent traumatic experiences in their countries of origin and in transit countries. When we combine this with the fact, based on empirical evidence, that detention of traumatized persons in substandard conditions for several months only serves to further damage their mental health (Jesuit Refugee Service - Europe 2010), we recognise that automatic detention as currently administered in Malta is seriously unethical, and furthermore economically and socially dangerous and unsustainable (Vella 3003). The authorities however defend the current practice saying it avoids homelessness and destitution (and related crime), allows for a staggered release into the community and is required to conduct medical checks and so to avoid the spread of infectious diseases; some honestly seem to believe that it is ultimately necessary to combat human trafficking and smuggling and to identify terrorists, and serves as a deterrent to reduce irregular economic migration (K. Camilleri 2003, 12–14).

Over the last 10 years, the government has gradually poured more money into the protection of asylum seekers and irregular migrants; some improvements to the conditions of detention and to the quality of housing in the Open Centres have been made, but the conditions, length and the very practice of administrative detention have been harshly criticized year after year in a host of reports

by organs of the UN, European Institutions and international NGOs[194]. For instance, in June 2011, Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe (2012), reported that the policy of mandatory administrative detention of migrants and asylum-seekers was "irreconcilable with the requirements of the European Convention on Human Rights and the case-law of the Strasbourg Court". Hammarberg also joined a long list of high-profile visitors in criticizing the living conditions in reception centres for migrants, which, when compared to the decent accommodation offered to convicted criminals at the Corradino prison, have become the shame of a nation which used to be lauded for its human rights record. The government has responded to the criticism by taking a very defensive tone and pointing to improved administrative procedures which allow more rapid release of immigrants from detention. These changes, though welcome, are not enshrined in law and can be overturned at any moment (DeBono 2011, 149).

4.4.2 Irregular Migration to Malta: Facts, Hype and Human Rights

4.4.2.1 Is There an "Immigration Crisis" in Malta?

In terms of raw volume, Germany, the US and the UK are the only wealthy Western countries in the world's top ten refugee hosting states, and they are dwarfed by countries like Pakistan (with almost 2 million refugees, or people in refugee-like situations). Malta has the 7th highest number of refu-

[194] These include reports by the Commissioner for Human Rights of the Council of Europe (2004; 2006; 2012), the International Federation for Human Rights – FIDH (2004), the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (Catania 2006), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT (2007), the UN High Commissioner for Refugees (2007), Médecins du Monde (2007), Médecins Sans Frontières (2009), the Working Group on Arbitrary Detention of the UN Human Rights Council (2010), Jesuit Refugee Service – Europe (2010), the International Commission of Jurists (2012), the International Detention Coalition (2012), Human Rights Watch (2012), and annual reports by Amnesty International over the last decade.

gees per 1000 inhabitants (but Jordan has 5 times as many). When adjusted to GDP, it is clear that the burden of hosting refugees is mainly being carried by the poorest nations (UNHCR 2011, 78f; cf. Castles and Loughna 2003, 4)[195].

In Malta, the total cost of the detention system and of temporary housing and welfare for released detainees rose from € 1.9 million in 2002 to € 12.2 million in 2010 (Caruana 2011), out of a total of € 1,220 million in social expenditure (Malta National Statistics Office 2012). While light-skinned irregular foreign workers who arrive by air or ferry contribute to the economy, rent their own housing, pay Value Added Tax, do not make use of Maltese welfare and do not go through the detention system, darker-skinned boat people are detained in conditions that breed dependency and PTSD-related depression. When released from detention and placed in Open Centres, most of these persons are inserted into a parallel and defective welfare system which does not really encourage them to find work and private housing, if not by perverse means (e.g. placing them in torn tents during winter).

Authors like Mainwaring (2012) have shown that the "crisis" narrative which keeps administrative detention in place in Malta is actually creating a crisis that would otherwise not exist. Rather than helping them integrate themselves into the community and the marketplace, the authorities consciously project, to those who are granted refugee status or subsidiary protection, a very depress-

[195] In the year 2010, the following were the countries holding the most refugees and people in refugee-like situations (in descending order of absolute numbers): Pakistan, Iran, Syria, Germany, Jordan, Kenya, Chad, China, US, UK; (in descending order of refugees per 1000 population): Jordan, Syria, the Republic of Congo (Brazzaville), Chad, Montenegro, Djibuti, Malta, Iran, Pakistan, Kenya; (in descending order per US$ 1million GDP): Pakistan, DR Congo, Kenya, Chad, Syria, Ethiopia, Bangladesh, Uganda, Iran, Tanzania (UNHCR 2011, 78f).

ing image of the country and its ability to welcome foreign residents. They seem to be trying to convince the refugees that their only hope lies in resettlement in wealthier countries. To be sure, the promise of imminent resettlement elsewhere, together with dependency and depressions carried over from detention, prevents many of these refugees from seriously seeking to integrate themselves in Malta, find work, and establish their roots in the country as productive residents. Many in fact remain in the Open Centres, afraid that they would not be given housing and welfare were they to leave, rent private housing and then lose their job.

The Maltese government expects the EU and international community to pay for what Malta spends warehousing unwanted migrants, or else to take charge of these persons and resettle them elsewhere. Given that the number of arrivals by boat has surged since Malta joined the EU, most Maltese see this as a problem *caused* by the EU which should be *resolved* by the EU The general idea is that Malta joined the EU to reap the benefits, not to shoulder the costs; many Maltese argue that this is not "crass egoism" but simply "fairness", since Malta is less prosperous than Germany and France. This self-interested attitude is further compounded by the anger that surrounds the Dublin II regulation and the way it was approved by the EU-15 just before the 2004 expansion. As noted above, Dublin II puts most of the burden of housing irregular migrants on border countries, namely, Spain, Italy, Greece and the 10 (+2) new members of the EU; it was rapidly approved a few months before the 2004 expansion (before any of the 10 new members could veto it) and seems to follow the ensuing logic: the EU core countries will now receive European workers and immigrants from the EU periphery (Germany from Poland…) but the periphery has to deal with irregular migrants from outside the Union (Poland from Ukraine, Malta from Africa…). Given these attitudes well-entrenched in its administration, Malta now grudgingly takes in irregular migrants and pro-

cesses their asylum applications according to Dublin II, but places their wellbeing and human rights at the very bottom of its list of social priorities. It interprets its responsibilities in international law in the most minimalistic way possible, and actually, many Maltese think that irregular migrants *do not* have human *rights* since they shouldn´t be here in the first place (DeBono 2011).

4.4.2.2 "Family Values" and Human Rights in an "Invasion" Narrative

In a very "Catholic" country that upholds family values, these people "are not part of the family" ("m´humiex ta´ ġewwa"), and unlike the Maltese citizens who are disabled, homeless, poor, or even convicted criminals (whose rights are well recognised and honoured by Maltese society), irregular immigrants are seen not as subjects of rights but merely as objects of supererogatory charity (DeBono 2011). When told by international journalists that there are too few toilets in the detention centres, or that immigrants spends months crammed in overcrowded halls with no privacy in barracks or tents (which are sweltering hot in summer and frigid in winter), many Maltese retort that "They should be thankful! At least here they have toilets here in Malta, not like in Africa!" or "Why are they complaining? Before they were living in the jungle, and now our government is taking millions from the mouths of our kids to put a roof over their head!" Then, if someone notes that even very poor Africans have a sense of dignity, hygiene and personal space — that Africa is not as appallingly poor and shockingly underdeveloped as some Maltese missionaries present it to be — the answer is that if Africans are not totally desperate and miserable, then they are even less deserving of the pity and charity meted out but the Maltese taxpayer.

Past and present ministers of Justice and Home Affairs like to repeat *ad nauseam* a host of statistics to prove their thesis that Malta is overwhelmed by irregular immigrants (Catania 2006, sec. 4). To

make the unimpressive numbers (a few hundred people per year) seem huge, they note that when compared to population size, one irregular migrant landing in Malta is equivalent to 205 entering Germany, and that the average arrivals of boat people per year is equivalent to 45% of the Maltese birth rate. The same politicians are less eager to mention the real numbers, and the fact that most of these migrants actually leave Malta after a few years. Between March 2002 and March 2009, there were 12,500 arrivals of irregular migrants; of which some 7,000 have departed (according to experts like Martin Scicluna, who advises the government on the issue of immigration). Some leave through resettlement programmes and some through repatriation (Malta repatriated 2,958 immigrants between January 2004 and September 2008), but most leave of their own accord (The Malta Today 2009).

Why do these politicians indulge in giving the impression of a constant invasion, and in repeating alarming and skewed statistics that foment panic and xenophobia? In fact, the statistics serve as part of a fallacious moral argument from "extreme emergency" to the effect that Malta is overwhelmed and cannot protect the human rights of these people. The thesis, expressed in not-so-diplomatic terms, is that the conditions in the detention centres and open centres are appalling because Malta cannot afford to spend so much of the national budget on such a "huge" number of unwanted aliens: if the EU and UN really care for their human rights, they should write the Maltese Government some fat cheques, and Malta will surely fulfil its international obligations. The more obvious solution — abolish administrative detention, set the migrants free, give them access to the labour market, and provide *decent* welfare only *when they need it* — seems unthinkable to most Maltese and their political representatives, lest the 40% who do not qualify for protection (the "economic migrants", "illegals" or "klandestini") compete with the Maltese for jobs, and lest the

60% who actually qualify (and have a right to freedom and jobs) decide they like Malta and want to stay. The false dilemma can be framed in these terms: "if we detain them, we cannot afford to detain them in decent conditions, if we let them free, they will take our jobs and make us poor, hence, in any case, Malta cannot afford to help these people".

4.4.2.3 Xenophobia and the "Necessity" of Detention

When seen from outside, it is hard to believe that the real problem here is economical and not one of racism: when Malta joined the EU in 2004 it opened its tiny job market to hundreds of millions of people, hardly blinking an eye (Debono 2013). The Maltese do not feel threatened by the tens of millions of jobless Spaniards and Greeks who could come over to their sunny and economically resilient islands legally whenever they wish, and apply for jobs; they get hysterical when told that a few hundred irregular dark-skinned migrants should be released from detention and allowed to contribute to the Maltese economy, even if they know that these migrants often take up jobs that the Maltese, Spaniards and Greeks no longer want to do. When seen from the inside, it is understandable that such economic fears do have purchase in a country which prospered in the last 25 years or so after two centuries of economic woe, and is jealous of its hard-earned wealth. Nonetheless, one expects a people enlightened by their history of mass labour emigration to show more sympathy for refugees, and indeed, for economic migrants.

The result of these short-sighted policies, dictated by political opportunism and fear of the stranger, is interesting to note. The "necessary" detention system, in fact, serves nobody. After a few months, all the detainees are released. Such, a system, obviously does nothing to "protect the Maltese worker from competition from the migrants and cannot dissipate the fears of job competition

harboured by many blue-collar Maltese workers. Furthermore, most immigrants see the detention system as merely a form of punishment for having entered Europe illegally (a chastisement in most cases undeserved, and even harmful to these persons´ physical and mental health[196]). The obvious solution, here, is educating the Maltese, not punishing the immigrants[197]. Unfortunately, like most of their counterparts in developed nations, Maltese politicians and — to some extent, even Church leaders[198] — have not showed enough leadership and resolve to confront these fears, explain why these people are here, admit that the "problem" is not going to vanish through any amount of political magic or wishful thinking, argue convincingly that there is space on the Maltese islands and in the Maltese job market for at least some of these people to stay on and eventually become Maltese citizens, and educate consciences on human rights and the value of diversity.

Politicians and journalists have a moral responsibility to bust myths and challenge misinformation (International Organization for Migration 2011). For instance, one should note that as more and

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[196] Some authors have studied the effects of detention on Somali women in Malta, who continue to be "punished" by the system even after legally accepted and released (Gerard and Pickering 2012).

[197] Clever and farsighted political leadership, when faced with an issue like immigration, recognises that the "situation" is here to stay, and tries to help citizens to understand the reality and face it. A good example is the way British government propaganda in the 17th century prepared the country to deal with the arrival of thousands of Huguenot refugees (Marfleet 2005, 102f).

[198] With the exception of the occasional strong-worded homily by the bishop of Gozo touching on the human rights of migrants (e.g. The Times of Malta 2009a), the Maltese Bishops´ Conference has generally avoided condemning xenophobia, administrative detention, job discrimination against foreigners and the lack of effective and just policies concerning the integration of migrants. When the Jesuits and their staff at JRS-Malta suffered multiple arson attacks in 2006 (cf. Farrugia 2006), the bishops expressed sympathy with workers of Catholic NGOs which promote the rights of migrants, but did not use the occasion to promote the same rights, values and Catholic Church teaching that inspired these workers and religious. In 2012, after an asylum seeker died in police custody, the bishops finally issued a statement questioning the detention system as currently implemented. While the bishops have not shied away from writing harsh and ill-timed pastoral letters on delicate topics such as the sinfulness of in-vitro fertilization techniques, and ordering them to be read in all Sunday masses around the country, they seem to have opted not to disturb ignorant or morbid consciences on the topic of immigration.

more irregular migrants and migrants from EU entered the labour market in Malta, unemployment actually fell from 8.42% in July 2003 to 5.81% in December 2007, and after a moderate increase due to the global recession dipped further to 5.78% in April 2012 in spite of the Eurozone crisis. In the second quarter of 2012, Malta´s unemployment rate was almost half the EU-27 average (EUROSTAT 2012, 5); if Malta wasn´t at full employment between 2008 and 2012, the reason was not irregular migration but the global recession.

4.4.3 Making Integration Difficult

4.4.3.1 Suspended Lives

In the long term, the anger against the Maltese, the depressions and the respiratory illnesses that accompany many who leave the detention blocks and open centres do not bode well for the integration of those 60% who — being eligible for international protection — have a right to stay and work in Malta, particularly when they proceed to look for a job and rent a house. Indeed, a certain number of the "good and deserving" immigrants are damaged by the system and find it hard to get a stable job. For many years, they live suspended lives, hoping they might soon be resettled in some wealthier country and unsure whether they should make the effort to integrate or to attach themselves to Malta and its people (Galea Debono and JRS-Malta 2010).

In contrast, the "bad" immigrants, or failed asylum seekers (those "economic migrants" who are vilified daily on the websites of local newspapers with bile-filled commentaries and blogs), given that they have less problems with trauma and do not live in the dream of being resettled in Wonderland in a couple of days´ time, tend to leave the open centres promptly, find work and housing, and learn Maltese. They have to prove themselves to the authorities, since staying on in the coun-

try is a concession, and they often come to behave as model residents. They could be deported any time; in fact they are not promptly deported mostly for economic reasons (given that their work is useful for the country and the government cannot afford the return flights without EU financing) but sometimes for humanitarian reasons (given that they cannot be returned to their countries for the time being – e.g. during a revolt or immediately after a natural disaster) – in this latter case, they are granted THPN, under certain conditions. However, the insecurity that they could be returned to their countries in the not-so-distant future seems to be less paralysing than the vague promise — made to refugees who are entitled by law to stay indefinitely and eventually become Maltese citizens, and to those enjoying subsidiary humanitarian protection — of being resettled in a wealthy country.

4.4.3.2 Temporary Protection or an Admission that Integration is Happening?

It is, of course, very hard to get rich quickly in a country like Malta with no natural resources and a tradition of poorly-remunerated long-hour work shifts in unskilled labour, especially for a dark-skinned foreigner starting at the very bottom of the social ladder and often a victim of wage discrimination. However some immigrants have started to realize that the low unemployment rate and the generous welfare system of the Islands offer a much better future for their families than life in their home countries. Furthermore, a minimum wage in Malta (with free healthcare and free education for one´s children up to college level) could actually be better than destitution in a wealthier country. A study conducted by the Maltese Refugee Commissioner´s Office (M. G. Friggieri 2011) of 847 persons given Temporary Humanitarian Protection (basically the “economic migrants” – the least wanted of the unwanted migrants) shows that 89% of these persons have found

independent housing in 53 different localities (compared with 57% of refugees and 42% of persons given subsidiary protection – many of whom continue living in Government-financed "open centres" concentrated in one area in the south of Malta). Only 3% have a tarnished police conduct record, mostly for trying to leave the islands irregularly and reach mainland Europe (to join their families or avoid deportation). The majority of those capable of employment are legally employed with an official permit and work contract in a wide variety of economic activities. For instance, 50% of the THPNs (not eligible for refugee status or subsidiary protection) who work in the construction industry do so legally, while 61% of those enjoying protection who work in this industry do so off the books. With few exceptions, most found jobs in the line of work they had in their country of origin; a handful of professionals and college-educated immigrants had to accept semi-skilled jobs (probably since their diplomas are not recognised in the EU). However many took advantage of vocational training provided by government agencies and NGOs to advance in their career.

The conclusion is that the unwanted and hated "economic migrants", when allowed to live in the community, find jobs (and mostly legal jobs, unlike many EU nationals working in Malta!), rent their own apartments, pay taxes, keep out of trouble, integrate themselves easily in most affordable neighbourhoods and do not depend on welfare. When one considers rationally Malta´s ageing labour market and the sustainability of its generous welfare and state pension system (Mercieca 2011; The European Commission - Ageing Working Group 2012), and when one disregards the skin colour of these persons and the distorted and sensational reports about them in the media, the unwanted immigrants start to appear quite desirable after all. Just as any other developed nation with a dynamic economy, Malta requires immigrant labour, and it should not be looking uniquely or primarily at refugees bearing the marks of multiple traumas to fill that need.

4.4.3.3 Recognising that Undesirable Immigrants are Actually Desirable

Most *refugees and beneficiaries of subsidiary protection* will, in time, find employment and independent housing (and they will do so much faster if spared the added stress of detention and told clearly and frankly that resettlement abroad will be available only for the few), but to boost its economy, Malta actually needs *economic* migrants. Refugees and beneficiaries of subsidiary protection have a *right* to asylum in Malta, and Malta has a moral and legal *duty* to provide protection, even if these persons be a burden to the Maltese economy (to be sure, the responsibility for their protection should be fairly shared among European countries). Malta's and Europe's borders *need* to be open to these latter migrants. As the European Commissioner for Home Affairs, Cecilia Malmström (2012), writes: "contrary to what the xenophobes would have us believe, the number of asylum seekers in Europe is far lower today than it was 10 years ago. And Europe is by no means exceptionally open in its asylum policies. There are far more refugees in Kenya alone than there are in the 27 EU countries". In a world torn apart by conflicts fuelled by our past deeds and present choices, traversed in all directions by millions of refugees and displaced persons, it is part of Malta's and Europe's responsibility, as a civilized polity, to provide asylum to those few who manage to reach our shores.

As regards the "economic" migrants, certainly not all have a right to stay, but even a tiny and not-too-wealthy country like Malta can and should offer access to its labour market, and eventually to citizenship, to a certain number of these persons. After all, for better or for worse, Malta is part of that same Europe which, over the years, created migrant labour bridges with former colonies and manipulated world markets in its favour, creating patterns of dependency; though formerly a colo-

ny, it has willingly joined the club of countries that, for centuries, sent their unemployed, destitute and adventurous sons and daughters to inhabit and colonize other continents and compete in their markets, claiming they had a right to enter and stay, and ignoring the laws of the land. So then, just like the rest of Europe, Malta should be ready to open its doors to at least some of these migrants and offer them ways to stay on legally, and all the more because, at the end of the day — and no matter how hard it is for the Maltese and their politicians to admit it — Malta needs their labour and is constantly benefitting from it.

In the medium-term, Maltese immigration policy needs to stop emulating policy responses adopted in Italy, Spain and Portugal over the last two decades. These policies have been criticized for being inconsistent and irrational, and for in turn seeking to copy the statist restrictive policies focussed on control (rather than management) of immigration flows which had previously been adopted only by Greece (Baldwin-Edwards 2004). Such policies have irked not only human rights activists but also right-wing economists who argue that, since the needs of a modern economy cannot be predicted through centralized planning, the current rigid policies on admission of labour migration being adopted in Southern Europe and elsewhere will more likely damage the economy of the receiving countries than help it (Harris 2007, 36f).

4.4.4 Building a Future Together

4.4.4.1 Ten Wasted Years

Ten wasted years of waiting for the irregular immigrants and asylum seekers to vanish into thin air have passed since the Refugee Act came in force in 2002. It now high time for native-born Maltese and immigrants to start building a future together. In view of this, how can the negative perception

of migrants, prevalent among the Maltese people, be changed? Given the lack of leadership of the politicians, some hope that the media will rise to the occasion. Surely, immigration poses a number of challenges for journalism in Malta. Journalists with an ethical formation are aware that they are called to inform and educate the public, to help to promote human rights and fight xenophobia. However, the most influential media are the organs of the main political parties, and tend to support the security agenda being promoted by both of the major parties[199]; they are often afraid to challenge public opinion and widespread prejudices on immigration and asylum (Sammut 2007). Though some journalists are trying to inform and educate the public about who these immigrants are and why they end up in Malta, the media are becoming increasingly commercialized and most viewers are less likely to spend time watching or reading in-depth news analyses or documentaries. Serious reporters have to compete for space with more sensationalist news items cut and pasted from news services, and risk reporting alarming facts (arrival of boats, riots in detention centres, street fights, etc.) without offering a context for the reader to put things into perspective. Journalists who have been on the forefront in the fight against racism and xenophobia have been attacked personally and persistently by far-right politicians. In 2006, arsonists torched the front doors of the private homes of Saviour Balzan, the editor of the English-language newspaper *The Malta Today*, and of freelance columnist Daphne Caruana Galizia.

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[199] Both main parties, Nationalist and Labour, are careful in how they project their image. While leaders do not want to flirt with populist racism, both sides fear that unless they are perceived to be defending the national interest, they will create a space where xenophobic far right parties could flourish.

4.4.4.2 An Interview with a Ghanaian-Maltese Pastor

Others are sceptical about the ability of the media to take up such a task, and see more hope in the face-to-face encounters between persons of different backgrounds, helped by educators and mediators in the community. One of the persons who strongly defend this view is Mr Ahmed Bugri, a Ghanaian-born protestant pastor who runs an open residential centre for immigrants in Marsa, and who obtained Maltese citizenship through marriage[200]. Mr Bugri acknowledges the need of better human rights protections in Malta, but feels that NGOs and international observers fail when they emphasize rights without linking them to responsibilities. He loves to comment on the first article of the Maltese Constitution, which states that "Malta is a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual". Rights and freedoms are very important, but on an arid piece of rock with practically no natural resources, nobody can benefit from social rights unless someone works hard to make that possible.

Pastor Bugri became aware of this fact soon after moving to Malta and meeting his father-in-law, an industrious jack-of-all-trades, as are many Maltese of his generation. It was hard for him to learn the Maltese work ethic and to do plumbing and plastering while studying for a law degree. He discovered that that a college education and a middle-class job do not equate with the comfortable, relaxed lifestyle of some of the upper classes in African society, or some of characters of famous TV soap operas. Many of the people arriving irregularly in Malta — be they asylum seekers used to cer-

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[200] Pastor Bugri expounded his unusual take on the issue in an interview I had with him in June 2011. I believe that his reflections have weight since he is himself an immigrant and he comes from Western Africa – the region where most failed asylum seekers come from. His frankness is at once refreshing and shocking, his approach is pragmatic, and the fact that he is foreign-born and African allows him to say things that other persons in the Maltese administration would never dare say.

tain behaviours and survival strategies in refugee camps and transit countries, or young people with some education, fleeing unemployment or underpaid manual labour in their countries — find it hard to accept that in Malta they may need to work harder than ever before and work their way up from the bottom of the social ladder. Mr Bugri believes that blue-collar Maltese workers, who see these struggles in their immigrant co-workers first hand, may have a better appreciation of the problem of immigration than intellectuals who fight for human rights or defend government policies, and who frame the issues too neatly in terms of rights, membership, economics or race. For this reason, he insists that most Maltese are not really racist or insensitive; rather they are suspicious that the immigrants may bring in certain attitudes that are dangerous and problematic, for instance a sense of entitlement when offered a generous welfare system without the work ethic needed to support such a system. Working-class Maltese also notice that there are cultural tensions which could be problematic in the long term if not addressed[201].

Mr Bugri boldly claims that "nothing in Malta prevents an African migrant from integrating". His position seems to reflect Seyla Benhabib´s position regarding "democratic iterations" and "jurisgener-

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[201] For instance, according to Mr Bugri, one cannot deny that there is a "tribal mentality" amongst some of the Africans, even if it may not be politically correct to say so; for example, when there is a stabbing incident, it is essential to find the elders and deal with them, and ask them to broker a settlement. A Somali who lived in a lawless land for 20 years will not trust the clueless Maltese police force — which kept him for 7 months in detention — to protect him from another Somali of a different clan. It will take time for him to get used to Western forms of justice. Meanwhile, according to Mr Bugri, Maltese police officers could put some effort into adopting forms of community policing that work in other cultural backgrounds, so as to avoid escalation of conflict and lurid stories about violent immigrants being published in the news. Similarly, Sub-Saharan Muslims may not feel comfortable or welcome in a Libyan mosque, but that does not mean that they have a right to pray and celebrate Ramadan in the middle of the street, creating havoc; they need to be taught how to worship in a more discrete way. At the same time, the Maltese public needs to be better informed about Islam and its practices so as to better accommodate them in its calendar ("yes, today is Eid al-Fitr, and no, they are not crazy, they´re having a party") and carefully allow some of these practices into its unabashedly religious (though mainly Catholic, and in some aspects partly secularized) public space.

ative politics", which we shall discuss in Chapter 5. In a small vibrant democracy with pragmatic political parties and no history of arrogant nationalism, the tension between the rights of others and the prerogatives of members, and the shifting of the boundaries between the self, the included "other" and excluded "other", will be negotiated one step at a time, and there is a good chance that Malta will find just ways of resolving these problems[202].

The problem, at this moment in Malta´s modern history of immigration, is that while Malta is receiving some of Africa´s most determined, intelligent and driven people who would make excellent citizens, the Maltese continue to see migrants as liabilities, not assets[203]. Malta gives them training and health care, and then lets other countries pick and choose the best and take them away. For Mr Bugri, the sooner that Maltese realize how much these migrants can contribute to Malta, and how misguided the government´s strenuous efforts to resettle them abroad, the better. He argues that (even, and especially) the so-called "economic migrants" should be given a legal status and a

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[202] Pastor Bugri is proud to be Maltese and to represent Malta in international fora. The Maltese government has used him cleverly for public relations and to implement policies, while Mr Bugri has slowly used his influence in government ministries and departments to debunk myths and help adopt pragmatic and sensible policies. In a small country, personal mediation can help solve many issues. While other countries spend decades revising flawed and sophisticated immigration laws written by university professors and mutilated by politicians, Malta can put the stakeholders round a table and find no-nonsense solutions to all the issues that will be raised by immigration and multiculturalism in the future, if there is the political will and the brokers to mediate a frank discussion. Religion, of course, has a place at that table, and religious leaders and activists have often been those brokers. For Mr Bugri, this is one of the greatest things about Malta, and he seems confident that in the long run, and in spite of all the problems and ambiguities of these hard years of transition — where being more European suddenly entails becoming more African — Malta will find a way to integrate immigrants far better and quicker than its wealthier northern neighbours.

[203] In a recent survey (I. Camilleri 2012), the majority of Maltese respondents claimed that "immigration" (generally understood to mean irregular immigration from Africa or low-skilled labour from Eastern Europe) does not enrich Malta's economy and cultural diversity. The perception that these persons have nothing to contribute to Malta is, of course, a dangerous one for a country that will continue to deal with immigrant inflows for the foreseeable future.

path to citizenship. Rather than spending its energy and money detaining and resettling immigrants, the government should help educate and inform the Maltese public: it is unrealistic and irresponsible to think and to make others believe that the "immigrant problem" is going to disappear. The longer it will take to learn to live together, the more problems we create for future generations. Mr Bugri sees that it is his vocation to bridge cultures, to contribute to an on-going educational process, where immigrants learn how to become Maltese, absorbing all the good things this land and its culture have to offer, while native Maltese come to rediscover and redefine what it is to be Maltese in an increasingly diverse society, where some aspects of the "other" slowly become part of the "self". Religious communities can contribute considerably to this process of bridge-building but many Catholic parishes have still to open their eyes to the situation and start doing something[204].

To be sure, many Maltese and Europeans who work in local and international NGOs do not share Mr Bugri´s optimism. One may cleverly argue that the Maltese are not "racist"; rather, they have known massive unemployment and are "cautious", they have absorbed the insular and "fortress mentality" etched in the mighty fortifications all around them and are "distant", they construe society as an extension of the tightly-knit family structure and are "protective". There may be plausible reasons to fear the other, but when xenophobia becomes pathological, it must be condemned

[204] Parish priests may not be too happy with the many new churches sprouting around Malta — and Rev. Bugri does not like to comment on his own ministry as a pastor — but he notes that the typical Maltese reluctance to reach out to strangers is a pastoral handicap for the Catholic Church. It took years for the local parish priest to visit the centre he runs, and to realize that there were Catholics and other Christians living there, persons who, according to Canon Law, were under his pastoral care. Then some parishioners started visiting, not knowing what to do among these foreigners, and soon discovered, to their great surprise, that many immigrants were keen on learning Maltese.

and dealt with through serious legal measures and enhanced civil education. Arson attacks (Farrugia 2006), deadly fights between immigrants and bouncers at nightclubs (Darmanin 2009), asylum seekers dying in police custody (Borg 3012), and unpleasant incidents — such as when a Jesuit provincial superior was told to "go back to Africa" by a police officer on duty while walking down a street (Cooke 2011) — seem to be telling us that it will be very hard to build a peaceful and prosperous future together if the inhabitants of Malta, old and new, do not make a serious effort to reach out to, and to welcome, one another.

4.4.5 Conclusion: History-Laden Interdependence and Recent Immigration in Malta

There are three kinds of moral duties which Malta has regarding the admission and integration of certain immigrants:

1. Some of these duties, which we will discuss in Chapter 5, follow from **general or universal ethical principles**, such as its commitment to freedom, equality and universal human rights as a Western democracy, and from the fact that as a Very High Human Development country, it can afford to help burdened nations and accept a certain number of immigrants — and not only Convention refugees — to help other countries with "zombie" economies develop.
2. Other duties follow from what we call "anamnestic solidarity" (solidarity built on a collective memory, cf. discussion in 6.3.4): Malta needed help to develop in the past and received it in part from countries which offered to absorb part of its unemployed and destitute population. The memory of this experience and the possibility of helping other countries in similar

situations today should push the now-prosperous Malta to generously welcome immigrants, according to its capacity.

3. Finally, some duties can be derived from the **Principle of History-Laden Interdependence**, formulated above (4.3.4). This seems to suggest that Malta should be more ready to accept immigrants from the EU and from countries it has been interdependent on in the last couple of centuries, than from countries with which it has had no substantial links in its history.

This last point helps us unravel some of the ethical issues raised by recent immigration to Malta. Immigration from the European Union is not seen as problematic and labour migration from the Maghreb region is tolerated[205]. The most complex issue, however, is immigration from Sub-Saharan Africa and from countries with practically no historical links to Malta. There is of course a component of racism and xenophobia in the relationship with immigrants from these countries, which should clearly be denounced. Yet, the argument that they should start by knocking on the door of past colonizers in Europe does have some weight, and the anger at Dublin II — which keeps these persons from reaching those countries they were headed to when they set out — is somewhat justified.

To better understand Malta´s duties regarding the reception and integration of such migrants, we will have to reflect on the principles mentioned in (1) and (2) above, and we do so in the following

[205] To be sure, Malta has had strong links to Algeria, Libya and Tunisia in the past 200 years (and also to Egypt), but the relationship with these nations is today still burdened by the unfair expulsion of persons of Maltese origin from these countries as they gained independence or during times of Europhobia, and by the deeply entrenched and re-emerging Islamophobia in the West which, of course, has purchase on the Maltese. Past rivalries and present fears are evoked to negate and weaken the interdependency of peoples on both shores of the Mediterranean, even though Malta has been in the forefront of recent political efforts to bridge the economies and cultures of the Mediterranean.

chapters. Yet, if we consider only the **Principle of History-Laden Interdependence,** Malta *as part of the European Union* cannot completely wash its hands of the responsibilities of Europe towards its former colonies by simply mentioning the fact that it was itself colonized by the Europeans. The notion of Historical Interdependence helps us go beyond post-colonial blame games and the simplistic logic of reparations: many regions in Europe were indeed treated as "colonies" for centuries by "their" monarchs and one may argue that the British crown often treated people in their colonies better than the Bourbons treated their subjects in Sicily.

I believe that the *main* ethical issue *today* in Europe´s relationship to its former colonies is not whether it should make reparations for the evils of colonization (measured anachronistically and with no reference to the pre-colonial situations in these countries) but whether it should recognise the web of interdependence it spun during the colonial period and honour the duties that follow from those links of proximity. Of course, Malta did not colonize Africa or Asia, but as part of Europe it benefits from the proximity of many countries in Europe to many countries in other parts of the world. As it comes becomes more enmeshed in the interdependence networks built by the powerful nations of Europe, it should not only be willing to welcome the money and investments of the neighbours of its neighbours, but also their needy citizens.

4.5 Conclusion: Lessons from Malta

The Maltese case study has helped us contextualize many of the general **historical** and **empirical** observations made in Chapter 3, while announcing some of the **philosophical** debates of the following chapter.

1. The **history** of Malta has shown us how human mobility is an intimate part of human history, and how nations which consider themselves "sedentary" are the products of immigration and emigration. History also helps us question the "newness" of the world we live in and of its "globalisation processes". Mass migration, disorganized migration, politically-gridlocked proposals for migration management, xenophobia and discrimination: our great grandparents knew all of this and were often victims; today, new technologies and new laws have changed some of the parameters, but many of the underlying ethical, political and social problems remain more or less the same.
2. Using qualitative and quantitative studies, and interviews, we have been presented the **empirical data** regarding the legal, political, economic, social and cultural implications of irregular and asylum immigration to Malta in recent years, the beginnings of a difficult process of adjustment to an increasingly multicultural society, and the challenges of integration.
3. From a **philosophical** point of view, the Maltese case invites us to be sceptical of the Westphalian system, and of any form of nationalistic communitarianism that easily confuses membership in a "sovereign" local *community* of persons with territorial boundaries of "sovereign" political *societies*. Bigger states are more easily seduced by absolutist notions of sovereignty, triumphalist forms of nationalism and illusions of self-sufficiency that the Westphalian *fictio juris* provides; smaller states like Malta are generally more sceptical of these ideas and more accustomed to a "glocal" or "rooted" cosmopolitanism which values local cultures and identities but is keenly aware of the fundamental interconnectedness and interdependency of all peoples and civilizations. The Maltese national community survived and thrived under a number of political arrangements, going from self-colonization (under

the Knights) to other-colonization (under the British) to dependent-independence within the context of the European Union. In all these contexts, borders are important but never absolute; indeed the Mediterranean Sea is at once a frontier and a bridge which gives the islands their unity and particular identity, but also brings their inhabitants into contact with the wider world.

CHAPTER 5: THE BOUNDARIES OF POLITIES

5.0 Introduction

The discussion in Chapters 3 and 4 allows us to reject Hypothesis A formulated in Chapter 2 (section 2.4.1). We here start to tackle Hypothesis B (2.4.2), concerning adjudication between conflicting rights claims. To do so systematically, we need to separate two orders of problems concerning the rights of immigrants and of polities, even though they are intricately linked. One concerns the ***origin and foundation*** *of such rights (and of their lexical ordering) — Sections 5.1 and 5.2. The other concerns the more precise* ***content*** *of the rights and priority rules in question, which we will deal with only briefly in this chapter – Section 5.3. We debate in this chapter with various positions in contemporary Philosophy, but keep at the back of our minds the "rooted cosmopolitan" approach and the understanding of human rights proposed by CST. We allow this "fore-judgement" to guide the debate, and to be eventually challenged by the debate, as proposed in the methodology (Chapter 1).*

In general, as mentioned in previous chapters, modern legal, political and philosophical thought does not recognise that people not born in a given country (in *ius soli* traditions), or not born to rightful political participants of a particular polity (in *ius sanguinis* traditions) have a *right* to long-term sojourn or to political participation (e.g. via citizenship rights). Most thinkers concede some *right* to temporary residence in case of serious necessity (e.g. shipwreck) only to non-hostile political strangers. Beyond this, as many believe, immigrants have no *a priori* (moral) right to enter or stay in a country which is deemed "not their own" (though they may have acquired such right *through positive law,* via international treaties between polities, individual contracts sanctioned by the law of the receiving polity, etc.). In classical modern thought, polities are therefore deemed to

have absolute sovereignty concerning the entry and integration of immigrants. This claim, however, is contested by Catholic Social Teaching and by an increasing number of contemporary political philosophers. Without fully espousing the notion of open borders, these contend that (A) *in some cases*, immigrants have a **moral** right to (i) enter, (ii) stay, (iii) be incorporated into the *polis* (5.3); hence (iv) a polity´s sovereignty regarding immigration and borders is (morally) *limited* and subject to some form of cosmopolitan right (5.1). Furthermore, (B) they claim that, in liberal democratic states, such moral rights and duties should be translated into **legal** (actionable) rights on all levels (local, national, international and cosmopolitan), via the exercise of *popular sovereignty* according to a coherent application of the principle of democracy (5.2).

In arguing for A and B, this chapter ventures into some of the most complex issues in contemporary political philosophy; we will obviously not be able to deal with all the issues exhaustively, and we cannot limit such a discussion to one chapter except by assuming that the reader is fairly well acquainted with the major authors and debates we refer to, and by delving almost immediately into a critical yet respectful dialogue with such positions. Thesis A and thesis B are linked in a complex manner: A challenges absolutist notions of sovereignty to morally establish the right to political participation of certain "others" (immigrants); B seeks to deal with the problem that —even if we can establish clearly what is morally right — we cannot simply impose the right (e.g. political participation of immigrants) on a political body without consent (based on the political participation of the native-born or citizens). In arguing for A, we will need to critique a group of thinkers — nationalists, communitarians, civic republicans — who deny that immigrants have any *a priori* right to entry, sojourn and political participation, using the reflections of another group — liberals, liberal-egalitarian and cosmopolitan thinkers who challenge the notion of absolute sovereignty. Yet, some of the con-

cerns of the former group must be taken into account when considering how the moral rights of immigrants can become legally actionable (B).

5.1 Foundations: Sovereignty and Cosmopolitan Right

5.1.1 Of Membership, Political Otherness and False Analogies

One of the most influential thinkers on the side of communitarians and civic republicans is, of course, Michael Walzer, though his position actually concedes a great deal to the liberal tradition on the topic of political sovereignty and immigration. His chapter on "Membership" in *Spheres of Justice* is a classic on the issues at hand. In this chapter, based on a 1981 essay, Walzer frames the problem as one of "distribution of membership" — as the original essay was titled — and few authors actually question this way of approaching the topic. I will however avoid such terminology for two reasons. Firstly, in English, the primary reference of the term "membership" is belonging to a club or **voluntary association**. Yet *political belonging* is a bizarre blend of *de facto* territorial situatedness, assumed societal bonding and *intentional* political participation, as we shall see below. Secondly, membership evokes the idea of becoming an **equal consociate with peers**, but *modern* political belonging does not simply abolish the premodern "estates" to produce political equals, but still maintains the various ranks, such as full citizen, disenfranchised citizen, denizen, metic and sojourner[206]. The further complexities of political belonging in complex realities such as the EU —

[206] The problem of political belonging of persons considered "strangers" obviously predates and exceeds the political world of modern democracies and the contractarian understanding of citizenship evoked by the term "membership". In Malta, under the rule of the Knights, full political participation was available only to foreign-born Knights (the Maltese could not become Knights), hence to "non-members" or "non-natives". In many European countries before the French Revolution, the nobility claimed to be of a different "ethnic" or "racial" origin than the commoners, the progeny of a clan of foreign conquerors of superior "virtue" who

where in some countries an EU- or third-country national can be a full burgher (or even a local mayor[207]) without being a citizen of the country — further highlights the inadequacy of speaking of the topic at hand in terms of "membership".

Walzer (1983, 32) starts off comparing "affluent and free countries" to "élite universities". This strikes me as a very poor analogy. In a modern university, students and staff are "members" because they are admitted as students or employed by the institution, but have no say regarding the admission or employment of other "members": membership is distributed according to principles set by those who founded, endowed or were selected as administrators or trustees of the university, or by the ministry of education; in any case, the criteria for distribution of membership are established by authorities superior to the "members". Whether the same is the case for "sovereign" political societies is precisely what we are investigating. Unlike polities, universities (and clubs) can be founded, closed, relocated; if their policies are discriminatory or their practices are illegal, they are held accountable to a higher authority; they do not have the power to conquer rival institutions, manipulate markets in their favour, and if they engaged in unfair business deals in the past to grow their endowments (e.g. grabbing tribal lands) their property may be confiscated by the courts. Walzer (1983, 35f) then juggles around three other analogies – neighbourhoods, clubs and families — which are clearly as inadequate as universities to help us *reflect philosophically* on the duties and

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were entitled to rule over all as long as they remained "strangers" to the people of the land. If the issue at hand were a question of "membership", what membership are we talking about? Is membership an all-or-nothing status consisting in being able to vote, or stand for elected office, or both? And if so, are infants, convicted felons, severely handicapped persons non-members *of the same type* as people living in foreign lands?

[207] For instance, on the 28th June 2007, Rotimi Adebari, a Nigerian refugee (and a Nigerian national at the time), was elected mayor of Portlaoise in Ireland. Mr Adebari arrived in Ireland in 2000.

prerogatives of a modern polity; he seems to shift from one analogy to another when the previous analogy does not fit his preconceptions of what a modern polity is or should be. If one uses, as analogies to understand modern polities, entities which have no *moral and legal* claim to "strong" (if not "absolute") political sovereignty, autonomous territorial jurisdiction, and the monopoly of the use of force, one is already tacitly conceding to the liberal cosmopolitan position that the correct way to conceive a bounded political society is one which assumes there is a higher authority above it (moral, legislative, correctional — though possibly not executive). I doubt, however, that Walter would want to concede this too easily.

The opposite of "member", in Walzer´s essay, is not "non-member", but rather "stranger". Walzer (1983, 33) hence embarks on a confusing reflection on what is owed to "strangers"[208] by referring to the Parable of the Good Samaritan, without making the fundamental distinctions between three different forms of "strangeness" or "alienage": **political exclusion**, **social otherness** and **physical distance**. If I am a tourist in Kenya and see a house burning across the street, I have a duty to call the fire fighters if I can, because the people possibly trapped in that house are *physically* close (though *socially* and *politically* "other" than me); the same is the case if I am at home and my I see my neighbour's house burning, whether or not that neighbour is my mortal enemy or my intimate friend (*social* distance). However, the otherness which we are discussing in this chapter is *political*; is it the question of participation in or estrangement from political and social goods (right to residence, work, civil participation and representation, etc.): I may be a German citizen and enjoy full

[208] Habermas (1998, 510f) provides a valuable discussion of duties towards strangers, summarizing most major positions on this topic. We discuss the issues at stake indirectly in the sections below. Cf. Nussbaum and Cohen (2002), Appiah (2002; 2007, 155–174), Waldron (1993) regarding the distinction between duties towards compatriots and duties towards political strangers.

political "sameness" with all other German citizens, even though I may have lived all my life abroad and never ever met another German citizen except at a consular office. Walzer´s point that *socio-political belonging* ("membership", in his jargon) is a crucial social good, since it is what makes so many other goods (and rights) concretely accessible, is well taken. However, to understand better what it entails, we need to reflect philosophically on the nature of (modern) polities, in light of globalisation and transnational rights and duties. Political societies are very particular kinds of human societies, and political sameness is not the sameness of people united by "natural" bonds of physical distance, blood, or by "rational" bonds of membership in an association, company or university. False analogies at best contaminate philosophical reflection and at worst provide an easy rationalization for the actions of *génocidaires*.

5.1.2 What is a Political Society? Maritain´s Basic Distinctions

In the first lecture of *Political Liberalism*, John Rawls (2005a, 40) claims that "a well-ordered democratic society is neither a community, nor, more generally, an association". Though we shall later question some of his reasons for this claim (viz., his claim that polities, in ideal theory, should be considered as "closed and complete societies"[209] and lack "final ends and aims" such as those sought by persons or associations), we can note here his refusal to use certain standard analogies to reflect on political societies. Polities are very particular entities indeed.

Jacques Maritain would agree with Rawls that political societies are not *communities*, but he believes that if we are willing to characterize them as "societies", we cannot ignore that, as such, they

[209] Regarding ideal theory and closure in Rawls´ earlier work, *A Theory of Justice*, cf. Rawls (2005b, 8f; 245f).

bear certain similarities with *associations*. Admittedly, this is a tricky analogy, but let us nevertheless take some time to examine it. Following the classical Aristotelian-Thomistic distinction between nature and reason (and clearly influenced by the French Republican tradition and the ravages of ethno-cultural nationalism in Europe in the 1930s and 1940s), Maritain (1998, chap. 1) distinguishes between two sets of concepts: *community* / *nation*, and *society* / *body politic*. The first set is considered primarily as a **product of nature** which is a **fact to take into account**, while the second is deemed a **product of reason** which is an **on-going task to accomplish**. Hence, a **community**, according to Maritain, is a "fact" constituted by physical and biological proximity of persons, who find themselves in a web of relations through instinct and hereditary linkages. As such, it *can never* develop into a society but a large community can be recognised by sociologists and anthropologists and tagged as an "ethnic group" on the basis of which a "nation" may be identified. A **society**, on the other hand, is a group of persons brought together to accomplish a task, having a common end (e.g. a business firm, a labour union, a professional association); it does not "happen" naturally, but is a product of the will and reason of human beings. Some societies (e.g. married couples, political societies) are considered "natural", but they are still the product of reason and choice: such societies *can* give rise to communities when physical and biological proximity bind these voluntary associations into long-term groupings of persons which are sociologically recognisable (e.g. a married couple can give rise to an extended family or clan).

Maritain builds the distinction between **nation** and **body politic**[210] on the previous distinction. The nation is an ethnic-social reality, "a community of people who become aware of themselves as history has made them, who treasure their past, and who love themselves as they know or imagine themselves to be, with a kind of introversion" (ibid., 5). For Maritain, though nations are usually associated with a soil or a land, in this context "land" is not a "territorial area of power and administration but a cradle of life, work, pain and dreams" (ibid., 6). Building the identity of the people on the basis of this reality has led to the modern "plague of nationalism" or, what we may designate more precisely as "ethno-cultural nationalism".

In contrast, according to Maritain, the **body politic** is a society; it is thus a work of *reason***,** with *justice* as its primary condition and intended aim; it is a *freely-achieved* communion of persons based on the form of *friendship*. People from different nations (e.g. Tanganyikans and Zanzibarians) can come together to build a body politic (Tanzania); the body politic in turn can consolidate over time as a "fact", and give rise to a new ("multinational") nation (Tanzanian). Maritain would not exclude the possibility of a healthy *patriotic* nationalism at this level, what contemporary authors would call "civic nationalism" — cf. Brown (2000) and Guibernau (1996). Thus, for Maritain, **it is not the (ethno-cultural) nation that gives rise to the body politic, but it is the body politic that gives rise to (civic) nations** (cf. Mitchell 2003).

Maritain also distinguishes the **state** (the governing and administrative *part* of the body politic) from the *whole* body politic (and the "nation"). The state is an organ at the service of the body poli-

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[210] We use the terms "body politic", "polity" and "political society" interchangeably in this chapter. We try to avoid using "state" or "nation" to refer to modern political societies considered as a whole, and we use the term "country" to denote the territory under the jurisdiction of a particular polity.

tic, and not vice-versa. Hence, the term "nation-state", often used to describe modern political entities, is seriously problematic: the legitimate modern political synthesis is one between the *civic nation* and the *body politic*, and not between the *ethno-cultural nation* and the *bureaucratic state* apparatus (which is precisely the synthesis proposed by fascist political parties in the 1930s).

Maritain´s distinctions are helpful, but his insistence on reason, freedom and a common *telos* seems to be too one-sided; most people find themselves belonging to a body politic simply by being born in a certain place and risking total political disenfranchisement (and possibly social exclusion, misery and even death at the border) were they to try to leave that bounded physical space. Though, as Habermas (1998, 492–515) insists, we should not conceive modern polities as "communities of fate" (*Schicksalsgemeinschaften*) in the pre-political sense (as in German romanticist thinking, e.g. Herder´s theory of the *Volksgeist*)[211], we cannot forget that a modern polity is a human *rational* project of social construction superimposed on the *physical* fact of a territory that must be (and is already being) inhabited and managed. We discuss this further in section 5.1.4. At this point, let us simply underline Maritain´s (and Habermas') awareness that the characterization of national identities is a "creative" (and at times completely fictional or intentionally deceptive) reconstruction of the past to serve the political interests of the present generation. National communities are "imagined communities", as Benedict Anderson (2006) would say, and though national myths and historical reconstructions are politically useful and epistemologically unavoidable, we can still choose whether to fire the national and patriotic imagination on the basis of *pre-political* idealizations of the ethnicity and culture of hegemonic groups, or on the political reality and civil unity that

[211] For a good introduction to and critique of Habermas´ views on nationalism, cf. Pensky (2008, 41f).

exists *today* (almost always enriched by ethno-cultural pluralism of some sort). Maritain helps us see that, correctly considered, the (civic) "*nati*on" is "*natu*ral"[212] primarily in the sense of second nature, or of an "artifice" of human reason[213]. His position, while close to Walzer´s, takes us beyond the analogy of membership in a club or university and helps us understand better the peculiar "associations" we call "political societies".

5.1.3 Polities, Peoples and Political Closure in Rawls

5.1.3.1 "People": An Ambiguous Term

If Maritain´s distinctions may seem too clear-cut (and patently intended to deny the claims of ethno-cultural nationalism at their root), Rawls use of the term "peoples" in *The Law of Peoples* tends to conflate what Maritain (and Rawls himself, in *Political Liberalism*) carefully distinguishes. As Seyla Benhabib (2004, 75f) argues, though Rawls´ reflection on cosmopolitan law is very much inspired by Kant´s *Perpetual Peace*, Rawls departs significantly from Kant in *The Law of Peoples*, when, instead of bringing human persons to the original position or table of public reason, he chose to bring "peoples". A "people" is a strange moral unit in modern political philosophy: one can always think of persons ostracized by their own "people" (or not considered by others as belonging to any "people"), persons whose rights could be ignored by an "ideal" system of international justice conceived

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[212] "Nation" and "nature" are both derived from the Latin roots (through French) referring to the Latin verb *nasci* (to be born).

[213] On creations of reason as "second nature", cf. Spaemann (1989). If we consider reason as the most defining feature of the "nature" of *Homo sapiens*, and polities ("cities") as the most basic creation of human reason, we should have no problem accepting that the political artifice is actually a defining feature of the human "nature", and that *Homo sapiens* is a *zõon politikón*.

to serve "peoples". It seems to hearken back to some pre-modern notion of political representation[214,215].

Rawls' notion of "people" is ambiguous since it seems to mix together sociological (empirical) and moral-political (normative) criteria for the determination of what constitutes a "people". Rawls (2001, 23) admits only to his (first) cosmopolitan assembly "liberal peoples" who, on the one hand, are made up of citizens united by "common sympathies" (**sociological** attributes), but are also characterized by a "reasonably just constitutional democratic government" and a "moral nature" (**moral-political** attributes). But where will the *moral and political* attributes come from prior to the Original Position[216]?

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[214] In pre-modern polities, persons were considered mainly as members of clans, guilds and social classes (e.g. the *états* system in the *Ancien Régime*), and where, instead of *persons* deemed equal in dignity, we had (more or less arbitrary) *groupings* of persons (going from a few dozen to tens of millions, whose dignity was deemed as dependent on the dignity of their group or *estate*). No consistent political theory — "ideal" or "non-ideal" — could lump together such human groups as equal partners in a domestic or cosmopolitan "Original Position"; one therefore wonders whether the peculiar group Rawls calls a "people" could be any different.

[215] Rawls argues that he does not bring equal *persons* to his thought experiment on international justice, as Kant or J. S. Mill do, since he wants to avoid grounding human rights straightaway "in a political (moral) conception of liberal justice" (Rawls 2001, 82). He believes that doing so, he would be prematurely imposing liberalism on all parties in the international "original position". The problem, is that by bringing pre-political "peoples" as moral agents instead of individual persons, and by conceiving of "peoples" in a certain way (as the quasi-sociological realities concocted by 19th century European nationalist "historians" and "anthropologists", fused with the ideal sort of moral agents which inhabit contractarian thought experiments) Rawls is actually imposing a much more problematic metaphysical or comprehensive doctrinal baggage in his "original position" than more cosmopolitan authors like Kant do in their political philosophy. On top of this, such "peoples" are conceived as "liberal democratic peoples" at the outset (Rawls 2001, 23), so one could argue that liberalism is imposed on the parties in any case. Rawls, however, claims that at the level of peoples in the original position, liberalism does not function as a comprehensive doctrine (ibid., 34), and that the principles chosen by liberal peoples can also be extended to "decent hierarchical peoples" (ibid. 6f).

[216] In fact, Rawls seems to fuse together a cosmopolitan *pre-political* assembly typical of contractarian thought experiment with the workings of *political* assembly such as the United Nations, where one finds such things as "liberal democratic" and "hierarchical" peoples. Of course, characters like "liberal" or "hierar-

This setup could make sense if the domestic original position were *logically* (and not only *historically*) prior to the cosmopolitan original position: such peoples would thus be *domestically* political, but *cosmopolitically* pre-political, and we could then use political attributes from the domestic level to admit or exclude peoples into the assembly which will constitute their cosmopolitan political selves. Rawls does not want to bring "states" (constituted political bodies) to the international "original position" since when we think of "states", we are already thinking of sovereign entities; rather, and following Kant, Rawls wants sovereignty to *arise from* a moral cosmopolitan/universalist thought experiment (or "overlapping consensus") and be *subject to* the moral framework which is born of such an "original position". Rawls also wants to avoid construing his contracting moral parties in the original position as ones prone to realist political reasoning, ones who would opt for absolutist, Westphalian sovereignty. "Liberal peoples" give rise to sovereign polities when recognised by others to be "moral", that is, to be committed to principles of justice in the international sphere and in particular to respecting human rights and not instigating war except for reasons of self-defence (Rawls 2001, 37). Yet, as Benhabib (2004, 78f) argues, if the "peoples" party to the original position are to be conceived as non-sovereign, pre-cosmopolitical entities, we cannot expect them to be *already* characterized by a "reasonably just constitutional democratic government". In other words, one cannot conceive a Rawlsian *domestic* original position before the establishment of modern sovereign political units, and these can be conceived only as the results of a *cosmopolitan* original position. No group of persons can become a people unless recognised as such by others; even less can they establish a polity (even one without territorial sovereignty, such as the Sovereign

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chical" apply to peoples only when organized into polities, not in the "state of nature" as groups of human beings with no sovereignty.

Military Order of Malta) unless such establishment is recognised by other groups of peoples. **The cosmopolitan original position is therefore logically prior to the domestic one**, and one cannot admit or exclude peoples to the latter on the basis of domestic political attributes.

Furthermore, prior to the cosmopolitan original position and to political sovereignty, peoples have no *legal* stewardship over any part of the globe recognised as such by other peoples. However, without establishing a *de jure* territorial sovereignty, it is morally futile to propose principles of *justice* for a sovereign state that might exist and be "sovereign" only *de facto*. The principles of *The Law of Peoples* are thus logically prior *conditions of possibility* for those of *A Theory of Justice* (or *Political Liberalism*). The conclusion is that, if we could ever establish a consistent cosmopolitan original position using "peoples", we could not already select them on the basis of public-moral[217] and political attributes. We need to think "peoples" consistently as pre-political entities; using Maritain´s distinctions, we "peoples" are "communities" and not "societies", they are "nations" and not "bodies politic", they are empirical/sociological entities and not normative/political entities.

However, when we start working with empirical "peoples", we start seeing the limitations of the notion of "peoples". Our first temptation is to think of peoples such as those which emerged from the breakdown of old empires in the 19th and 20th century. Of course, such peoples are not what we are seeking: they are the product of politics, and especially, of ideology, exclusion, power and oppression. They were born from ad-hoc conglomerates of individuals culturally homogenized through fictional historiography, statist centralization, oppression, exclusion, demonization or con-

[217] A "public" *morality* (or a morality based on "public" reason) is here distinguished from a communitarian *ethos*, as in the classic distinction between Kantian *Moralität* and Hegelian *Sittlichkeit*.

tempt of the "other", and dreams of liberty, conquest or autarky. When an empirical "people" (an ethno-cultural "nation") lays claim to a territory, it is practically never alone as a "people" on that territory. There are usually other peoples living in the territory which one *dominant group* of peoples (those banded together by historical alliances, ideology, mythological reconstruction of fictional common origins) want to reduce to "minorities", by demographical dominance. Sometimes hegemonic groups also acquire and maintain their demographic and political dominance by drawing boundaries with neighbours in a way that "minority" peoples are created by separation of weaker people from similar peoples in neighbouring territories (e.g. the Kurdish peoples in the Middle East). Even a territory empirically occupied by a "homogenous" "people" may be claimed by peoples forcibly removed from those territories in the past, whose link to that land is brandished as constitutive of their "peoplehood" (e.g. the Jews and the Palestinians). Such empirical "peoples" cannot make an *uncontested* claim to a bounded territory. A *laós* does not translate directly and legitimately into a *dẽmos*.

5.1.3.2 Should Polities Be Seen As Doubly Closed (Demotically and Territorially)?

For argument's sake, let us nonetheless assume that we could think of purely pre-political peoples, whose unity and identity is as "real" as that of pre-political human individuals, and whose presence on, and link to, a territory is uncontested. Just as the individuals in the domestic Original Position would not accept the right to private property without some form of "difference principle", these pre-political peoples in the cosmopolitan Original Position, not knowing if their native "soil" is a sinking island in the Pacific or a vast, resource-rich, thinly-populated land, will never recognise the right to territorial sovereignty of other peoples without some arrangement regarding migration.

There is no way a reasonable "people" which enters the cosmopolitan Original Position as a *closed and complete social entity* could be given title to territorial sovereignty under the "veil of ignorance"[218] unless it is ready to accept principles regarding *opening* up its territory (and itself as a polity) to indigent peoples, or, if it refuses to do so, giving up underutilized territory back to the cosmopolitan commons, or offering substantial aid to these peoples.

Waltzer (1983, 42f) is keenly aware of this moral problem in his work, especially when discussing the *White Australia Policy*. In a changing world of limited resources, one cannot morally justify both *geographical* closure (each polity has a fixed plot of land on the planet Earth) and *demotic* closure (each polity comprises a fixed group of people): if a polity has more land and resources than it needs while other peoples are without, it has either to open itself to others as a human group (integration), or else, if it wants to maintain its "identity" and "culture" by closing itself as a human group, it must place its territory and resources at the service of others (territorial and economic openness).Yet, double closure (geographical and demotic) is precisely what Rawls[219] assumes is re-

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[218] The Rawlsian "veil of ignorance" is a series of restrictions on knowledge in a hypothetical contractarian assembly which force the participants (and the readers imagining themselves thinking in their stead) to make a choice which is just, according to rational standards which are acceptable to all in a pluralistic society (what Rawls calls "public reason"). It is a way of accomplishing Kantian moral universalization, or forcing oneself to will according to the Rousseauian "general will". Rawls (2005b, 137) lists the following areas where one brackets knowledge: "place in society, […] fortune in the distribution of natural assets and abilities, […] conception of the good, […] special features of [one´s] psychology such as [one´s] aversion to risk or liability to optimism or pessimism, […] particular circumstances of their own society, [… and] generation [to which] they belong".

[219] Rawls' reflection on international justice does not put into question the assumption, clearly stated in his other works (e.g. 2005a, 41), that a democratic society (in *ideal* theory) should be conceived as a **closed and complete system** where individuals join by birth and leave by death. Furthermore, in *The Law of Peoples*, he wants us to take the mapping of that society on a territory as a simple given. Following Walzer, Rawls (2001, 38f) claims that in the absence (and undesirability) of a world state, **boundaries** are necessary and important (no matter how arbitrary their establishment was in the course of history) since they allow effective gov-

quired for ideal political theory[220]; for this reason he relegates the subject of migration to non-ideal theory and excludes it from his national and international "original position" (cf. Benhabib 2004, 87)[221]. He pre-empts any discussion of immigration and emigration under the veil of ignorance, rendering them taboo subjects for the contracting parties.

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ernmental stewardship of environmental and population assets, and effective representation. Most people would agree at this point, but Rawls seems to conclude from this that ideal theory should not be used to question actual boundaries. Yet, one cannot imagine how, in the cosmopolitan original position, the participants could tacitly accept *both* a principle prohibiting the redrawing of actual boundaries (without the polity´s consent) *and* a principle prohibiting the opening of membership of current political societies (without their consent).

[220] It is relatively easy to maintain the closure required by ideal theory at the level of single persons or at the level of the human race (both are "closed systems"), but it is practically impossible to work with a unit in between the two (such as "people" or "polity") and give it true sovereignty over property and land while maintaining it as a closed system. Any system in the middle cannot be truly closed, and if it were true that ideal political theory in this in-between can only be conceived on the basis of assumptions of strict closure, then one would doubt whether consistent and useful political theory were at all possible.

[221] In the introduction of *The Law of Peoples*, John Rawls (2001, 9) summarily dismisses the idea that migration could have a place in (ideal) political theory. After describing a realistic utopia as one having a "sound social policy" where "religious freedom and liberty of conscience, political freedom and constitutional liberties, and equal justice for women" are guaranteed, Rawls (ibid.) claims that "the problem of immigration is not […] simply left aside, but is eliminated as a serious problem in a realistic utopia". It is possibly true that, in a utopian international system made of well-ordered democratic societies, fewer people will be forced to migrate due to persecution and poverty; much depends on whether all "peoples" and all persons (even those rejected by their "people") will be included and fairly represented in such a system. Yet, it is less clear how, in an international utopia made of monadic utopias, one can find the will to deal with the effects of natural disasters on tiny nations, and with cosmopolitan problems such as global warming which may cause national territories (such as islands in the Pacific) to disappear and people to become stateless. Creating a world system of "realistic utopias" à la Rawls does not eliminate migration as a fundamental human and political *reality* that needs to be *reflected upon* (rather than simply bracketed) in political theory. Nor does the adoption of perfectly fair and democratic institutions (and the bonanza of freedoms and riches for everyone that such institutions supposedly conjure up) necessarily reduce the flow of persons across borders or make citizens more welcoming of poorer immigrants (the Difference Principle, in fact, does not eliminate *relative* poverty). Most of the current migration flows will not dry up simply by ensuring the respect of basic liberties — without addressing the economic inequalities between polities and the changing ecology of the biosphere, and ignoring the fact that refugees can be generated even in well-ordered but poor states due to rampant crime, or due to interventions and sanctions that may even be compatible with Rawls´ "just war" principles. Migration is a human phenomenon that has existed throughout human history and it has never been unproblematic; any political theory or ´realistic utopia´ that does not take it properly into account is either problematic or unrealistic.

To be sure, Rawls (2001, 105–120) does note that reasonably just liberal peoples have a duty to assist "burdened societies", but such a duty does not, in his view, entail any duty to open one´s borders and to offer membership, residence, asylum or even bare-minimum hospitality (as in Kant — see below), to people from these societies. Rawls insists that peoples do not have a right to migrate into other peoples' territory without their consent, and this means that "a people has at least a qualified right to limit immigration" (Rawls 2001, 39 n. 48), even though he prefers to leave aside what such qualifications might be. I believe that placing a double closure constraint on political theory, rather than being a philosophical necessity, is characteristic of a frame of reference biased towards sedentary forms of living which acritically construes polities as stable and practically-sealed population compartments. To be sure, Rawls´ "settler-society" approach reflects the "norm" in philosophical thought. For this reason, "political membership — the conditions of entry and exit into societies — has rarely been considered an important aspect of theories of domestic and international justice" (Benhabib 2004, 74).

The obvious need for *some* boundaries often tempts political philosophers to idealize *impermeable* boundaries; their "ordered political societies" and "realistic utopias" almost always make the assumption of "insignificant" migration, and this constraint on political thinking is considered all too easily as a plausible and acceptable one. Yet, while (permeable) boundaries — such as those between the different states in the US — are administratively necessary, and have existed since time immemorial, the notions of *closed* boundaries, of *clearly-separated and clearly-identifiable self-sufficient* "peoples" or "nations", and of each "nation" having an *exclusive right to a territory* emerged after the peace of Westphalia. The Westphalian system spread in the 19th century after the Napoleonic wars, and were quickly *idealized* and put into place effectively through passport re-

gimes and pushback policies, perfected at the height of xenophobic nationalism in the 1930s, as we have seen in Chapter 3 (section 3.2.2). Rawls, however, does not simply idealize them: he cannot even conceive *ideal* political theory without the strict compartmentalization of "peoples". Yet "We, the People", used by American and French Revolutionaries in the 18th century is not the same as the ethno-cultural *Volk*, a population unit popularized by Romanticist academics in the 19th century (by post-colonialist ideologues in the 20th century) to serve the political ambitions of a generation in search of scapegoats and strangers against which to forge a "national" identity. While the "peoples" born from the American and French Revolution are *moral* and *political* entities which justified their existence on the basis of universalist ideals, were generally open to include neighbours and were cosmopolitan at heart (at least in theory)[222], Rawls´ peoples remind us of the Romantic *Volk*, jealous of their splendid isolation and terrified of being culturally or genetically contaminated by strangers: they are practically "windowless monads who have no interest in mixing, mingling, and interacting with others, […] indifferent not only to each other´s plight but to each other´s charms as well" (Benhabib 2004, 92).

[222] For instance, the Montagnard Constitution of the 24 June, 1793, Article 4, states: "Every man born and living in France, of twenty-one years of age, and **every alien**, who has attained the age of twenty-one, **and has been domiciled in France one year**, and lives from his labour; or has acquired property; or has married a French woman; or has adopted a child; or supports an aged man; and finally every alien whom the legislative body has declared as one well-deserving of the human race, are admitted to exercise the rights of a French citizen" (my emphasis).

5.1.4 Two Dimensions of Political Society to be Held in Tension

5.1.4.1 The First Dimension: Stewardship of a Territory

Rawls' notion of "peoples" may not have been very helpful in our quest for a better understanding of borders and sovereignty, but a number of things mentioned in the previous discussion will prove useful as we go along. We mentioned, in particular, the tension between societal closure and territorial closure. I believe that this reveals two dimensions of political societies. In this section I will propose what I consider the most suitable way of conceiving modern political societies. As we shall see below, this scheme is influenced by the philosophy of Immanuel Kant, and owes much to insights from the Catholic Tradition.

The first word in "Political Society" comes from *polis* (city). **Cities are, first of all, bounded physical spaces**: in Malta, by definition, a real "city" has real (and massive) walls. Though vestiges of extra-territoriality still exist in the modern world, the complex medieval arrangements of overlapping jurisdictions and authorities have disappeared, and — excluding certain moments of "crisis", such as wars and humanitarian interventions, and certain parts of the planet, such as Antarctica and the ocean floors — every inhabitable plot of land on Earth has one sovereign authority assigned as its steward (*de jure* or *de facto*) and tacitly recognised as such by practically all other sovereign political authorities.

However, a person who encloses a tract of land from the commons acquires a legitimate title to that land not by the act of *enclosing* it (most such acts in history were indeed unlawful and unjust) but when all other claimants tacitly or explicitly accept the enclosure as a fact and *pretend* to surrender their rights to that land, transferring full stewardship rights to that person. They do so, hop-

ing that by creating a system of holdings, the land will be used more productively, and given the higher aggregate wealth produced from that land, benefits (such as well-paying jobs and well-funded welfare schemes) will somehow accrue to all former claimants, even those who never found "enough and as good" land to enclose and those who ended up with no land[223]. Contrary to what certain libertarian authors seem to assume, there has never been a *just and rational* scheme of land enclosure and institution of property rights in the history of humankind. (Any such scheme would also need to take into account future generations, for instance.) Thus, one cannot assume that all possible legitimate claimants to a tract of land have truly, fully and permanently alienated their rights to the current owner. Private property (as a *just and lawful permanent institution*) is a *fictio juris*; the Earth *ultimately* belongs to the whole human race[224], and private persons and corpora-

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[223] I will not enter here into a discussion of the Lockean proviso and of right-wing libertarian attempts (such as that of the early Nozick) to demonstrate that historical homesteading could be morally justified: they have been amply critiqued even within the libertarian tradition. Left-wing libertarian positions, such as those of Hillel Steiner and Peter Vallentyne, and the single-tax libertarianism of Henry George, would concede most of the points I would like to make here. Suffice it to say that Locke´s (1980, para. 28) claim that homesteading is permissible if "enough, and as good [is] left in common for others" is a logical impossibility for a coherent liberal, since when a person chooses among finite things, she reduces the freedom of choice of the next chooser, and freedom is a major human good. Thus, the situation for the second chooser is always one of lesser freedom of choice, and hence cannot be "as good" as that of the first chooser. Furthermore, as human population grows, land becomes scarce and at some point some people are excluded from the distribution, such that all the process of legitimation falls back like dominos (not enough is left for chooser n+1, so n cannot set up a border, hence n-1´s border is delegitimized, then n-2´s border, etc. up to the first act of closing the commons). This objection does not even start to take into account the deception, theft, violence have accompanied the closing of the commons in actual human history. Rousseau puts it eloquently in *A Discourse on the Origin of Inequality:* "The first man who, having enclosed a plot of ground, took it into his head to think *this is mine*, and found people simple enough to believe him, was the true founder of civil society. What crimes, wars and murders, what miseries and horrors would the human race have been spared had someone pulled up the stakes, or filled in the ditch, and cried out to his fellow-men: 'Do not listen to this imposter. You are lost if you once forget that the fruits of the earth belong to all, and the earth to no one!'" (Rousseau 1992, 44).

[224] Though *Rerum Novarum* 7-8 defends private property as a natural right and as "sacred", this Lockean doctrine was introduced into Catholic Social Thought by its drafters (namely Luigi Taparelli d´Azeglio and Matteo

tions are allowed to act as though they have an absolute title to a tract of land for as long as they use that land to benefit society at large. If they accumulate large tracts of land and leave them uncultivated, or pay misery wages to their labourers and invest all the earnings abroad, or use the mineral wealth extracted from the land to finance militias that destabilize the country, they can reasonably expect the land to be taken from them, by the government (via confiscation, expropriation and redistribution, or in payment of hefty taxes), or by civil society movements (e.g. land invasions by poor farmers).

Similarly, the current system of sovereign "nation-states" resulted from the enclosure of practically all inhabitable land on the Earth by political societies, often founded as heterogeneous alliances between displaced persons or migrants and native born clans, and eventually moulded into a more-or-less homogenous entity (a "people" or "nation") through coercion, subjugation and exclusion. As we mentioned above, such political units have generally hemmed in excluded others ("minorities") in their midst who refused or were not allowed to "integrate" (via cultural assimilation, religious conversion, intermarriage). The existence of current polities as "sovereign" entities is a *juridical fic-*

Liberatore) and constitutes a break with the greater Catholic tradition which considered that: (i) institutionalized property is part of the *jus gentium* (and is not inviolable; such an institution can be reformed by the appropriate authorities), (ii) land and material goods on earth are ultimately the *possession* of the whole human race, but stewardship is granted to private individuals for more efficient use of such goods, in view of bigger benefits accruing to the common good, (iii) just possession is linked to just use, and titles to possession can be challenged on the basis of use which does not benefit the common good, (iv) human persons have *some* right to *dominion over basic material goods* (which is not exactly the same as the modern right to private property) necessary for survival and the exercise of liberty (cf. Fortin 1992). Official Catholic teaching since Vatican II (on the basis of the authoritative doctrine of GS 71), while not denying the right to private property *when justly received or acquired*, has strictly bracketed the Lockean thesis espoused in *Rerum Novarum*, and reaffirms Catholic tradition by insisting that the universal destination of goods is primordial and so prior to private property (CCC 2403), placing the regulation of the exercise of the right to private property in the hands of political authority (CCC 2406), reiterating the traditional notion of property as stewardship (CCC 2404) and avoiding any mention of private property as "sacred" or as a "natural right" (cf. Fortin 1991).

tion: persons and polities inhabiting other lands pretend they have surrendered their claim to that part of the surface of the planet and tacitly (or explicitly, e.g. the international recognition of South Sudan via the United Nations) confer stewardship over that tract of land on a particular polity. As long as the polity manages well the territory under its jurisdiction, provides benefits for the whole of humanity (which, in the case of a fertile and thinly-populated country, may include placing cheap food on the international markets and providing agricultural jobs for non-natives), avoids trying to take over the land of others and respects the rights of minorities within that territory — in short, as long as it behaves as a decent steward of that territory — other polities will treat it *as though it were* truly and absolutely "sovereign".

5.1.4.2 The Second Dimension: Stewardship of a Human Collective

The second term in the expression "political society" — and the derived meaning of *polis* — refers to a **human collective**, in part *voluntary* (citizens accept to belong to the *polis tacitly* by not leaving the "city" and renouncing their citizenship rights, and *explicitly* by exercising their rights as citizens; foreigners may explicitly ask to become citizens, etc.), in part *non-voluntary* (most citizens are simply *born* in that territory or born to other citizens; their forebears became citizens or "members" of that polity at the time of its establishment or expansion simply because they happened to be residing within that physical space). Thus, besides being a matter of (a) **territorial situatedness** (and thus encumbered with the corresponding responsibilities of environmental and demotic stewardship), a modern political *society* is also (b) a **human collective** which usually combines (b1) an *assumed* (non-voluntary or not-specifically-chosen) **network of societal bonding** with (b2) *intentional* (voluntary) **system of political participation**. There are some situations where each of these elements ex-

ist in an almost pure form, e.g. (a) Antarctica, (b1) certain refugee camps, (b2) the Knights of Malta[225].

It is not easy to combine the two elements of this equation. On the one hand, a polity is a steward of a *territory* (with its human and material resources) and acts as such in the name of the whole human race which is the ultimate owner: it is thus subject to a higher law, a "cosmopolitan right", a body of "universal human rights". On the other hand, a polity is a society, an autonomous *human collective* with no external superior, answerable only to itself. Thus, on the one hand, if a polity is sitting on a territory with an excess of resources while keeping needy strangers out, we can accuse it of bad stewardship and consider it at fault *qua* **steward** (it can only justify its position by giving up territory or using its resources to effectively help meet the needs of those strangers). This can also work the other way: a polity sitting on a very fragile or important ecological habitat (which might be destroyed by human settlement and activity) might have a duty *qua* **steward** (especially towards future generations) to keep people out and promote emigration.

On the other hand, however, if a polity is jealous of the cultural unity and the identity of the human group which composes it (a unity painfully built over decades and centuries), and is proud of the proper functioning of its democratic institutions due to this very unity, it is not necessarily at fault *qua* **society** in preventing strangers from joining this human group. Of course, *qua* **society**, a polity

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[225] (a) Antarctica is a territory with environmental and demotic stewardship but with no real human collective; (b1) some refugee camps mimic an assumed network of societal bonding with no real territorial autonomy and little (if any) political participation (cf. Giorgio Agamben´s (1998, chap. 7) reflection on "camps"); (b2) the Sovereign Military Order of Malta is a 900 year-old "sovereign entity" (a sort of polity with about 3 citizens, and 13,000 members) having a complex system of political participation but no proper territorial autonomy (after losing Jerusalem, then Rhodes, then Malta) and no societal bonding of the sort found among people who live together in a unified space.

might even opt to promote the immigration of *similar* human groups in order to strengthen its demographical and cultural clout (or offer a haven for people with similar religious beliefs being persecuted elsewhere); it might even want to embrace people from *different* cultures and races, believing that by becoming a cosmopolitan "melting-pot" society, it will thrive artistically, economically, and geopolitically.

5.1.4.3 Double Political Stewardship and Political Realism in Modernity

The problem here is that modern political sovereignty, correctly understood from a moral viewpoint, requires that polities fulfil *at once* their duties as territorial stewards and their duties as human collectives in order to be able to enjoy the prerogatives linked to both. Obviously, political realism has tended to obscure this, and promote an absolutist ideology of state sovereignty with three features: "*internally*, the state is the final and absolute political authority over its particular territory and its inhabitants; *externally*, the state is not subject to any other outside its own territory; and, *concerning the boundaries* between these two realms, the state has the sovereign right unilaterally to determine who may cross and under what conditions" (Abizadeh 2010, 147, my emphasis).

The political realist tries to sell us a world which is basically a blown-up version of a very rough neighbourhood, with no police force[226], where most people seek to stay inside and avoid gunfights, and put on ear plugs when they hear women and children shrieking. But is a "mind your own busi-

[226] Properly conducted humanitarian interventions in the case of genocide or crimes against humanity (in situations covered by the doctrine of the "Responsibility to Protect") are probably best understood as "just policing", as Tobias Winright (2011) convincingly argues.

ness" international society the best we can strive for in an interconnected world where we seem to have no problem establishing binding global rules to regulate a plethora of "mundane" things[227]? The political realist´s conception of sovereignty *without moral limitations* seemed plausible after the ravages of the Wars of Religion in Europe, and when the mighty polities of the world tried to avoid fighting in Europe and busied themselves building empires overseas, colonizing land belonging to polities whose legitimacy was *supposedly* denied for *moral* reasons (e.g. the practice of human sacrifices and the violation of the rules of hospitality). Few people then could be bothered to challenge the realist view by proposing limits to state sovereignty and a body of cosmopolitan norms which each (imperial) polity would have to respect so as to be recognised as "morally mature" or "morally well-behaved" and hence entitled to be treated as sovereign.

Unlike past multicultural empires, modern democracies are smaller political units, and their political being depends on the bonding and participation of citizens. They typically have less land and resources to offer to outsiders (or so they believe), and cannot ignore the second part of the equation: they cannot let people in without eventually building with them a larger body politic, without finding effective ways of fostering societal bonding and active political participation so that the stranger does not simply remain the *other* (the colonized or juxtaposed *other*) but becomes part of the *self*. In practice, prosperous modern polities find it inconceivable to give up territory or capital resources to others, and the help they offer to other "burdened" polities is often insignificant, inef-

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[227] Jeremy Waldron (2008) provides an interesting list of "mundane" cosmopolitan norms which sovereign states submit to all the time without raising any eyebrows: "postal and telephone conventions, airline safety and navigation standards, the law of international trade, the practices that define the convertibility of currencies, transnational banking arrangements, weights and measures, time zones, international quarantine arrangements, and so on".

fectual, or simply a cover to protect their local and geopolitical interests at the expense of such polities. All this imposes on them a moral obligation to welcome needy strangers, yet when they do let people in (regularly or irregularly), they also find it hard to integrate these strangers socially and politically and make them part of their political self. Though, from an ethical point of view, this dilemma seems to be simply one of mustering the (political) will to do what is right, the "will" here is not that of an emperor discussing his duties with a confessor, but a complex and fragile will of a democratic political society afraid of becoming more complex and fragile, and more polarized and conflicted, by hastily doing what may be morally right without coming to endorse it fully and will it deeply. Indeed, since that very society and its will may be altered in the process of including others as part of the self.

5.1.5 Political Sovereignty and Cosmopolitan Right

5.1.5.1 Cosmopolitan Right in Kant´s "Perpetual Peace"

The conception of political societies within a cosmopolitan order, presented above, hearkens back to Kant, though it has not been inherited today by several thinkers and not only by known Kantians, like Rawls. Some "left-wing" libertarians and even communitarians like Walzer would concede most of the points. In her reflections on sovereignty, cosmopolitan right and the rights of immigrants, Seyla Benhabib (2004; 2008; 2009) offers an insightful synthesis of Kant´s thought on these issues. A major text which grounds her work is Kant´s third definitive article for perpetual peace among states, which states that "The Law of World Citizenship (*Weltbürgerrecht*) shall be limited to condi-

tions of universal hospitality" (Kant 1983, 118)[228]. Kant insists that hospitality in this context is a *right*, not a question of *philanthropy*. It is a peculiar right, however: a "cosmopolitan" right (the only one that Kant is willing to admit), something between a *universal human right* and a *civil right*[229]. "Hospitality is a 'right' which belongs to all human beings insofar as we view them as potential participants in a world republic [; … it] is situated at the boundaries of the polity; it delimits civic space by regulating relations among members and strangers" (Benhabib 2004, 26–7). However, for Kant, hospitality (*Hospitalität/Wirtbarkeit*) is the right of *temporary* sojourn (*Besuchsrecht*), not the right to be a *permanent* visitor (*Gast*) or a fellow *inhabitant* (*Hausgenosse*) for a certain time. It means that the stranger *who arrives peacefully* in the land of another (and does not act with hostility during the sojourn) should not be treated as an enemy; they may be refused permanent sojourn and be accompanied to the border, but not treated with hostility[230].

Kant justifies this right using two premises, ultimately sourced from Catholic Moral Theology: one is the capacity of all human beings to associate, and the second is the "common possession of the sur-

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[228] One of the earliest reflections on this right was developed in 1539 by Francisco de Vitoria in *De Indiis* q3 a1 (1991, 278–284). It eventually became part of international law as reworked in the writings of Hugo Grotius, and was further developed in Samuel von Pufendorf, Emmerich de Vattel and Kant. Hospitality as a social practice was however dismissed by the Scottish Enlightenment, and as an element of international law it was completely disregarded after Kant, as nationalism and legal positivism became dominant in the 19th century, only to be rediscovered after World War II (Baker 2011, 38).

[229] Though Benhabib does not note this, the peculiar status is mainly Kant´s rendering of the notion of *ius gentium* as something intermediate between the *ius naturale* and *ius civile* in the Salamanca school (and in Roman civil law, as rediscovered in the Middle Ages). *Ius*, in Kant, is seen more from the point of view of the (individual, "sovereign") subject´s entitlement, than from that of the political sovereign´s prerogative (as in Vitoria), or as merely an "objective" legal corpus.

[230] For Kant, the right to permanent sojourn (*Gastrecht*) could only be granted through an explicit contract of beneficence (*ein wohltätiger Vertrag*); in the time of Kant, such concessions were occasionally granted to certain long-term sojourners (e.g. the *droit d´aubaine* in pre-Revolutionary France, the right of Jews of Spanish origin to reside indefinitely in some Northern European polities since the 15th century, etc.).

face of the earth"[231]. Kant is well aware of the dangers of imperialist conquest, and does not commit Locke´s mistake (and that of many of his political realist readers) of moving from common possession of the Earth in the *ethical and transcendental* construct of the "state of nature" (cf. Locke 1980, 18) to the *political and historical* assumption of some particular land (e.g. "America") as a *res nullius* prior to the arrival of the Europeans (cf. Locke 1980, 29). In fact, Kant spends half of the section on hospitality denouncing European abuses and admitting that while the Barbary pirates do wrong when they enslave castaways, the Chinese and Japanese are right in not offering rights to permanent sojourn to greedy and treacherous Europeans.

5.1.5.2 Cosmopolitan Right in Kant´s Other Writings

However, this historical detour seems to prevent Kant from providing a cogent argument from common possession to cosmopolitan right in *Perpetual Peace* (cf. Benhabib 2004, 31). Hence, Benhabib examines other Kantian works, and mentions that in the *Rechtslehre* of *The Metaphysics of Morals*, Kant (1996, 89) seems to argue from the sphericality (and hence, finitude) of the surface of the earth that the *Right of a state* (national law) and the *Right of nations* (international law) need a prior *Right* which grounds their sovereignty on a particular portion of the surface of earth. This *prior* (moral, implicit, non-positive) law is the "Right of all nations" (*ius gentium* or *ius cosmopoliticum*).

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[231] Actually, the first is Vitoria´s argument (cf. note 228, above), reproduced in Grotius, the second originates in the fifth chapter of Grotius´ *Mare Liberum* (Grotius 2009; cf. Baker 2011, 46). Ultimately, the idea of common possession of the Earth prior to privatization and the closing of the commons (as a prelapsarian ideal, or a primitive situation of humanity in the "state of nature") can be traced back to St. Ambrose (*Duties of the Clergy*, I.132), and eventually inspired the famous arguments of Locke and Marx, and the Catholic Church´s teaching on the "universal destination of created goods".

Kant frames all of this in a discussion of external freedom (e.g. the freedom of acting on or taking possession of something *external to the thinking self*, in the categories of space and time, distinct from the *internal* freedom of appropriating an idea). Unlike internal freedom, true external freedom can be possible only if bounded by law; for Kant (unlike Locke), though I might grab or occupy a piece of land using *might*, I can possess it only by *right* (in a rationally-organized human society, mapped out on a *finite* landmass[232]) when my possession is approved by law, that is, when the other social partners rationally accept my claim to private possession of that land (and agree that nobody can use it or dispose of it but me). However, for my social partners in a bounded polity (i.e. national law) to be able to do so, the *landmass of the polity* must be theirs to allot; this is where cosmopolitan law is needed (cf. Kant 1996, 40 note i). In Rawlsian jargon, there needs to be a cosmopolitan "original position" to found a domestic "original position" that establishes titles to property, and the latter is subject to the former, such that there can be no warrant for *absolute* political sovereignty.

Of course, this was a dangerous thing to say in Kant´s Prussia in the 1790s, during the French Revolutionary wars: the ideologues of the French Revolution presented it as a cosmopolitan movement which transcended boundaries and unseated tyrants who denied liberty and equality to all. Memories of the European Wars of Religion were also still fresh, when the sovereignty of polities was put

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[232] Locke´s famous assumption that simply by *grabbing* a piece of land, and leaving "enough and as good" land for others, I obtain a *right* to that land is ultimately based on the idea of a (practically) infinite space, where $\infty - 1 = \infty$. In finite space, when a chooser X removes a piece of land from the commons, chooser X + 1 inevitably has less freedom of choice, so the land available for her is *necessarily* not as good as that available to X. Fairness, in a finite world, entails that the right to possession can be granted only by the (at least tacit) rational agreement of all. People do not own land simply because their grandparents grabbed it, but because society (the body politic, not simply the state) tacitly agrees that they should be allowed to keep it, and that it should not be grabbed back from them.

into question by invading armies sent by those who insisted that rulers were subject to the authority of the Holy Roman Emperor, the Pope, God or *Sola Scriptura*. Kant, using his "right to hospitality", quietly drives a wedge into the edifice of absolutist modern sovereignty that threatens to bring down the whole fort; he evokes the ghost of a cosmopolitan right superior to domestic right, but meekly insists that this should be invoked only when asking "uncivilized peoples" not to kill harmless castaways.

5.1.5.3 Kant´s Double Legacy in Contemporary Debates

Kant´s *Besuchsrecht* and the fundamental right to hospitality, resuscitated after the horrors of World War II and the pushbacks of Jewish refugees, is seen as the precursor of the principle of *non-refoulement*. It might also be used to found a principle prohibiting the use of disproportionate (e.g. lethal) force or discriminatory removal procedures against persons who enter a country peaceably (though irregularly)[233]. This part of Kant´s legacy has been inherited by **liberals** who seek to expand on these fundamental rights so as to support today´s immigrants´ claims to political belonging.

Yet, Kant´s insistence that the *ethical assumption* of cosmopolitan citizenship (a global "body politic") *does not* imply the *political institution* of world government (a global "state") and his refusal to construe *Gastrecht* (the right to permanent residency) as a fundamental right (considering it rather as the result of a charter, granted as a privilege by the republican sovereign) has been taken up by

[233] Kant (1983, 118) argues that a person behaving peaceably can be turned away only if this can be done without destroying them. Some authors, like José Jorge Mendoza (2011; 2012), have recently argued that most irregular immigrants residing in liberal polities today cannot be removed but through acts of force that are discriminatory, violent or harmful, and such removals are unjustified.

communitarians, civic republicans and defenders of national sovereignty who want to close borders or keep unwanted migrants out.

Benhabib (2004, 39) recognises Kant´s legacy as ambivalent, but sees the unresolved tension as philosophically fecund in today´s debate on immigration and on the doctrine of the responsibility to protect. She sees *Perpetual Peace* as a key text in political philosophy, marking a transition from what she calls *Westphalian sovereignty* to another conception of sovereignty, *liberal international sovereignty*. In the former model, all polities are construed ´free and equal´ and can do whatever they want within their territory so long as they do not harm other polities, and where intervention by other polities is ruled out except perhaps in the case of grave civil conflict with the collapse of state institutions. In the latter conception of sovereignty, the formal freedom (viz., the right to be free from intervention by others in one´s internal affairs) of states — even functional, non-belligerent ones — is *not absolute.* For their freedom to be worthy of respect, states must be minimally "decent". For Kant, this meant (a) not killing or enslaving castaways and temporary sojourners, and (b) adopting a "republican" civil constitution (where members enjoyed freedom *qua* persons, dependence on common legislation *qua* subjects, and legal equality *qua* citizens)[234].

To be sure, Kant could not demand much more in a project for the abolition of war in 1795, yet we have since developed this nucleus into (a) a body of international human rights law and (b) a requirement for governments to *respect* the freedom and fairly *represent* the interests of all persons legitimately residing on their territory (a representation which *at least* should somehow respect the

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[234] Cf. Definitive Article 1 of *Perpetual Peace* (Kant 1983, 112). "Republican", for Kant, does not necessarily mean non-monarchist government, and even less a full-fledged Western democratic system.

moral-political principle — drafting laws which are *rationally acceptable* to those who are bound by them — and *ideally* should adopt some of the institutions and practices of modern **democratic** polities which allow *actual political participation* of those affected by the laws, according to the **democratic principle**). We shall return to this below, when discussing democratic legitimacy and the complex synthesis positions proposed by Benhabib (and other followers of Habermas´ re-appropriation of the Kantian legacy) to bring together (a) the liberal-cosmopolitan insistence on the priority of human rights and (b) the civic-republican defence of popular sovereignty.

5.1.6 Classical Liberal Approaches to the Rights of Immigrants in a Globalising World

5.1.6.1 A Coherent Libertarian Approach to Immigration

Let us however take a moment to look at these two groups and at their ideological postures separately. Arash Abizadeh (2010) offers a concise and insightful overview of the major positions[235]:

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[235] For a wider overview which goes beyond the scope of our current work, see Barry and Goodin (1992), and in particular Nardin´s (1992) concluding synthesis, which also includes natural law, Marxist and political realist positions, and compares the way the movement of money and the movement of persons are treated by such positions. We could also include utilitarianism, as Carens (2008, 222) does. In general, Marxism, while being cosmopolitan and theoretically opposed to borders which could divide the universal proletariat, sees migration with suspicion as an epiphenomenon of superstructures of exploitation and the hopes raised by migration as forms of alienation, and in practice, Marxist regimes have had problems even allowing citizens to *emigrate*. Political realism and utilitarianism are very difficult to apply consistently to the problem of sovereignty and immigration: they give different results depending on how you equilibrate domestic national interest and geopolitical balance of power factors, or on how you do the utilitarian calculus (i.e. whether you are a domestic or cosmopolitan utilitarian, whether you are an act- or a rule-utilitarian, and whether you are Millian, Benthamist or Sidgwickian when defining utility). Classical natural law positions are often considered as closest to the Catholic position, but generally lack clear proposals of their own to make on such topics (apart from adopting and adapting liberal-egalitarian stances), possibly because (in the hands of the current generation of scholars, at least) they are too dependent on the exegesis of premodern texts, and are thus difficult to reconcile with modern conceptions of political sovereignty and subjective rights. For an example of this, see John Finnis´ (1992) very critical response to Ann Dummett (1992).

1. *Liberal philosophers* emphasize **human rights** *without* linking them to the **procedural-political dimensions of modern states** (viz. popular sovereignty, participation and democratic legitimation).
2. *Other authors* (e.g. civic republicans, moderate communitarians) prefer to emphasize the **procedural-political dimensions of modern states** (and to discuss rights with reference to such dimensions, rather than "naked" rights), or at least seek to keep in balance rights and democratic participation.

In the following three sections, we discuss liberal authors, making reference to civic republican and other positions, which we present more fully after critiquing the former. Among the liberal authors, Abizadeh distinguishes *classical liberals* (who base their arguments on rights to *basic freedoms*) and *liberal egalitarians* (who, besides freedoms, include the more *egalitarian rights*). In general, both positions offer valuable critiques to *one aspect* of the absolutist notion of state sovereignty, viz., its *substantive-moral dimension*. As we have indicated above, they argue that rights to basic freedoms and to some measure of equality on the global level place moral limits on the exercise of state sovereignty. Certain laws concerning boundaries and naturalisation are immoral insofar as they violate these rights. The main rights privileged by liberals are "liberties", namely (i) freedom to use and dispose of private property, (ii) freedom of contract and (iii) freedom of movement. Let us consider in more detail the *classical liberals*, those who focus on the first two and derive the third from them.

Right-wing libertarians are maybe the best examples of the classical liberals: *laissez-faire* capitalists and free-market ideologues at the end of the 19th century were staunchly in favour of open borders

and removing restrictions on the flow of labour and human capital; in their view, governments had no business regulating the contracts signed by private individuals, and if one wanted to hire a worker from another country, the government had no right to keep that worker out. According to these thinkers, markets should be open to everyone, and if they get overcrowded, people presumably move on (cf. Walzer 1983, 37); markets require no state regulation. Similar authors writing after the collapse of Communism argue that when the West tries to use central planning to control supply and demand of labour on the domestic and international market, it simply imitates the failed policies used by Eastern Bloc countries to regulate transactions in goods and services (cf. Harris 2007, 34f). In this vein, in a 1997 paper, Joseph Carens (2008, 213) constructs a libertarian (Nozickean) argument in favour of open borders, given that Nozick himself, like most contemporary right-wing libertarians, avoids applying his political theory to the subject of human migration. According to Nozick, all persons have the right to enter into voluntary exchanges with other persons, and the state does not have the right to interfere in such exchanges unless someone´s rights are being violated; furthermore, nobody has a right to be protected against (fair) competitive disadvantage. Consequently, the state cannot interfere to stop the exchange of labour for money between a citizen and a non-citizen (e.g. in order to increase the chances of other citizens successfully exchanging their labour force for money and protect them from competition).

5.1.6.2 Coherent Libertarian Thought and Contemporary "Libertarian" Politics

Carens (2008, 214) rightly notes that libertarianism does provide a basis for the exclusion of non-citizens. Even though

> *it provides no basis for the state to exclude aliens and no basis for individuals to exclude aliens that could not be used to exclude citizens as well. Poor aliens could not afford to live in affluent suburbs (ex-*

> *cept in the servants' quarters), but that would be true of poor citizens, too. Individual property owners could refuse to hire aliens, to rent them houses, to sell them food, and so on, but in a Nozickean world they could do the same things to their fellow citizens.*

Nozick analogously concedes that a *small community* might agree freely (e.g. through an *explicit and binding contract*) to exclude outsiders (and also to obligatorily redistribute wealth), but he is not ready to accept that *individuals in a polity are bound by tacit or theoretical contracts* of a similar kind: in his view, private property is acquired from land which is owned by nobody (and not from land held in common by all), so polities have no rights over what is private: I can let into my car and sell my house to whomsoever I wish, citizen or not, and the state has no right to interfere or try to stop me.

The conclusion, drawn also by Carens (ibid.), is that certain slogans (typical of far-right groups), like "this is *our* country – we let in and keep out whomever we want", are incompatible with authentic right-wing libertarianism, which adamantly would retort that "what is *mine* is not '*our*' — and certainly *not of the state*. Nobody but *I* can let in or keep out anybody from *my* property". Of course, this is not the only surprise that a theory of just homesteading and just transfer of titles holds for intellectually-honest conservatives; the obvious fact that most holdings of land in the Americas have not been justly transferred and should be returned to the original title holders and their descendants may surprise many people in Texas and Arizona — who usually consider "illegals" from Northern Mexico as the real "squatters"[236]. Of course, there are some libertarians who are more

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[236] Indeed the consequences of such a theory may shock many persons (in any corner of this planet which has ever been coveted and conquered) who pretend to espouse libertarianism. Furthermore, the (admittedly very surprising) idea that consistent libertarian theory allows me to secede at will (cf. Steiner 1992, 92f), declare my apartment in the centre of Paris and as part of Iran (assuming that the polity over there wants to

intellectually sophisticated and admit some sort of tacit social contract[237] in their theory of the institution of private property (e.g. left-wing libertarians, or single-tax libertarians[238]); according to such libertarians it may be "reasonable" to postulate that when a polity (or at least a system of holdings) is established, there is an implicit agreement (and contract) to keep out unwanted others, just as in some gated communities, where contracts have a clause saying that buyers cannot resell their house to persons considered undesirable by their neighbours without previously offering it to the community at the fetching price (cf. Steiner 1992, 87f). However, the problem for libertarians with allowing complex communitarian clauses in their titles is that all sorts of "reasonable" social welfare and recurrent taxation clauses could be introduced into the system in this way, and their position ends up being no different from that of liberal egalitarians.

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welcome me), and let the Iranians install chemical weapons in my home may seem somewhat distasteful to many conservatives, but if private property is truly "inviolable", who could rightly stop me?

[237] For instance, some libertarians "regard any original title as encumbered by a proviso designed to render it consistent with each person's self-ownership and/or entitlement to equal liberty. Moreover, since these foundational moral rights are vested in all persons, regardless of their temporal/generational location, that proviso-based encumbrance remains attached to each title successively derived (through transfer) from an original title" (Steiner 1992, 89).

[238] Single-tax, or Georgist libertarians, reject recurrent taxation, but admit "each person's entitlement to an equal portion of the value of natural resources and thus a correlative obligation in owners of such resources to surrender that amount" (Steiner 1992, 89), and this entitlement is assumed to be global in scope (or at least Henry George never denies this). One could build a single-tax argument in favour of immigration by saying that poor immigrants entering prosperous nations seeking welfare are simply reclaiming what they are entitled to.

5.1.7 Liberal Egalitarian Approaches to the Rights of Immigrants in a Globalising World

5.1.7.1 Recognising a "Right to Immigrate" Behind the "Veil of Ignorance"

Let us then move on to this second group of thinkers. As the name suggests, liberal egalitarians believe that we should treat all human beings as free and equal moral persons, that liberties come first, but should be protected and/or made available in ways which are egalitarian, and that socio-economic equality should be promoted as much as possible. As regards human mobility, these authors tend to provide arguments (i) *from liberty,* in favour of the freedom of movement (but justified as part of a contractarian thought experiment in which all persons are *originarily* deemed equal, not as in Nozick) and also arguments (ii) *from equality*, in favour of allowing the world´s poor access to the wealth hoarded by prosperous nations. In this vein, Carens (2008, 215f) constructs a "Rawlsian" liberal egalitarian argument, well aware of the fact that Rawls himself avoids questions about immigration by restricting his political reflection to an "ideal" type of political societies: ones which are closed and complete, as we have explained above. "In ideal theory one assumes that, even after the "veil of ignorance" is lifted, people will accept and generally abide by the principles chosen in the original position and that there are no historical obstacles to the realization of just institutions. In non-ideal theory, one takes account of both historical obstacles and the unjust actions of others" (ibid.; cf. Rawls 2005b, 8f; 245f).

We have already argued above that Rawls´ exclusion of human migration from ideal theory faults the theory as a whole, since natural disasters and sinking islands which displace people and make countries disappear are not just "historical obstacles" or "unjust actions" that hinder the realization

of a political ideal, but are part of the *constitutive fact* that modern polities sit on a material piece of the planet Earth that no "realistic utopia" can afford to ignore. Yet, in spite of this and many other objections raised to Rawls´s construction of the original position and definition of the veil of ignorance, I agree with Carens that the proceduralist tools provided by Rawls in *A Theory of Justice* are useful to explore the liberal-egalitarian approach to political justice[239]. Simply, given the problems of closure mentioned above, we should consider the cosmopolitan level prior to the domestic one, and ignore Rawls´ protests that this would unjustly impose a democratic, liberal and pluralistic view of human polities on all human persons (and "peoples"): democratic procedures, human rights and political pluralism are much more deeply rooted in human cultures and societies than the nationalist, post-colonialist and religious-fundamentalist ideologues of the 19th and 20th century may want us to think.

It is quite reasonable to think, under the "veil of ignorance" of a cosmopolitan original position, that people (who cannot suppose that in real life, they aren´t in love with a person living in another country, they aren´t living on a sinking island, in a country devastated by desertification or in a relatively well-ordered polity which is nonetheless very poor, etc.,[240]) would not want to risk unhappiness, death or poverty by choosing a closed-border policy, and would choose freedom of move-

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[239] Carens (2008, 216f) outlines some of the major objections to Rawls' political theory, and argues that they can be effectively answered or else that they do not really matter in our discussion of borders and migration. He concludes that "the 'veil of ignorance' offers a way of thinking about principles of justice in a context where people have deep, unresolvable disagreements about matters of fundamental importance and yet still want to find a way to live together in peaceful cooperation on terms that are fair to all", and this is quite adequate for the questions we are addressing.

[240] Note that we are not including here non-ideal theory considerations, such as persecution, genocide, and living conditions in countries devastated by crime, unjust international trade rules, histories of exploitative colonization, etc.

ment across borders. They would therefore adopt a "right to immigrate", such as the one proposed in Catholic Social Teaching, with certain limitations.

5.1.7.2 Liberal-Egalitarian Limitations on the Right to Immigrate

One can envision three types of "public-order" restrictions that liberal egalitarians might want to place on the right to immigrate. One would want to limit flows, firstly, in the case of a *reasonably objective and veritable* risk of **breakdown of social order** (e.g. widespread riots, civil war, etc.), and secondly, when they constitute a grave **threat to national security** (e.g. terrorist attacks, etc.)[241]. A third possible valid reason for the limitation of freedom of movement across borders, from a liberal egalitarian perspective, is a **serious threat to the liberal democratic political culture and the functioning of the institutions of the polity**; we will discuss this further below[242]. Social chaos, serious threats to national security or to the functioning of liberal democratic institutions and practices may cause severe restrictions of various liberties and so may be used as a reason to limit some liberties (such as the freedom of movement), but only when one can reasonably believe that threat is real (Carens 2008, 219; Rawls 2005b, 213). In sum, freedom of movement is a *liberty*, and following Rawls, it cannot be restricted (in ideal theory, at least) except for the sake of *liberty* (since liberty is considered lexically prior to equality). This means, in Carens' application, that even in the counter-intuitive cases where a policy of (relatively) open borders were to be economically more disadvantageous than a more restrictive policy *to the most vulnerable persons* in the world (or in a particular

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[241] For a more developed discussion of this points, see Carens (1992, 28. 30).

[242] For further discussion of these and other proposed (but far less plausible) liberally justifiable limitations on the freedom of movement, see Carens (1992, 28–34).

society, if one rejects the global version of the "difference principle"[243]), the less restrictive policy would (in ideal theory) still trump, given that *liberties* (e.g. freedom of movement) cannot be restricted for the sake of greater *equality*.

However, in the case of non-ideal theory, Rawls (2005b, 247) concedes that "it may be reasonable to forgo part of [the] freedoms [of the first principle] **when the long-run benefits are great enough to transform a less fortunate society into one where the equal liberties can be fully enjoyed**" (my emphasis). This fourth limitation *might* be used to restrict freedom of movement in a poor and burdened country receiving refugees and immigrants from a poorer and more troubled neighbour. It *cannot* however be used by wealthy and liberal-democratic nations to restrict immigration on the basis of its supposedly negative impact on the most vulnerable members of such a society, since such nations are closer to strict compliance with the ideal conception of justice. Carens (2008, 221; cf. 1992, 32–34), also considers whether poor countries could use such argument to restrict *emigration* (e.g. to reduce "brain-drain") and concludes that using the Rawlsian *caveat* in this way would be "a dramatic departure from the liberal tradition in general and from the specific priority that Rawls attaches to liberty even under nonideal conditions". In reality, restrictions on exit migration (especially of talented and educated people with certain means) are only rarely enforced, and if so, only in totalitarian countries. Restrictions on entry are the real problem, and in practice (given that immigration restriction does not usually target wealthy and highly-skilled immigrants) it is hard

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[243] If one limits the difference principle to the domestic original position, however, the immigrants would have to be included in the maximin calculations. In other words, one would have to compare the effects of a more restrictive immigration policy and a more liberal one *not on the least advantaged among citizens alone*, but on the most disadvantaged *in the set which combines citizens with immigrants* allowed in by the more liberal policy (cf. Carens 2008, 221–2).

to imagine there may be people more vulnerable than the migrants themselves who would be benefited by promoting greater restrictions on entry for "egalitarian" reasons.

5.1.7.3 Cosmopolitan Liberal-Egalitarian Argument Based on Equality

Liberal egalitarians, however, do not only offer arguments *from liberty* in favour of freedom of movement. Recognising the complexities of the above debates, and "granting that interstate movement may not be a basic liberty, [some social liberals] nonetheless insist that, given the massive levels of poverty and inequality in the world and the failure of many states to provide their populations with an adequate range of valuable life options, prosperous liberal states in particular have a duty to keep their borders open to the global poor" (Abizadeh 2010, 152). Though Rawls (2001), in *The Law of Peoples*, avoids the application of (social) egalitarian principles in his cosmopolitan ideal theory (limiting himself to suggest some sort of obligation to provide aid to burdened peoples), other authors (e.g. Joseph Carens (2008, 218f), Thomas Pogge (2008a; 2008b, 111f) and Charles Beitz (1999, 149–150)) have claimed, against Rawls (2001, 106), that a cosmopolitan original position would yield an international distributive justice principle (e.g. some sort of "difference principle").

If so, and if such a principle were to be respected in the real world, immigration flows would most probably decrease and become much less socially problematic. If, on the other hand, such a principle were not to be respected in the real world after lifting the "veil of ignorance" (as is actually the case), then one might argue that closed borders (in the case of prosperous nations) are morally wrong, since they are there mainly to keep the poor of this world from getting their due. Just as it morally wrong for rich people to hoard bread in times of famine, pushing starving people to break

into their warehouses to take their share, the liberal egalitarian defence of open borders serves as a non-ideal theory approximation or workaround when direct cosmopolitan distributive justice schemes fail to materialize (or even to be considered seriously by politicians). Obviously this approach is quite controversial[244], but when we consider both the argument from liberty and this argument from equality, liberal egalitarians certainly offer us a much more solid theoretical bulwark in favour of (reasonably) open borders than libertarians[245].

5.1.7.4 Liberal Egalitarian Responses to Communitarian Ethno-Cultural Objections

How do cosmopolitan liberal egalitarians deal with the problem raised by communitarian and nationalist liberal egalitarians like Kymlicka (2001) who claim that, intuitively, it seems quite obvious that human societies (or communities) have a right to protect their culture and exclude strangers who do not share their way of life? Following Maritain´s distinctions, one could straightaway object to the parenthesis, which tends to equate *communities* with political *societies* and *ethnic cultures* with the *national (political) culture*. There are two claims being made here, one on behalf of the

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[244] For instance, Benhabib (2004, 105f) says that she is "made uncomfortable by the imposition of a global redistributive principle to create economic justice among peoples, unless and until the compatibility of such a principle with democratic self-governance is examined". She presents three serious objections (epistemic, hermeneutic, and democratic) to Pogge and Beitz´s "global redistributionism" while defending a "cosmopolitan federalist" position which nonetheless "has redistributionist implications" which go beyond Rawls "duty of assistance" to burdened societies.

[245] Some liberal egalitarians do not agree that their position implies (relatively) open borders. Liberal egalitarian arguments in favour of closed borders have been constructed from (i) brain drain and its purported detrimental effects on development — e.g. James Woodward, (ii) the lack of cosmopolitan social and political institutions and consequently the lack of cosmopolitan duties of justice, (iii) the territorial correspondence between the exercise of coercive authority by the state and the exercise of freedom of movement by its citizens, and the (theoretical?) lack of coercive authority of states over non-citizens — e.g. Michael Blake, (iv) the detrimental effect of immigration on welfare states. See Arash Abizadeh (2006; 2010, 151–156) and Joseph Carens (1992) for a concise presentation of these arguments and adequate responses.

cultural rights of ethnic, linguistic and religious communities, and one on behalf of the political culture that glues a modern polity and its institutions.

Let us start with the former. Ethnic cultures obviously have a value, and modern polities have a certain role in preserving them; probably the worst way to do this is to make one ethnic culture hegemonic and impose it as the "national culture" to the detriment of others. In this respect, many argue today that the European Union has done more to enhance regional cultures and identities in Europe than national states, and this shows that restrictive national border policies have little to do with the preservation of ethnic cultures. Rich human cultures are "preserved" when kept alive and dynamic, namely, when challenged to be creatively faithful to their traditions by respectful contact with different cultures. Carens (2008, 226) points out that centuries of open borders between the states in the US have not homogenized the country culturally: New York City is very different, culturally, from Waycross, Georgia, and both are different from Seattle (which probably has more in common with Vancouver).

5.1.7.5 Liberal Egalitarian Responses to Communitarian Civic-Cultural Objections

However, as some civic republicans and communitarians like Michael Walzer insist, there is a legitimate way of posing the question in terms of a national (political, civic) *culture*, rather than local ethnic (pre-political) *cultures*[246]. Certain **political values and practices** (e.g. democratic processes,

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[246] All this forms part of a bigger debate about political culture in a "postmodern" world. In the context of increasing globalisation which could threaten the democratic culture of European polities, Habermas (2001, 88) prescribes a balance between opening and closure, "characteristic of the happier periods of European modernization". To shape the "postnational constellation", he suggests that we should consolidate regional political belonging (e.g. political participation in the European Union), rather than seek some wider form of cosmopolitanism.

toleration, ways of organizing and protesting as part of civil society, etc.), and possibly a common denominator in the **content and pedagogy of all educational institutions** (e.g. one which would promote such a "republican culture"), is probably necessary for a modern polity to function. If so, one could argue that in the original position, persons would choose to include some restrictions on the cultural provenance or volume of immigration to preserve the national political culture and ensure the effective functioning of state institutions and civil society[247].

As we have seen above, Rawls seems to subscribe to this position discretely by adopting his notion of "peoples" and constructing his ideal domestic original position using the assumption of a "closed and complete" society. Yet, Rawls' critique of the principle of perfectionism as a basis for structuring a modern polity can be used to critique certain inappropriate uses of such "argument from national culture", such as Samuel Huntington´s (2004) "The Hispanic Challenge". From a moral point of view, the role of a polity is not to organize itself to reach some ideal of *cultural perfection* (or economic and military dominance); the purity of the Finnish language (linguistic perfectionism), excellence in scientific education and research (technological utopianism), faithful transmission of the legendary "Anglo-Saxon Protestant work ethic" ("Huntingtonian Americanism"), the ideological and forceful exclusion of religion from public debates (*laïcité*), the use of *Shari'a* as an objective moral standard for public life (Islamic fundamentalism), and so forth, even when highly valued by the majority of the population, are secondary when compared to basic rights and political justice which

[247] For instance, the political landscape in Israel has changed considerably in the past two decades with the arrival of many Jewish immigrants from Eastern bloc countries. Though similar in terms of ethnicity and religious beliefs, such immigrants are very different in terms of political culture from the Westernized Israelis born and raised in the big Israeli cities, and the tendency of these immigrants to settle in ultra-conservative neighbourhoods or in isolated settlements does not help to bring them into what was considered the "mainstream" political culture. Rather, mainstream political parties have had to adapt to garner their votes.

seek first to protect and promote liberty and equality. For liberal egalitarians, the only real *cultural* threat which could justify restrictions on immigration is one which, as we mentioned above, is profoundly **political**, in that it seriously **weakens civil society and the functioning of (liberal, democratic) institutions** (Ackerman 1980, 89–95; cf. Carens 1992, 28).

In this vein, some liberal egalitarians are quick to point out that, though this may be a serious problem theoretically, on a practical level, it is mostly a question of integration. Well-integrated immigrant populations are often more active in civil society, more likely to vote in local and general elections, and more "patriotic" than native-born populations, since they value the newly-gained liberties more; immigrant populations who are segregated or marginalised, on the other hand, may remain politically "inactive", or use their liberties subversively[248]. The question then shifts to a more

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[248] Benhabib (2004, 183f) provides an interesting analysis of the *affaire du foulard* in France, where a group of Muslim girls in Creil (Oise) ended up challenging the school authorities and the French state regarding its interpretation of the principle of *laïcité* and its practices of toleration and defence of religious liberties. What is often missed when discussing the headscarf laws in France and elsewhere is that it is inconceivable for a group of schoolgirls in most Muslim-majority country to behave in this way (except in Turkey, which actually bans headscarves in universities and civil service). A woman with covered hair, standing up defiantly for her rights, as traditionally represented by the figure of Marianne, is the quintessential emblem of French Republicanism; ironically, in Indonesia (the most populous Muslim-majority country), women traditionally never covered their hair, and religious conservatives in Turkey (which is 95% Muslim) did not manage to reverse Ataturk´s ban on headscarves, in spite of democratization. Of course, one may ask many difficult questions here: whether French *laïcité* is an intolerant perversion of the principle of toleration, whether Muslim girls should be allowed to wear headscarves (and look distinctively different from other girls) in Western (and egalitarian) public schools, whether their protests were "feminist" or "anti-feminist", "religious" or "ethnic", whether being able to see the face of the (vulnerable) other is necessary to build a morally sound society resistant to repression and totalitarianism, whether such social problems should be resolved using punitive legal means, and whether the veil, in this case, is being mandated by the Koran, the *Shari´a*, Maghrebi culture, the girls' "traditional" fathers, their "fundamentalist" boyfriends, or simply the convenience of not having to bother with bad hair days. The really interesting question, however, is whether these young women are really wearing the scarf because they choose to do so freely and autonomously (as a true act of subjective conscience), or because they feel it is being imposed on them "heteronomically" as an inescapable burden (and as a symbol of female subordination and sexual repression) by their family, ethnic culture, or certain interpretations of the Muslim tradition, and, in the light of this, whether public education is helping

complex discussion of how many immigrants can we afford (or are we willing) to integrate *well*, and what does an effective and fair *integration* policy look like, which we will leave aside for now.

5.1.7.6 The Cosmopolitan Liberal Egalitarian Approach applied to Japan and Australia

After this discussion, how can we summarize the cosmopolitan liberal egalitarian position? Carens (1992, 30) proposes the following rule of thumb: "the state is obliged to admit as many of those seeking entry as it can without jeopardizing national security, public order and the maintenance of liberal institutions." However, he also indicates that while his liberal egalitarian position is morally binding for Western democracies which present themselves as built on liberal and egalitarian ideals, there may be other polities in the world which may be rightly-ordered and justly refuse that the above conclusions apply to them. Some polities may choose to follow a perfectionist principle and decide to vigorously promote a certain culture and way of life at the expense of liberty and equality. Rawls takes a similar position in his 1993 Oxford Amnesty Lecture entitled "The Law of Peoples" which was eventually developed into the book with the same title we have critiqued above (Rawls 2001)[249]. When we extend Rawls" reflection to the issue of immigration, as Carens does, this means

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them stand up for their rights (and conscience) against certain repressive authorities in their admittedly patriarchal communities and cultures *with the same vigour* as they are ready to do so against the school and state authorities. Autonomy is important for the functioning of modern polities since one is expected to participate politically as a free and "emancipated" citizen, and not simple as a spokesperson for one´s guild, social class, ethnic group or religion.

[249] As we have noted, Rawls became so careful not to impose liberal egalitarianism as a "comprehensive doctrine" onto all "peoples" and so ready to accommodate other worldviews that he decided (i) to build his cosmopolitan original position on the basis of the very problematic notion of "peoples" instead of building it on autonomous and equal persons (as is customary in the liberal tradition), (ii) to consider cosmopolitan justice and its principles as logically posterior to domestic justice (instead of following Kant) and (iii) to bring into a second cosmopolitan original position people who were "decent" but did not (entirely) uphold liberal egalitarian principles.

that while Western democracies are obliged by their liberal egalitarian principles to have relatively open borders, with the only restrictions being the ones discussed above, other polities can much more easily close their borders to immigrants using a perfectionist cultural justification.

Carens gives the admittedly problematic example of Japan which, though forced to embrace liberal egalitarian principles after World War II, and though it became successfully democratized and Westernized in many ways since then, has sought to maintain a particular (public and national) culture which is different from that of other "Western" countries. Japan adopted strict immigration restriction laws intended to protect that culture. As described by Carens in the 1990s, Japan also presents itself as *relatively* (a) densely populated, (b) culturally homogenous, (c) consistent in rejecting immigrant labour, and (c) generous in its overseas aid; this is only partially true[250], but let us assume that such a virtuous isolationist country actually exists. Surely, its case is very different from that of Australia and its deep-seated and cyclically-resurgent desires to "remain" white and non-Asian. Carens uses this difference to argue that different rules regarding immigration restriction apply to polities which are different from the US and Canada (and Australia), Western liberal plural-

[250] Actually, (a) Japanese cities are crowded, but Japan is far less densely populated than Hong Kong or Singapore and its population is ageing rapidly. (b) Japan is culturally much *less heterogeneous* than most other Western nations but nonetheless contains 3 important minority groups (the Burakumin, the Ryukyuans, and the Ainu) and ethnic, religious, cultural and linguistic pluralism is also present. (c) Japan is a country which, though consistent in not *officially* attracting immigrant labour in boom years (e.g. through guestworker schemes) when it was economically profitable to do so, still did import Korean labour (and Taiwanese and Chinese labour, to a lesser extent) during World War II, "repatriated" people of Japanese descent from Asia after the War, hid a new wave of Korean immigration, and then attracted the immigration of Brazilians (and other people) of Japanese ancestry. Finally (d) Japan is a country which was No. 1 provider of overseas aid in the 1990s, when it sought to increase geopolitical influence (given the strategic limitations imposed by its "pacifist" constitution) but whose aid programmes have since declined considerably (Masters 2008)). For a less idealized and better documented history of Japanese labour immigration policies and practices than the one presented by Carens, see Morris-Suzuki (2006). For a discussion of how demographic decline and excessively restrictive immigration policies have compounded Japan´s economic woes since the 1990s, see Rutledge (2001), Tabuchi (2011), Arudou (2012).

istic democracies built on immigration which ostensibly adhere to the principles of liberal egalitarianism.

I am not sure I agree with Carens (and Rawls) that Japanese cultural perfectionism *as such* is acceptable from the liberal egalitarian standpoint and *by itself* justifies restrictive immigration policies that liberal egalitarian principles would deem intolerable in other "Westernized" polities. If Japan were to suddenly reclaim land from the sea and increase threefold in size (or, similarly, Saudi Arabia were to suddenly convert large tracts of desert into habitable land), while not providing significant aid to burdened polities, and while importing cheap immigrant labour as a disposable good during economic booms, then it would become another "White Australia" case. The key issue here is the duties attached to **territorial stewardship** regarding the protection of universal human rights, and not primarily the organization of the **human collective** (which could be liberal, hierarchical, theocratic, etc.). Whatever the cultural perfectionism (or hierarchical political structure) a polity claims to uphold, a country with large tracts of underutilized land and a considerable capacity of creating jobs and wealth remains the steward of its territory (even if most of it were to be "reclaimed") on *behalf of humanity* and as such, when faced by the need of people from "burdened societies", has to accept the alternatives that Walzer offers: give up excess land, give significant aid to burdened nations and/or open your doors for immigrants. To be sure, I believe that the cultural argument can be used (as Walzer believes) to stop immigrants whose basic rights to *security and subsistence* (cf. Shue 1980, discussed below) are reasonably well met in their native country from entering: not all countries can be asked to uphold and protect a wide-ranging *liberal right to "freedom of movement"*. Yet one expects all polities to uphold the *basic rights of all human persons to security and*

subsistence if they want to be considered decent polities and consequently treated as sovereign by the international community.

5.1.7.7 Conclusion: Immigrant Entry and Sojourn Selection Rule

This brings us to an important conclusion: a robust and complex understanding of the *right to immigrate* (and *to emigrate*) should not be based solely on property (and contract) rights and on the right to the freedom of movement: liberal egalitarians agree that to some extent, the exercise of such rights (especially on a cosmopolitan level) may be justifiably restricted. It is when we combine these rights with the *safety rights of persons threatened by persecution* and/or the *sustenance rights of people threatened by the lack of means for a decent livelihood* that the rights to freedom of movement and contract (in all "decent" and wealthy nations) become hard to restrict using nationalist or communitarian arguments. If not, we will not get much further than what Carens summarizes as the liberal egalitarian position on this matter:

> *Liberal egalitarianism entails a deep commitment to freedom of movement as both an important liberty in itself and a prerequisite for other freedoms. Thus the presumption is for free migration and anyone who would defend restrictions faces a heavy burden of proof. Nevertheless, restrictions may sometimes be justified because they will promote liberty and equality in the long-run or because they are necessary to preserve a distinct culture or way of life. (Carens 1992, 25).*

This conclusion, and the discussions on the limitations to the right to immigrate in section 5.1.7.2 and 5.1.7.5, will form the basis of one of the priority rules we will propose at the end of this chapter, in section 5.4, the **Immigrant Entry and Sojourn Selection Rule.**

5.1.8 The Limitations of the Liberal Approach

5.1.8.1 Liberalism Critiques the Moral-Substantive Dimension of Sovereignty

Traditionally, liberal authors generally understand (civil) rights as necessary moral limits imposed on the burgeoning power of the bureaucratic modern state, which tends to be exercised to the detriment of the body politic it is supposed to serve unless proper safeguards are introduced: Lockean rights are needed to tame the Hobbesian Leviathan. The case of immigrants (who do not belong to the body politic when they show up at the border) puts this understanding of rights in a tough spot: in manning its borders the state unavoidably uses its power against "outsiders" and limits on this power will have to come from the "outside", viz., from a real or hypothetical international or cosmopolitan normative authority, and from the right (*ius*) it generates as a safeguard against the abuse of state power. We speak here of *universal* human rights and of a "cosmopolitan right". The normative authority which founds such rights has been the object of intractable debates between jusnaturalists, juspositivists, pragmatists and theonomists of all sorts in the 20th century, and many insightful thinkers, such as Hannah Arendt, were sceptical about the real impact of human rights declarations. Little by little, however, human rights not only came to be enrooted in most human traditions of thought, but also grew legal roots and structures on the national, regional and international levels (Benhabib 2004, 54f. 69). State sovereignty no longer offers a reliable long-term guarantee of protection for states and persons who engage in gross violations of such rights.

Following Maritain, in the above discussion, we have nonetheless avoided an understanding of political realities which places the *state apparatus* and its power at the centre; we have spoken of polities as societies of human persons and as stewards of land and resources, inserted within a cosmo-

politan human body politic that grounds their legitimacy and whose sociological existence is not always historically noticeable, but must nonetheless be morally and politically assumed. Human rights are not quite "invented" but rather "recognised" when each person in such a cosmopolitan assembly admits each other person´s due, and as a consequence, recognises also the limitations each must impose (morally and legally) on their freedom (personal freedom, and that of state institutions at their service) in order to make such freedom compatible with a fair system of freedoms and rights available to all. Human and cosmopolitan rights, in turn, constrain and shape the domestic assembly that founds the state apparatus and the Constitution or Basic Law which makes civil, legally-enshrined rights available and actionable, and imposes corresponding duties, using the modern state´s monopoly on coercion and violence when necessary. In modern democratic societies where states have become quite accountable to such "domestic assemblies", the spotlight should be shifted from *state institutions* to these territorially-bound *political societies* as a whole, to their responsiveness to human rights and to their desire to structure themselves morally on the basis of an ever-deeper understanding of the human dignity that undergirds such a system of rights.

5.1.8.2 Liberalism Maintains the Procedural-Political Dimension of Sovereignty

This brings us to a fundamental problem in the liberal approach to questions of state sovereignty and immigration. Given their focus on the state and its power, liberals often fail to offer a critique to the *procedural-political dimension* of absolutist political sovereignty. They effectively demand the modern democratic state to give *moral reasons* (which are publically acceptable in a pluralistic context) for any restrictions it might want to impose on certain liberties such as the freedom of movement across borders. This limits state sovereignty by rendering it morally accountable; hence,

liberalism effectively critiques the *moral-substantive dimension* of absolutist political sovereignty. Yet, given the disagreement on what counts as a *publicly acceptable moral and political reason* (among liberals and with other thinkers), it is difficult to defend the legitimacy of laws solely on the basis of *moral substance*. Rather, when formulating laws to guide the coercive use of political power, the *acceptability of the procedure* becomes necessary for legitimacy, so the question becomes: *who* has the legitimate authority to formulate such laws, and *how* (Abizadeh 2008, 40f; 2010, 156)? The obvious answers are "political society" and "democratically", but then the question becomes: who actually belongs to a "political society", and what democratic procedures can legitimize the use of coercion against minorities and marginalised co-inhabitants? This where we start to critique the *procedural-political dimension* of sovereignty.

Democrats and civic republicans are right in insisting on *popular sovereignty*, noting that it is the "people" (or better, the polity), and not the state, which is truly "sovereign". Yet, if we want to discuss the limits of political sovereignty, we need to reflect not only on what a polity can or cannot do, but also on who is comprised in the polity when it is claiming to do such and such *legitimately*. In this vein, thinkers who are close to the civic republican tradition, but who share the position of cosmopolitan liberal egalitarians on this issue, question the usual assumption that that a polity should be immediately equated with its recognised members ("citizens") and that such an exclusive political body has the unilateral right to formulate laws regarding borders and cross-border migration (e.g. through the majoritarian vote of its citizens).

5.2 Foundations: Consent, Actionable Rights and Democratic Legitimacy

5.2.1 Linking Human Rights with Democratic Legitimation

5.2.1.1 The Paradox of Democratic Legitimacy

Let us take some time to examine the above claims in more detail. As we have noted previously, communitarians and certain civic republicans have often been more reluctant to recognise the rights of immigrants, given the fact that their conception of actionable rights is linked to the democratic self-determination of a "people". Their critiques of liberal positions on the subject help us to understand that there are limits on the rights of migrants, and that established political communities may make certain demands on migrants if they are to enjoy the hospitality of a new nation, with its cultural frameworks, traditions, language and standard ways of proceeding.

There is, however, a "democratic" or "civic republican" way of recognising limits on the sovereignty of polities (which we have argued for above from a *liberal* stance). For instance, following Habermas (1998, 454f) to some extent, Seyla Benhabib argues in favour of **moral-substantive** limits. She considers (a) *human rights* and (b) *citizenship (civil) rights* as co-implicated in a democratic structure. "Ideally, democratic rule means that all members of a sovereign body are to be respected as bearers of human rights, and that the consociates of this sovereign freely associate with one another to establish a regime of self-governance under which each is to be considered both author of the laws and subject to them" (Benhabib 2004, 43). For Habermas and Benhabib, modern democratic polities are "Janus-faced", in that they act in the name of universal principles (thus looking out towards the cosmopolitan human society) yet circumscribe such principles within a bounded political

society (looking in towards a particular group of people bound by and contributing to those laws and institutions that make *universal* human rights legally actionable in the *local* space of a polity).

As we know, however, in modern majoritarian democracies, the will of the majority is not *always* respectful of the rights and liberties of all. This brings us to what Benhabib (2004, 43f) calls the "paradox of democratic legitimacy"[251]. The paradox is that, for a modern polity to be considered *legitimately sovereign*, it is not enough for other polities merely to deem it formally so (as in the Westphalian model of sovereignty), but it should undertake to *limit* its "sovereign will" (and to *frame* the acts of popular sovereignty) by a series of precommitments to "human rights", that is, certain *universal* principles which recognise the liberty and equality of human persons and without which the notions of "popular sovereign" and "democratic polity" make no sense[252].

However, more hard-line civic republicans insist here that the commitment is not to some prepolitical notion of "natural" or "intrinsic" rights, and that the sovereign people has the ability to renegotiate and reinterpret such rights[253]. Yet when cornered and asked whether this "renegotiation" could go as far as legally and democratically allowing slavery or genocide, they admit that there *may be* certain tacit and "objective" moral constraints on what can be legitimately decided through a democratic procedure, but such constraints are *usually* guaranteed by the democratic pedigree of

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[251] This debate goes back, at least, to the famous discussion of the general will in Rousseau´s *Social Contract*. The will of the majority should bind itself to follow a morally-informed will (the "general will", that fairly considers and takes into account the rights and freedoms of all those affected by an act of popular sovereignty) rather than serve to promote the interests of a particular group (however large).

[252] Universal human rights may be thought of as *prior to* popular sovereignty, or *co-originary* with it, but cannot be seen as *posterior*. Political constitutions and assemblies do not *create* human rights.

[253] Some African authors, for example Mahmoud Mamdani (2009), tend to see most "humanitarian interventions" in Africa as neo-colonialism in disguise, and promote an absolutist understanding of sovereignty.

the *procedure* itself (not by *substantive* universalist moral principles imposed from outside). This debate highlights the necessity of complementing the above **moral-substantive** limits on sovereignty with **procedural-political** ones, and exploring another layer of the paradox of democratic legitimacy. In fact, besides violating universal human rights under the guise of "renegotiating and reinterpreting" them, democratic processes can be morally flawed by civic republican standards by not following the democratic principle so as to produce laws that (a) are rationally acceptable to all those affected by such laws and (b) have the subjects of such laws adequately represented among the drafters. Majoritarian "democracies" could become majoritarian tyrannies where the majority becomes just another elite group trampling on the rights of minorities and disenfranchised inhabitants of the polity.

5.2.1.2 How Can Border and Immigration Policies Be Democratically Legitimate?

Let us now apply the above reflection on the legitimacy of democratic processes to the case of immigration and border policies. Though most scholars do not speak of a "universal human right to immigrate", we have seen how, from the liberal egalitarian perspective, a number of well-recognised human rights sometimes imply that certain persons have a *prima facie* right to enter certain countries, take jobs and establish their residence there. From a **moral-substantive** viewpoint, a liberal democracy which denies such a "human" or "cosmopolitan" right is betraying the universal principles on which it was founded. Yet, many civic republican authors would deny that by rejecting the (human/cosmopolitan) rights of immigrants in the name of the polity´s (civic) right to self-determination, that polity paradoxically undermines its own legitimacy. Rather, they claim that sovereign polities can reinterpret and renegotiate the content of rights recognised within their bor-

ders. Abizadeh (2010, 157) identifies two civic republican arguments which could be used to justify such a "renegotiation" of the rights that liberals would simply grant to immigrants. These authors claim, "first, that closed borders are *instrumentally* necessary for ensuring the empirical preconditions of viable democratic practice; and second, that democratic self-determination *intrinsically* entails the unilateral right to control one's own borders, including the moral permission to close it to foreigners".

The *instrumental* argument (or argument from the "protection of the national political culture") is granted by most liberal egalitarians, as we have seen above (5.1.7.5). It is an argument which works in theory, but in practice, nothing indicates that prosperous modern polities *cannot* integrate and transmit their political culture to many more immigrants than are legally allowed across their borders at present. Often the problem is that they do not really *want to* integrate these people, or to do it properly.

This leads us to the second argument, which "is not an argument for closed borders *per se*, but against the putative duty to open borders" (ibid.). For arguments´ sake, let us grant that polities can reinterpret and renegotiate the *content* of the rights of aliens affected by their laws. But, if so, they can do so only if the *procedure* is legitimately democratic. We know that *all* "foreigners" (non-citizens) — that is, even those (immigrants, refugees, sojourners, etc.) who are being made subjects of the law through the processes of democratic self-determination of a modern polity — are systematically excluded from such processes on account of their citizenship status. Is this a legitimately democratic procedure? Or does the claim to unilateral formulation of border policies actually imply a rejection of democracy and a return to oligarchy? Abizadeh argues for the latter conclusion,

claiming that a legitimately democratic procedure which generates boundary laws (and interprets the rights of immigrants) should contemplate the participation of those affected by such laws.

5.2.2 The Democratic Principle

In fact, if we ask civic republicans to be consistent when they link the formulation of laws (and the legal recognition of rights) to political participation, they will help us rediscover the democratic principle in all its richness (which goes well beyond majority rule), as certain disenfranchised social groups did during the American and French Revolution: "*What touches all should be determined by all*". In those revolutions, the portion of the population which paid most of the taxes rebelled since they had no say in the formulation of tax laws (and other laws). In the case of border policies and naturalisation laws, migrants similarly have no say in the laws that primarily concern them. In both cases, we have *subjects* of a "sovereign" authority who are subjected to the coercion of that authority while not being treated as *participants in the* polis, and not being effectively *represented* by the popular sovereign.

All this points to the fact that the democratic principle — which links the *political participant* in deliberative political processes to the political subject of laws — cannot be completely confined by domestic boundaries and, especially in an interconnected world, acquires a cosmopolitan dimension, as in Abizadeh (2008). This author´s defence of the democratic principle is very much based on a particular notion of *coercion* (and actual or potential use of political *power*)[254] and critics like Da-

[254] For Abizadeh (2008), coercion is a violation of personal autonomy which needs to be legitimized, and this is done (in a democratic system of government) by allowing me to be among the authors of the laws which subject me to the will (and power) of the polity. Abizadeh builds on a notion of personal autonomy taken from Joseph Raz and from Robert Nozick and sees coercion *mainly* as a constraint of one´s *independence* (via

vid Miller (2010) argue that this notion is too wide to apply to boundary laws. A visa overstayer from Ireland who risks being removed from Massachusetts is only being subjected to "prevention" (in Miller´s jargon) or to what we might call "coercion-lite"; he is free to move and work in all the EU countries, his life options are not seriously reduced by the US boundary laws, and his life and health is not being put at risk by the US authorities (unless he is caught and resists deportation). Thus, if coercion is the key to the democratic principle, he is not entitled to participate in the drafting of US boundary laws since he is not *really* being coerced. Miller (2010, 117), however, concedes the following:

> *It might be said that this caricatures the position of excluded immigrants, who very often do not have an adequate range of alternatives to being admitted. If they are sent back to their countries of origin, they may face political violence or starvation, for example. But while this is clearly true of a certain category of immigrants — those we would class as refugees — it is not true of all, and Abizadeh's argument is supposed to apply to immigrants generally, not just to those who try to migrate to avoid desperate circumstances.*

This brings us to a more general discussion of the democratic principle. We cannot do justice here to the rich tradition behind the medieval adage: *Quod omnes tangit ab omnibus tractari et approbari debet* (what touches/concerns all should be handled/managed and approved by all)[255]. The point in this principle (which guided the decision-making in monastery chapters) is not primarily *coercion*. A law allowing free practice of medicine and surgery (with no need of training) could actually increase the *options* of both potential practitioners and potential patients, and does not limit

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a threat of serious harm) and/or a serious limitation of available *options* or courses of action; both reduce a person´s autonomy.

[255] See Post (1946), Congar (1958), Watner (2005). Tierney (1997, 284) notes the use of this principle in Las Casas´ defence of the rights of the Amerindians: insofar as the decisions of the Spanish crown affected them, the Amerindians in the colonies were truly subjects, and their free consent to such decisions was required.

autonomy; following Abizadeh such a law reduces coercion, rather than increases it. However, if everyone is against it (because they fear it will have a negative *impact* on the quality of heath provision in a given polity), a "benevolent despot" should not enact it. Democratic participation is necessary when people are seriously *impacted* (or touched) by a law, when they are *subjected* (in this weaker sense, which does not necessarily imply violence or coercion) to a law[256].

Habermas (1998, 110), for instance, does not mention coercion in his definition of the Democratic Principle (DP): "only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted"[257]. Of course, Abizadeh´s proposal challenges Habermas´ use of the category of "citizen" to separate law and morality and avoid subjecting one to the other, a separation which, in the particular case of border laws, has been criticized as an untenable equilibrium which ultimately subjects morality to positive law (cf. Ahn 2012)[258].

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[256] The debate between Abizadeh and Miller could be much enriched by reference to the longstanding distinction between "natural" and "positive" law. Positive law in modern polities requires democratic legitimation because of its being *positive*, that is, *enforceable* (through coercion) and *revocable* (and replaceable). The requirement for legitimation, thus, does not proceed only from coercion. Habermas (1995, 13) similarly distinguishes *coercibility* and *changeability*. Changes to what was previously accepted need to be legitimized, even if they entail greater freedoms and less state coercion. Of course, a "conservative" population could end up having to be coerced to adopt freer ways (e.g. through affirmative action), and persons resisting change (especially in violent and intrusive ways) may need to be coerced to desist, but I don´t believe we can easily reduce changeability to coercibility.

[257] DP is derived from the Discourse Principle (D): "Only those norms of action are valid to which all possibly affected persons could assent as participants in rational discourses" (Habermas 1998, 459). The universalization of D yields the Moral Principle (MP), as in Kant´s categorical imperative; the key word here is "could", since *actual* participation is not needed. When D is converted to DP, the "could" becomes "can" (since actual participation is needed) and "all possibly affected persons" becomes limited to "citizens".

[258] In today´s political reality, which Habermas calls the "postnational constellation", national laws affect all sorts of persons outside the territorial borders and outside the citizen class, and Habermas is well known for suggesting a gradual move towards global democratic legitimation by first strengthening the democratic le-

5.2.3 The Special Status of Boundary Laws

In the previous section, we have compared immigrants with politically-disenfranchised taxpaying gentry in pre-revolutionary North America and France. The case of immigrants, however, brings in a further critique of modern political theory because of the special nature of borders:

> *[There] is a unique conceptual feature of boundaries: constituting and enforcing them always necessarily subjects both insiders and outsiders to the exercise of political power. [...] When what is at issue are boundary laws, the appeal to self-determination begs the question of who the relevant collective self rightly is. [...] Since the constitution and enforcement of boundaries is one of the most significant ways that political power is exercised over human beings, the boundaries of a democratic polity cannot be the taken-for-granted starting point of democratic theory, simply imported as is from history and exempted from the demands of legitimation. Insofar as boundaries are politically and coercively enforced on an ongoing basis, they are not prepolitical, historically-given facts beyond the scope of democratic legitimation (Abizadeh 2010, 158).*

In other words, though we may seriously question the claim of cosmopolitan liberals that there is a *prima facie* right to freedom of movement which merits legal recognition, "the legal recognition or denial of such a right must be the result of democratic processes giving participatory standing to foreigners asserting such a right" (Abizadeh 2008, 39). This "participatory standing" given to affected foreigners concerns only *boundary laws*, given their particular nature, which subjects both insiders and outsiders (Abizadeh 2010, 159). Other laws which do not significantly concern outsiders should express the will of the "insiders" only, that is, those people who reside in the territory of the polity and are somehow embedded in the life of the polity, and — given the current *modus operan-*

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gitimation of law generated by regional blocks, such as the EU Indeed, the EU has built a federal structure of representation in jurisgenerative processes on top of the national one to serve non-nationals (from member states) potentially affected by the domestic laws of a member state (akin to the way citizens from Illinois are represented in the jurisgenerative processes of the state of Texas via US federal oversight, and easy transfers of voting rights). But such structures often do little to offer democratic legitimation of boundary laws via the representation of third-country nationals.

di of modern "nation-states" which revolves about the status of "citizenship" — *all* such insiders should be offered a path to citizenship and full political participation.

Abizadeh does not clearly tell us how the participation of foreigners in the drafting of boundary laws will be achieved. On the one hand, he rejects the suggestion that immigrants should simply be allowed to vote on immigration laws, or long-term resident aliens on naturalisation laws, in the context of a majoritarian plebiscite (Abizadeh 2010, 160). On the other hand, Abizadeh (2008, 41) rejects that they could "participate" simply by way of a liberal egalitarian thought experiment. In this, he sides with Kantian thinkers such as Jürgen Habermas who insist (against Kant and other Kantians such as Rawls) that moral legitimation in politics is not achieved by requiring people to *think alone* in a moral (universal/publicly-rational/political) way (and recognise, in their head, that a certain stance being proposed is *justifiable*), but by asking them to *participate in fair discourses with (real) others* (and to actually *justify* law by moulding it within such spaces of public conversation).

But how can this be achieved, concretely? One could envisage existing or new, permanent or *ad hoc* **cosmopolitan and transnational institutions** having a role in drafting and vetting boundary laws of liberal democracies, where those particular immigrants most affected by a particular political boundary law (and not simply any foreigner who could theoretically be affected) are adequately represented when that law is being revised. One could also think of representatives of the predominant migrant groups seeking entry into a particular polity sitting on the **parliamentary committees** which draft boundary laws. Another possibility concerns the **judiciary** branch of the state (especially constitutional courts) where migrants should be allowed to present their grievances against laws which unjustly restrict the access to human rights or which violate the liberal and democratic spirit

of the polity as expressed in the Constitution. Finally, one could start more humbly and pragmatically by giving a strong voice to immigrants (especially those who are already living within the boundaries of the polity, regularly or irregularly) in **civil society**, in the media, in church organizations, in universities and within grassroots organizations.

Of course, the participation of non-citizens in democratic processes of a "sovereign" polity is a daring proposal and in a way subversive of common-sense ideas of how modern democracies should function, especially if the "non-citizens" we are referring to are irregular immigrants already present within the country, or foreigners outside the country trying to get in. Here, the limitation to *boundary laws* is important if Abizadeh´s proposal is to remain reasonable. Nonetheless, some would argue that it is hard to maintain this restriction to *boundary laws concerning the transit of people*, in a world where all sorts of things spill over national boundaries to affect the lives of people on the other side, including money, pandemics, crime and pollution. In a sense, most laws enacted today (especially in prosperous nations) touch the boundaries, and it hard to establish a border between "boundary laws" and other laws. Hence, Miller (2010, 117) is right in suggesting that the requirement of effective participation be further restricted to a *class* of migrants (and not all people possibly and imaginably affected by boundary laws); one might delimit such a class by suggesting that only migrants *whose autonomy is "seriously" affected by a particular boundary law* need to somehow participate in the democratic processes which formulate or revise such a law, in order that the law be considered as truly legitimized democratically in the full sense. We will seek to give more precise content to the word "seriously" in later sections.

5.2.4 Revolutions in Sovereignty and the Importance of Ideas

There are several benefits which can accrue from Abizadeh´s proposal. Migrant activists could help shape public opinion about immigration and not simply enlighten the decisions of state bureaucrats. Furthermore, the challenge of finding effective ways of getting migrants involved in law-making processes could also benefit other marginalised people; these could include citizens living in poor neighbourhoods and housing projects who feel politically voiceless (and who typically are most impacted by the arrival of "needy" immigrants and most supportive of immigration restriction). Democratic empowerment of such citizens could do much to help them deal with the real problems burdening their neighbourhoods, rather than suffering them fatalistically and seeking scapegoats to assuage their frustration.

All this contributes to a "revolutionary" process where received ideas about national sovereignty are challenged and remoulded. Daniel Philpott (2001), an international relations scholar, has reflected at length about this, tracing two past revolutions in sovereignty: (a) the transition (in Europe, mainly) from a medieval structure of overlapping levels of political sovereignty to a horizontally compartmentalized system of sovereign nation-states between the Peace of Westphalia (1648) and the Congress of Vienna (1814-15), and (b) the expansion of this system to encompass (practically) all the world, especially in the decolonization processes after World War II (culminating in the 1960 United Nations General Assembly's *Declaration on the Granting of Independence to Colonial Countries and Peoples*). These two revolutions form part of the same *movement* of **consolidation and absolutization of (state and domestic) political sovereignty**. Philpott´s central argument is that over time, (moral and religious) ideas are effective, and international politics is not merely a question of realist calculus and balance of power strategies, or of inevitable economic processes and

"material" necessities. Indeed, the Westphalian model of (horizontally disaggregated and absolutist) sovereignty is modernity´s first approximation to the desire for more autonomy and equality between persons, cultural entities and religious communities (Philpott traces back these ideas to the Protestant Reformation and the Theology it engendered). However, new ideas are now spreading, challenging the limits of this model; Philpott (2001, 36–45) argues that we are experiencing new revolutions in sovereignty (even if they may seem less dramatic than past "revolutions"), since a new *movement* which **circumscribes (state and domestic) political sovereignty** is growing:

> *A reversal of momentum, [this movement] is the circumscription of sovereignty. This movement has not returned us to the Middle Ages, for it has not replaced or eviscerated the state, but it evokes medieval Christendom in its limitation of state sovereignty on behalf of transnational ideals, here human rights and European Unity. This movement has consisted of three major resolutions — the rise of minority treaties in the nineteenth and twentieth centuries; European integration, beginning with the European Coal and Steel Community of 1950 and proceeding through the European Union of today; and the rise of internationally sanctioned intervention following the Cold War. Of the three revolutions, minority treaties have disappeared, while the other two continue in full swing (ibid., 37).*

What could political sovereignty look like in the 21st century? Authors like Thomas Pogge (1992) have reflected on the possible vertical disaggregation of sovereignty, which could promote peace and security, reduce oppression, enhance global economic justice, and allow us to deal more effectively with ecological issues by strengthening (and giving limited "sovereignty" on particular governance portfolios to) political units above and below that of the "national" polity. Though many remain sceptical about such cosmopolitan projects, authors like Seyla Benhabib (2004, chap. 4) have dwelt on how some of this is already happening in the case of the European Union.

5.2.5 Seyla Benhabib on Boundary Laws and Democratic Iteration

Abizadeh´s proposal seems easier to adopt and less "subversive" when we apply it to certain types of immigrants, for example, long-term legal residents with no rapid and easy path to citizenship or

no desire to acquire citizenship. Seyla Benhabib (2004; 2008) discusses the need for participation of such non-citizens in the democratic processes of the polity within which they reside, given that such processes generate all sorts of laws which affect their lives. How can this happen in practice? How can sovereign policies come to modify their constitutions, for instance, to allow non-citizen residents to vote in municipal and provincial elections? Benhabib (2004, 47) builds on the paradox of democratic legitimation discussed above, and claims that, even though such a paradox can never be *fully* resolved for democracies, yet, "its impact can be mitigated through a renegotiation and reiteration of the dual commitments to human rights and sovereign self-determination", in a series of processes which she calls "democratic iterations":

> *By democratic iterations I mean complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society. These can take place in the "strong" public bodies of legislatives, the judiciary, and the executive, as well as in the informal and "weak" publics of civil society associations and the media (Benhabib 2004, 179).*

Articles by Joseph Carens, Catholic Social Teaching documents, or dissertations such as this one may try to establish by rational argument and/or reference to other authorities the rights of immigrants on the basis of accepted moral principles (e.g. universal human rights), but sovereign polities will not simply accept their conclusions as authoritative (as past sovereigns sometimes submitted to the authority of the pope, or of their confessor). Rather, they serve as "revolutionary" ideas within "democratic iterations", influencing the decisions of lawmakers, broadcasters and advocacy groups. One might indeed insist on the universality and immutability of human rights, and not agree that polities have a right to *reinterpret and renegotiate* the content of such rights (in the case of migrants, refugees, prisoners, etc.), but in fact, this is what happens when rights (and the necessary

limits on the exercise thereof) are enshrined in laws. In this sense, Benhabib identifies certain law-making processes, called "jurisgenerative processes", which generate *ius*, that is, a *right* (i.e. a body of laws) which contains a legally actionable implementation of human and cosmopolitan *rights*:

> Jurisgenerative politics refers to iterative acts through which a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets these, thus showing itself to be not only the subject but also the author of the laws (Benhabib 2004, 181).

We have seen, above, that the proper exercise of *civil* rights (e.g. voting in an election) includes a self-limitation to respect and promote *human* rights. Voting for a party which proposes to (unduly) restrict the fundamental human rights of a minority is a perversion of popular sovereignty. The Constitution and judiciary system (which sometimes reinterprets and extends the scope of the Constitution) are expected to come in to defend the rights of all when the legislative and executive branches of government (which respond more directly to popular sovereignty) fail to do so. Yet, popular sovereignty sometimes can also counterbalance and overturn certain limitations of the Constitution itself which deny the rights of certain groups of people (e.g. by amending the Constitution to allow women or persons of certain races to vote and run for elected office). Hence, the rights of people excluded from membership in the sovereign will bind the sovereign will of the members. The details of such rights — including the possibility of obtaining political belonging and rights to active political participation — are negotiated in a space flanked on the one side by human rights and on the other side by claims of sovereignty, where liberals and civic republicans (and communitarians) confront one another in a difficult but unavoidable debate.

5.2.6 Conclusion: A Procedural Rule

The positions of Rawls, Walzer, and others who limit participation in democratic processes to citizens, reflect a need for *democratic closure*, necessary for obvious *legal and functional* reasons. Abizadeh too is concerned with this problem when he limits the participation of affected aliens to boundary laws and avoids entering into details on how this participation can be obtained. No matter how we define the boundaries and criteria for such political belonging, some will be unfairly left out, and this is *morally* problematic, especially if one espouses a discourse-theoretical approach to morality, as Benhabib does. Morality challenges those who exclude others for reasons of an "ethical" (communitarian or religious *ethos*), "legal" or "functional" nature to justify themselves to the excluded. "Every person, and every moral agent who has interests and whom my actions and the consequences of my actions can impact and affect in some manner or another, is potentially a moral-conversation partner with me: I have a moral obligation to *justify my actions with reasons* to this individual or to the representatives of this being" (Benhabib 2004, 14). This tension between the universal moral *norm* and the bounded legal (and cultural or administrative) *fact* is at the root of the *paradox of democratic legitimacy* discussed in section 5.2.1.

Democratic iterations help us deal with this paradox, which can even be fecund. They help us put into place flexible and functional forms of democratic closure that allow legal systems to function (and rights to be protected) while seeking ways of bringing in and representing those formally (or formerly) excluded from the *demos*. Morality may never be able to justify democratic closure except as a "lesser evil" or an "unwelcome functional necessity", and keeps us vigilant with respect to the cases of unjust exclusion it engenders. Thus, Benhabib argues that "there are some practices of democratic closure which are more justifiable than others but […] potentially all practices of demo-

cratic closure are open to challenge, resignification, and deinstitutionalization" (Benhabib 2004, 17)[259].

The discussion in this section leads us to formulate an important **procedural rule** when seeking to propose border and immigration laws and policies which are democratically legitimate, and seek to obtain the consent of those seriously affected by them. The rule concerns our way of applying and interpreting other priority rules (cf. section 5.4), and can be stated as follows: *"The local fine-tuning and concretization of the other rules requires fair democratic processes where those most impacted by boundary laws are adequately represented."*

5.3 Content: Specifying the Rights in Question

5.3.1 Moral Criteria For Judging Content

Before venturing to discuss some more concrete moral criteria for judging the content of immigration policies and laws, it is important to note that our reflection can only be "concrete" to a certain extent. Given the differences in times, places and human situations, the *details* of policies and laws is not something which can be determined *a priori* from universal or general moral principles by a

[259] In her work, Benhabib (2004; 2008) analyses three cases of such democratic iterations: the French debate on the use of head coverings (and "ostentatious" or "combative" displays of religious symbols) in public schools, the German debate on the use of head coverings by public officials (the "Fereshta Ludin Affair"), and the German debate on the participation of non-nationals in local municipal and district elections. It is hard and maybe impossible to deduce from universal human rights principles what would be a fair law or policy in such cases, yet Benhabib argues that when all involved are given a chance to express themselves and justify their positions rationally in public, democratic processes are put into place which can *start to deal* with the grievances of those who feel excluded, both "immigrants" and "native born", and revise laws and public policies accordingly. The results may not be immediate, and may not be the best from a moral (e.g. liberal egalitarian, discourse-theoretical) point of view, yet this is how moral ideas slowly and effectively transform politics and law and expand the purchase of human rights around the world.

simple process of logical deduction. Abizadeh (2010, 161) underlines the importance of "empirical circumstances" in the deliberations regarding such policies:

> *Just how much more open borders must be, in light of human rights considerations, will depend on empirical circumstances. […] I have suggested that current circumstances justify at least some degree of closure, [so] the question is who should be permitted entry; my argument suggests that those whose basic human rights are most urgently at stake have the strongest moral claims against prosperous liberal states.*

In the following sections, we will try to say something more about who are those people "whose basic human rights are most urgently at stake", and which are those states which can be considered "prosperous liberal states", and to move towards proposing some *basic priority rules* that should guide the formulation of just border policies. Abizadeh´s insistence that those whose welfare and liberty are most impacted by border policies and laws (and their coercive enforcement) should in some way participate in the formulation of such laws, however, helps us ensure that the *more concrete details of policy* are formulated in a legitimate way.

Seyla Benhabib gives us an idea of what we are aiming for in the following paragraph:

> *A cosmopolitan theory of justice cannot be restricted to schemes of just distribution on a global scale, but must also incorporate a vision of just membership. Such just membership entails: recognizing the moral claim of refugees and asylees to first admittance; a regime of porous borders for immigrants; an injunction against denationalization and the loss of citizenship rights; and the vindication of the right of every human being "to have rights," that is, to be a legal person, entitled to certain inalienable rights, regardless of the status of their political membership. […] Furthermore, just membership also entails the right to citizenship on the part of the alien who has fulfilled certain conditions (Benhabib 2004, 3).*

5.3.2 Third Level: Citizenship and Full Political Participation Rights

Benhabib´s proposal mentions different levels of political belonging: citizenship, the status of the "alien who has fulfilled certain conditions", and "first admittance". Let us start at the top level by

focussing on admission to citizenship. One of the most interesting positions is that of Michael Walzer (Walzer 1983, chap. 2), which Joseph Carens summarizes very well:

> *Walzer's central claim is that exclusion is justified by the right of communities to self-determination. The right to exclude is constrained in three important ways, however. First, we have an obligation to provide aid to others who are in dire need, even if we have no established bonds with them, provided that we can do so without excessive cost to ourselves. So, we may be obliged to admit some needy strangers or at least to provide them with some of our resources and perhaps even territory. Second, once people are admitted as residents and participants in the economy, they must be entitled to acquire citizenship, if they wish. Here the constraint flows from principles of justice, not mutual aid. The notion of permanent "guest workers" conflicts with the underlying rationale of communal self-determination that justified the right to exclude in the first place. Third, new states or governments may not expel existing inhabitants even if they are regarded as alien by most of the rest of the population (Carens 2008, 225–6)*

The second and third constraints reflect Walzer´s position regarding the immorality of maintaining a permanent or long-term metic or denizen class in modern liberal democracies: **the principles of liberty and equality which undergird modern political values and institutions do not allow the establishment of a permanent underclass of politically disenfranchised residents.** By the same logic that prohibits ethnic cleansing, denationalization and exile of resident minorities, one cannot simply remove people who have been permitted legally to live and work in a country for many years (e.g. guestworkers permitted explicitly or tacitly to remain).

A case which is clear to most people is that of John Tulloch, a 63-year old professor born in India, who has lived in the UK since he was 3 years old, dedicated many years of work to the British academia, survived the London bombings in 2005 and became a symbol of "national" resistance. After taking up an academic position in Australia, applying for dual citizenship, and obtaining an Australian passport, his right to live in the UK was revoked. He was not allowed to renew his British passport, and at present can only visit the UK on a tourist visa. For most people, Tulloch is obviously

"British" and should be recognised as such. On the other extreme, we can mention the French Montagnard Constitution of the 24 June, 1793 which granted citizenship to any propertied man residing in France for more than 12 months, and the current constitution of Ecuador which recognises universal citizenship and grants national citizenship after 24 months of residence. Most people, however, think that these time intervals are too short for a foreigner to become truly "French" or "Ecuadorian".

Most reasonable people would probably agree that after a "generation" of residence in a particular country, a cheap, easy and swift access to citizenship should be available. Whether the time period of "habitual and continuous" residence that opens the door to citizenship should be 5 years (as in France) or, say, 25 years, and whether it should be reduced for certain people who demonstrate a good level of integration (as is sometimes done for celebrities and famous academics) is not something that can be decided *a priori* in a discussion such as the present one. However, what can be said, from the point of view of a universalist moral philosophy, is that *at some point* residents should be allowed to become citizens, especially in polities which consider themselves democratic and are built on the exercise of popular sovereignty. Unlike ancient Athens, such polities cannot tolerate the existence of a permanent metic class. In the light of this, some traditional *jus sanguinis*

countries, such as Germany[260], have amended their Constitution in recent years and moved towards *jus domicilii*[261].

Many countries block naturalisation (and sometimes denaturalise citizens) on the basis of criminal conviction. This can be done in ways which are reasonable or which reflect "crimmigration" paranoia (Stumpf 2006). The most ridiculous case is probably that of Mark Littler, a British engineer who was fined AUD 200 for fare evasion in Brisbane in 2009 when his faulty travelcard failed to register. He thereby became a convicted offender for the purposes of the Australian Citizenship Act and currently has no legal path to citizenship. A more reasonable approach is that taken by the Maltese Citizenship Act (Art. 10: 7b) which distinguishes minor infractions from an "offence against the security of the state" or an offence for which a person "has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years".

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[260] A significant reform to the German Nationality Act (of the 22nd July, 1913) came into force on the 1st January, 2000, which facilitates the naturalisation of permanent residents and persons born in Germany (or born to permanent residents).

[261] Malta, however, which was a *jus soli* country upon independence, amended its Citizenship Act (of 21st September 1964 / Chap. 188) to become a *jus sanguinis* country after the 31st July 1989, then shifted to a discretionary *jus domicilii* in 2000 (mainly to satisfy EU membership requirements): currently, permanent residents by law *may apply* for naturalisation, but according to the *Cabinet Citizenship Guidelines*, unless there is some blood link to a Maltese citizen or ancestor, such application "will only be given favourable consideration if there are humanitarian aspects involved" (Department for Citizenship and Expatriate Affairs of the Republic of Malta 2010, 1). NGOs have repeatedly commented on the hardships and injustices caused by such legislation (Times of Malta 2012).

5.3.3 Second Level: Denizenship or Permanent Residence

5.3.3.1 The Importance of the Permanent Residency Status in Modern Polities

Walzer´s (1983) position, presented at the beginning of the previous section (5.3.2) is that a polity´s right to exclude can be exercised only during admission; if people are allowed "in", they should be offered a path to citizenship. However, this does not mean that all persons who enter on a tourist visa should be able to apply for citizenship, or that all those who enter the country irregularly or overstay their visa should be allowed to stay and become nationals. Nor does it mean that, when a country sees a castaway approaching its shores, it must either let her drown or grant her citizenship; it is hard to imagine that Walzer would object to Kant´s "right to hospitality". The "admission" we are speaking about here is the passage from visitor status to long-term residency; the Kantian problem of allowing the *Besucher* to become a *Hausgenosse*, the foreigner to become one´s civic kin. The distinction between **hospitality** and **civic kinship** is crucial in immigration debates; we will explore it further in Chapter 7.

As we have mentioned above, the status of permanent residence is a very important one today. In many EU countries, it makes many political rights immediately available (one may even vote and hold elected office in municipal and district elections). This is why many mobile highly-skilled professionals, as well as poorer "circular" migrants, are not interested in applying for citizenship in the country where they are residing as long as a number of rights are guaranteed by permanent residence. In the US, most people see permanent residency mainly as the doorstep to citizenship, since

during its history, the US has seen immigration mainly as a tool for nation building[262]. Unlike most European countries, the US promises a quick path to citizenship to legal permanent residents, but does not grant them much in terms of political rights. In any case, permanent residence status is desirable for many sojourners, both in itself and as a conduit to citizenship. This is where the real border lies and where the legal wall is raised: here, tourist, student and business visas are programmed to expire and asylum applications are surrounded by hurdles to make rejection easy. The difficulty of keeping sojourners from becoming de facto *permanent residents* is the reason why undesired potential immigrants are not given permission to visit, and draconian border control measures are sometime put into place.

5.3.3.2 Distinguishing Between "Forced" and "Empowered" Immigrants

Let us start with the case of persons who are in the country legally as visitors, and who would like to become permanent residents. Let us also assume that the receiving country is (i) **relatively prosperous** and **developed** (medium to high HDI and GDP), (ii) does not have a 5-figure **population density** per square kilometre (as Monaco), and (iii) is not in an **ecologically sensitive** part of the planet (such as the Maldives); these three assumptions are important and we will return to them below, in 5.3.4. Who, therefore, has the right to stay and be integrated?

The rough distinction which most scholars make here is one between "needy" or "burdened" strangers, and ones who are less "needy". In the terminology of Chapter 3, we prefer to speak of

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[262] Though circular migration (for instance, of Mexicans and Italians in the 19th and early 20th century) was an important phenomenon in US history, the idea that some people actually prefer to return to their native countries after having experienced the "American dream" may sound strange to many Americans.

"forced" (economic and socio-political) immigrants and "empowered" immigrants. Classical Convention refugees whose personal safety is at risk for socio-political reasons are the most clear-cut case of the former. Most people think that countries who can afford to grant them permanent residency should do so, even though, by international law (as we saw in Chapter 2), they may be resettled in (or "subcontracted to") other countries, enclosed in camps, pushed back to "safe third countries" through which they transited and even returned to their home country (when receiving countries decide that the situation has changed and there is no longer a reasonable fear of persecution). Highly-skilled professionals immigrating from a high income, high HDI country are clear examples of the latter. They are "empowered" economically, politically and socially in their home countries and do not have a real "right" to permanent residency in another country. The trickiest cases, of course, are those in between, that is, people who feel "forced" to migrate for reasons of persecution not recognised in the Refugee Convention, and for economic reasons. How can we better understand the notion of "forced" migrant?

One possible approach is that suggested by the debate between Abizadeh (2008) and Miller (2010): "forced migrants" are persons whose autonomy is "seriously" reduced if they are refused the status of permanent residency in a prosperous nation. I will not pursue this here. Rather, I will follow Henry Shue´s (1980) reflection on basic rights. For Shue (ibid., 13), "a moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats". Certain rights are "basic" since they are necessary for the enjoyment of other rights and hence must be secured in order to be able to live a dignified life; the most important ones being *physical security* and *subsistence*. Basic rights are "social guarantees against actual and threatened deprivations of at least some basic needs" (ibid., 18).

5.3.3.3 Civic Kinship: Allowing the Stranger to Become Part of the Political Self

On the basis of this notion of basic rights, we can start to distinguish between "forced" and "empowered" immigrants, and sort out some of the less complicated cases. Some people have no real right to stay, though they should be treated hospitably during their sojourn. Others do, and civic kinship should be extended to them, so that they may become part of the political self if they so wish.

Shue´s "right to physical security" is a not very problematic basis for requesting kinship: most states recognise the right to asylum and the right of stateless people to acquire a nationality since such rights offer protection against physical threats and function as an Arendtian "right to have rights". However, for Shue, subsistence — the right to "unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care"[263] (ibid., 23) — is no less basic than security. Shue (1980, chap. 2) argues that the classical classification of security as a "negative right" and subsistence as a "positive right" is seriously flawed, as is the assumption that there are such things as *clearly* "negative" rights which trump positive rights. On a personal level, the duty to refraining from stabbing someone is intuitively more evident than the duty to offer a loaf of bread to a hungry child, but on a political level, security and subsistence must be protected *positively* by costly state institutions. It is not enough for state agents to refrain from killing for people to be protected against murder. Political duties regarding deprivation (of security, subsist-

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[263] Though we cannot reduce subsistence to monetary income, the **international poverty threshold** helps conceptualize what we are talking about. In 2008, the World Bank proposed the figure of $1.25 a day at 2005 purchasing-power parity (Ravallion, Chen, and Sangraula 2009), but recognises that "for middle-income economies, however, a poverty line of $2 a day is more representative" (The World Bank 2010).

ence) are tripartite: one should *avoid* depriving, *protect* from deprivation and *aid* the deprived. Shue´s notion of subsistence — especially when enhanced with elements from Amartya Sen´s and Martha Nussbaum´s capabilities approach and the weights and measures that go into the calculation of the Human Development Index — helps us understand what a "needy" foreigner or "forced economic migrant" looks like, and appreciate the need for prosperous nations to help in dealing with the deprivations of such persons which includes effective aid or the offer of legal residency, as is currently the case with Convention refugees (at least in *decent* modern polities). We can, in fact, start referring to this case more precisely as ***forced security and subsistence migration***.

How about **"empowered" sojourners** whose security and subsistence are amply guaranteed in their country of origin, and who would like to become residents? Much depends here on whether the receiving country effectively allows them to integrate themselves as *de facto* residents, and whether they are willing integrate themselves, or not. Let us consider a person who is allowed to work for a number of years, acquire property, build a family, construct a network of friends, learn the language and culture, and become attached to the way of life of a polity, especially in times of economic prosperity. If this person is not legally admitted to the status of permanent residency and continues to be classified as visitor or guestworker (e.g. so that the state may more easily remove her when this seems politically convenient), the exercise of political sovereignty here is clearly unjust and exploitative. In this case, the litmus test for most critical observers is employer sanctions: if these sanctions are enforced *effectively and consistently both* in times of labour shortage *and* in times of high unemployment, then yes, a sovereign polity is entitled to block "empowered" sojourners from obtaining long-term residency and to humanely deport visa overstayers. Of course, employment is not the only dimension of integration; Italy´s point system for granting permanent

residency (in force since the 10th March, 2012), though problematic, is an interesting attempt to recognise *de facto* integration using a number of criteria. And if a person is, for all intents and purposes, a co-inhabitant, why not recognise this by law?

5.3.3.4 Civic Kinship with Irregular Immigrants

The trickiest case, of course, is that of immigrants who entered the country irregularly or overstayed their visa. If they can be classified as **forced security or subsistence migrants**, it seems that they have a *prima facie* right to "amnesty" and a path to permanent residency (that eventually leads to the possibility of naturalisation) in most countries which can provide them subsistence rights without significantly affecting the subsistence rights of their current legal residents. The administrative infraction does not make such persons "criminals". It is ultimately due to morally objectionable elements of laws which unjustly deny first entry to such people or unjustly deny such people from obtaining permanent residency. But how about **irregular empowered migrants**, who have no *prima facie* right to enter and stay?

In this case, much depends on their level of integration, as in the parallel case above. Carens (2009) argues that "irregular migrants should be granted amnesty — allowed to remain with legal status as residents — if they have been settled for a long time. Some circumstances — arriving as children or marrying citizens or permanent residents — may accelerate or strengthen their moral claims to stay, but the most important consideration is the passage of time". Building on certain cases[264],

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[264] Carens (2009) discusses two cases to illustrate these circumstances: that of Marguerite Grimmond, an American national who lived "irregularly" for almost 80 years in Scotland without applying for permanent residence and risked deportation after leaving the country with an American passport and re-entering on a

Carens (ibid.) concludes that "as irregular migrants become more and more settled, their membership in society grows in moral importance, and the fact that they settled without authorization becomes correspondingly less relevant. At some point a threshold is crossed, and irregular migrants acquire a moral claim to have their actual social membership legally recognized". For Carens, a migrant can acquire belonging in a society without legal authorization because "social membership does not depend upon official permission" (ibid.).

As time passes, the administrative infraction becomes less and less relevant; if a polity (both as bureaucratic apparatus and as civil society) does not intervene to effectively stop the integrative process, one can assume that nobody has any real problem with the presence of that immigrant in the country. When a zealous immigration bureaucrat or a jealous co-worker suddenly starts having a problem with a person´s "illegal status" after 20 years or more of social membership, reasonable people intuitively know that the real problem is not with the *papers*. The logic behind statutes of limitations for minor crimes (which exist in most legal systems) helps us see what the real problem is: when an authority does not punish an infraction in a reasonable amount of time, but rather keeps it pending as an "ace up its sleeve", it is usually clear that the authority is not interested in justice but in exploiting the situation to its advantage. So, how long a time is long enough? Carens does not think we can establish a clear threshold *a priori*, but suggests that "five years of settled

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tourist visa, and that of Hiu Lui Ng who entered the US on a tourist visa with his parents when he was 17, overstayed, completed high school and college, became a computer engineer, married a US citizen, had two children, got a job at the Empire State Building, got "caught" and died in detention while awaiting deportation.

residence without any criminal convictions should normally be sufficient to establish anyone as a responsible member of society" (ibid.).

Yet, some would object that a "Miguel Sanchez" — an irregular immigrant living in the US whose case is presented in Carens (2009) — should not be treated differently from a "Niloufar Folani" — an Iranian woman wanting to immigrate to Canada currently applying for a visa in Tehran, whose case in presented in Abizadeh (2009). Why should irregular immigrants be allowed to "jump the queue"? Carens responds that in most cases, there simply is no queue: there is no way an unskilled person from a poor country with no relatives inside the receiving country can obtain a visa to visit, let alone apply for permanent residence. Sanchez may have violated an administrative rule, and if he is not a *forced security or subsistence migrant* as described above, upon irregular entry, or upon the expiration of the tourist visa, the state may rightly deport him. However, he is not necessarily a "worse" immigrant than Folani: we must take into consideration that he also risked his life and his family´s savings to get to the US and his boldness is a positive sign of initiative and desire to belong to the receiving polity. An Indian software engineer or an Irish university student who overstay their US tourist visas should probably attract less sympathy, but are usually less at risk of being deported. In any case, Sanchez and Folani are at roughly the same level of entitlement at day one of Sanchez´s irregular presence in the US When time passes, and Sanchez become more integrated, according to Carens, his entitlement to stay increases, and after a number of years, he should not be removed,

even if the situation in his home country changes in the meanwhile and his rights to security and subsistence can now be adequately guaranteed there[265].

5.3.3.5 Conclusion: Immigrant Residency and Naturalisation Selection Rule

The reflections in this section help us to formulate another priority rule, the **Immigrant Residency and Naturalisation Selection Rule:** "Immigrants whose security and subsistence rights cannot be adequately guaranteed in their home country have a clear *prima facie* right to enter and stay in countries which can afford to provide them such rights while not endangering the security and subsistence of their current population". This rule, as stated more fully in section 5.4, uses the criteria discussed above to help determine cases where deportation might be legitimate, and to adjudicate the cases of irregular migrants.

5.3.4 First Level: Entry and Temporary Sojourn

5.3.4.1 Civic Hospitality and Closed Border Regimes

Our discussion above, especially concerning Kant´s right to hospitality (section 5.1.5), made it clear that the border where a polity is morally entitled to keep certain strangers out is not the physical

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[265] Carens (2009) does admit that there may be other factors to consider besides time, but he sees them as factors which could be used to *reduce* the time threshold rather than to allow bureaucrats discretion to *increase* the threshold and keep people from obtaining legal permanent residence after living in a country a certain number of years. This attitude towards bureaucracy and state discretion is typical of a liberal egalitarian, and very understandable from a practical point of view. However, a civic republican, while not willing to deport a Marguerite Grimmond after 80 years of residence, may still want a Miguel Sanchez to demonstrate that he is well rooted in the *political democratic culture* of the receiving country, as we mentioned above, given that Sanchez may not have known such a culture in his formative years. Italy´s point system for granting permanent residency, mentioned above, reflects such concerns, which are legitimate so long as a comprehensive *ethnic cultural and religious baggage* is not imposed on the immigrant: *a modern polity is not an ethno-cultural community*.

one, but the legal and administrative one separating sojourn and permanent residency. Asylum seekers have a right to cross national boundaries to seek safety and apply for asylum, but we can make a more general claim in terms of the freedom of movement. Alan Dowty (1989, 55–94), for instance argues that closed borders are a new form of serfdom: freedom of movement should be allowed since it is a basic right which is needed for the exercise of other rights (Christiansen 1988, n. 22). I believe that the liberal egalitarian position (cf. 5.1.7.7) which insists that "the presumption is for free migration and anyone who would defend restrictions faces a heavy burden of proof" (Carens 1992, 25), is correct, if we also take into account the limitations stated in 5.1.7.2 and 5.1.7.5., and insist, as we have done in the previous section, that not all those who have a right to enter have a right to stay.

The limitations mentioned in section 5.1.7 are mainly concerned with (i) insecurity; (ii) disruption of public order and (iii) severe dilution of the receiving country´s political culture. One can imagine this happening, in times of war, or in rare situations where massive irregular border crossings may cause grave public disorder and civil strife, countries may be entitled to keep immigrants out using violent coercion, even as forced security or subsistence migrants. Today, these situations may indeed occur on borders between poor countries, or between poor and medium-income countries in times of famine or genocide, situations that generally require a quick and effective response from the international "community". It cannot honestly be invoked to describe the current situation of irregular migration to prosperous countries, not even tiny ones like Malta, as we have seen in Chapters 3 and 4. However, we cannot simply do away with these limitations, but rather should insist that they not be used as excuses to close borders unfairly.

Our discussion in previous chapters, however, highlights some other limitations (already noted in passing, above, in section 5.3.3.2), namely that some countries may have good reason to restrict entry and sojourn due to (i) low prosperity (GDP) and low human development (HDI), (ii) very high population density, (iii) ecological vulnerability, or (iv) a constitution (or a form of government) which is ill-equipped to deal with strangers and pluralism. These limitations seem to me pretty obvious, and I will not discuss them further here. Of course, refugees and forced migrants usually do not enter such countries unless to transit to other countries: the irony in the case of Malta is that these persons are let in when rescued at sea, but due to closed borders, they cannot freely leave the island.

5.3.4.2 The Use of Coercion at the Border

The above limitations indicate that there may be legitimate occasions when borders need to be closed, and when coercion needs to be applied to keep people out. To be sure, there are limits to the coercion a liberal democratic state may apply at the border. José Mendoza (2012, 21f) uses a Rawlsian thought experiment to propose the following principles regarding suspected irregular migrants caught after crossing the border:

> *One principle […] is that constitutional protections, such as due process, equal protection, and a right to an attorney, should be extended to everyone in all cases including removal proceedings, which is currently not the case in the US. Another principle could be that all persons present in a state should be assumed to be lawfully present until their presence is proved to be unauthorized.*

Similarly, when trying to keep migrants from entering, the use of lethal force is not proportional to the “offense”, and does not allow discrimination between forced security or subsistence migrants and others. Ceuta´s fence with Morocco is an interesting example of a literalist interpretation of proportionality and “coercion lite”: it is technically not lethal, but very unpleasant to approach and

extremely hard to get through. It is also very expensive to build and maintain; there is no way the US could afford something similar on the border with Mexico. Yet both the American and the Spanish fence have forced legitimate immigrants to risk their lives crossing the Sonora desert or the Atlantic coast of Africa to the Canary Islands. The "collateral damage" of such "proportional" use of coercion is morally acceptable only if, as discussed above, legal and accessible means of first entry are made available to persons whose security and subsistence cannot be adequately guaranteed in their home countries. Contrary to what most people think, this does not mean a never-ending flood of immigrants flying into wealthy nations: rather, it forces such nations to help guarantee safety and subsistence rights in their home countries, as Western European nations did after the collapse of communism in Eastern Europe. The flow quickly subsided, since, as Waltzer (1983, 38) rightly insists, "human beings […] move about a great deal, but not because they love to move. They are, most of them, inclined to stay where they are unless their life is very difficult there".

5.3.4.3 Conclusion: Two Priority Rules

The discussion in this section helps us to propose two priority rules, more fully stated in section 5.4, below. One is the **Immigrant Entry and Sojourn Selection Rule,** already sketched in section 5.1.7.7, and applies most obviously in the case of modern liberal democracies, but other states may have a duty to adopt some version of it, in the light of the discussion in this chapter. It states that "a modern liberal democracy which can afford to welcome migrants and asylum seekers should normally allow *legal entry and temporary sojourn".* A number of exceptions and limitations coming from the liberal egalitarian tradition, and considered "obvious" by many communitarians and civic republicans are included in this rule. The second rule is the **Recipient Country Selection Rule**, which helps

us take into account some of the issues related to a country´s capacity of hosting sojourners: prosperity, development, population size, ecological vulnerability, and the commitment to human rights enshrined in democratic constitutions which also create the capacity for a greater cultural pluralism and civic hospitality.

5.4 A Set of Priority Rules, and a Conclusion

I think that stating the priority rules introduced in this chapter can also help us to revisit the major issues we touched upon above, and hence summarize and conclude the chapter. I will do so in the following paragraphs, starting with the last rule mentioned in the previous section.

5.4.1 The Civic Hospitality Rules

3. **Recipient Country Selection Rule:** A polity has a greater moral duty to open its borders to immigrants if it is (i) prosperous (high GDP) and highly developed (high HDI); (ii) not too densely populated; (iii) not situated on an ecologically-sensitive territory; (iv) a liberal democracy explicitly committed to the promotion of human rights by its constitution.
4. **Immigrant Entry and Sojourn Selection Rule:**
    a. A modern liberal democracy which can afford to welcome migrants and asylum seekers should normally allow *legal entry and temporary sojourn*, except when this poses a *serious* and *credible* risk of (i) insecurity; (ii) disruption of public order; or (iii) severe dilution of its political culture and weakening of its political institutions, or else (iv) when certain restrictive policies can be shown to enhance liberty and equality on a cosmopolitan level in the long run.

b. This rule seeks to protect (i) the right to file an asylum claim, (ii) the right to freedom of movement, (iii) the value of creating a deeper unity between peoples of recognising their interdependence; it also follows from (iv) the cosmopolitan duties which encumber territorial stewardship and from (v) liberal and democratic arguments.

c. Polities without a liberal or democratic constitution, may refuse (b/v) above, but should also adopt some version of this rule for the other reasons in (b).

These rules summarize most of the discussion in the third part of this chapter (section 5.3.4), and have as their background the discussion of liberal egalitarianism, sovereignty and cosmopolitan right in the first two parts of the chapter (5.1 and 5.2).

5.4.2 The Civic Kinship Rules

5. Immigrant Residency and Naturalisation Selection Rule:

a. Immigrants whose security and subsistence rights cannot be adequately guaranteed in their home country have a clear *prima facie* right to enter and stay in countries which can afford to provide them such rights while not endangering the security and subsistence of their current population.

b. Other immigrants do not have such a right and may be removed humanely, ensuring the legal protections afforded to citizen defendants in civil law cases, unless a long time has passed (more or less, 5 to 25 years) and unless they have shown themselves to be quite well “integrated” into the political culture of the receiving polity.

c. Persons who are explicitly or tacitly allowed to stay beyond a sojourn period of a few months should be considered as long-term residents and potential candidates for

naturalisation. The *basic rights* of such residents should be respected and guaranteed as far as is affordable for the country, including some access to *welfare services* in case of destitution, and a flexible (not overly regulated) access to the *labour market* which reflects the real need of the economy while offering other workers some protection against wage competition and depression.

d. This rule seeks to protect (i) the right of refugees for protection, (ii) the socio-economic rights of *all* residents, (iii) the value of integrating persons whose contribution to the welfare of the polity (at least in time of economic prosperity) is tacitly or explicitly recognised, and who therefore enjoy some sort of "belonging" to the recipient political society; it also follows from (iv) the cosmopolitan duties which encumber territorial stewardship and from (v) liberal and democratic arguments.

e. The reasoning above may be adapted to the cases of irregular immigrants, and also to polities without a liberal or democratic constitution.

6. **Procedural Rule**: The local fine-tuning and concretization of the above rules requires fair democratic processes where those most impacted by boundary laws are adequately represented.

The first of the two rules above summarizes the discussion in 5.3.2 and 5.3.3 above, while the second comes from the conclusion of the second part of the chapter (5.2). Together, they reflect the position we have adopted which, in the light of Catholic Social Teaching, seeks to learn from both liberal egalitarian and civic republican/communitarian authors while proposing ways of overcoming the impasse between the hard-line versions of these two positions.

This is a preliminary presentation of the rules. Admittedly, the list is incomplete, and there may be tensions between some of the points listed above which we explore and try to resolve in Chapter 7. As we said before, these tensions cannot be fully resolved *a priori*, but if properly harnessed, they can drive jurisgenerative processes and concrete policy decisions which build a positive public consensus responsive to human rights and shared moral claims.

CHAPTER 6: THE BOUNDARIES OF ISRAEL: INSIGHTS FROM THE OLD TESTAMENT

6.0 Introduction

This chapter turn to the Old Testament[266] *using critical methods, seeking inspiration in the sacred texts of a venerable and complex "national" tradition. We will not focus on the whole corpus of the Christian Bible, given the limitations of space and given the particular setting of the New Testament in a foreign-dominated cosmopolitan empire, which arguably is more remote from the reality of modern-day polities than the Old Testament. As we approach the biblical text, we shall ask ourselves: How does the Bible construe human political realities and their relation to migrants? How does it complement modern political philosophy in taking stock of the age-old phenomenon of human migration? What ethical demands does it place on political societies as regards their relations to the stranger?*

[266] We follow these conventions in this chapter: (1) References to biblical books follow the shorter forms of the abbreviations in the Chicago Manual of Style (16th edition), sections 10.48-10.50, except when they are included in citations. (2) Transliteration of words in Hebrew follows BRILL´s scholarly transliteration system for Hebrew, which is loosely based on the *Encyclopaedia Judaica* rules (Rietbroek 2011), except when they are included in citations. (The Chicago Manual of Style (11.111) does not privilege any particular transliteration system for Hebrew.) (3) The divine name is transliterated as "YHWH" in biblical citations or references to precise biblical texts; however, the divine name "Yahweh" is used in discussions about the principal divinity in the history of Israelite Religion. Ultimately, as suggested by the biblical tradition itself, it is a matter of the reader´s discernment (made on the basis of context and priestly dignity), rather than that of the writer, whether to vocalize or not the divine name when one proclaims (qrʾ) a written (kṯb) text, and what to substitute for it in the latter case. (4) Biblical citations (except when included in other citations, or where specified otherwise) follow the New Revised Standard Version, Anglicised Catholic Edition (available at http://www.biblegateway.com), amended according to rule 3 above.

The complexity of the biblical treatment of the subject, and the ambiguities present in some parts of the Old Testament provide valuable resources towards a deeper reflection on a number of key concepts: ***hospitality and kinship*** *(6.2),* ***national identity*** *(6.3), "****strangeness" and "otherness"*** *(6.4). The biblical approach also allows us to deepen the* ***historical dimension*** *of our investigation which helps us to* ***refine and expand on the preliminary priority rules presented in the previous chapter*** *(6.6). All this leads us to the following chapter where a new framework for the ethics of migration is proposed.*

6.1 The Bible as Heuristic Source for Political and Ethical Thought

6.1.1 The Bible as Conceptual Source of Modern Political Thought

The Bible was written in the political setting of antiquity, and we assume here that there is no direct way of going from the practices, narratives or laws in the Bible to valid policy recommendations addressed to modern polities in the 20th century. However, Scripture is useful to our reflection on immigration policies in the 21st century in three ways: (a) as a **conceptual source** of modern political thought which cannot simply be bracketed or ignored (as will be argued below), (b) as an **inspiring classic** that documents how a particular society dealt with the phenomenon of human migration over a number of centuries (cf. section 6.1.2), (c) as an **authoritative text illustrating ethical conduct for believers** (cf. section 6.1.3). Let us start with the first point. As a conceptual source of modern thought, the Bible has *praxically* inspired both nationalist political movements in modernity (6.1.1.1), and *speculatively* stimulated philosophical reflections on justice in political societies (6.1.1.2).

6.1.1.1 The Bible as Praxical Source for Modern Nationalist Movements

Va, pensiero, or the "Chorus of the Hebrew Slaves" from Verdi´s *Nabucco*, has a central place in the history of the Risorgimento[267]. Based on Ps 137, the chorus uses biblical language referring to the peoplehood of Israel, which the audience rapidly associates with a modern nationalistic struggle for independence from foreign rule. Biblical texts and narratives have a long history of being adopted by groups of persons who consider themselves the biological or spiritual progeny of the "Exodus group". Of course, the Risorgimento is a movement that most scholars consider "nationalist" in the proper sense of word, or as that word has come to be understood in light of the events of the 20th century; "modern" nationalisms, as Walker Connor argued in the 1990s, are mass political phenomena, the products of mass cultures, which can develop only in modern states. Yet, the biblical texts which (modern) nationalist movements often used and referred to in their rhetoric are examples of a (pre-modern) "nationalism" — a politically-active discourse based on the ostentation of (real or imaginary) ethnic ties and sentiments, seeking to define and promote the interests of a particular human group.

Anthony Smith (2008) argues quite convincingly that nationalism does have "pre-modern" incarnations which he classifies under three paradigms: "hierarchy", "covenant" and "republic". These forms of nationalism (hierarchical/covenantal/republican) are already present in some of the political arrangements of antiquity: **empires** (such as those in Mesopotamia and Egypt, which empha-

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[267] Though revisionists like Roger Parker (2007) may doubt Verdi´s or his librettist´s commitment to Italian nationalism, or whether the chorus was actually encored on the première night, there is no doubt that the text soon took a life and a meaning of its own in Italian political history, whatever the original intention of the author.

sized *hierarchy*, and presented it as divinely-mandated), **tribal confederations and ethnoreligious kingdoms** (such as biblical Israel, which emphasized the idea of a *covenant* with God and among tribes, though it also included elements of *hierarchical* nationalism promoted in times of centralized monarchic rule), and **city-states** (such as those in Ancient Greece, some of which promoted *republican nationalism*, while others developed ideologies supporting *hierarchy*, always in accordance with the political propensities of their respective city gods). At the end of the Middle Ages and in early Modernity, the Bible (combined with Roman legal texts and Greek philosophical writings) had a central role in mediating these ideas and shaping the proximal precursors of what we call "nationalism"[268]. Of course, even modern nationalist movements, starting with the Risorgimento, make ample use of the Bible, as we have hinted above. Moxnes (2011), for instance, traces how the various versions of the "historical Jesus" resulting from the different quests in the 19th and 20th centuries mirror the nationalist ideals of the different exegetes.

6.1.1.2 The Bible as Speculative Source for Political and Ethical Thought

The adoption of biblical stories and concepts by nationalist rhetoricians and thinkers has meant that the biblical worldview, whether appropriately grasped or misrepresented, has often shaped new constitutions, laws and policies, which the intelligentsia then sought to justify philosophically *a posteriori*. All this shows how powerful the Bible can be, both as a spiritual and rhetorical tool in the

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[268] Forms of *hierarchical nationalism* were developed towards the end of the Middle Ages, notably in Muscovy, France, England and Spain, often justified with reference to *hierarchical* elements in the Bible (A. D. Smith 2008, chap. 4). Forms of *covenantal nationalism* emerged by the sixteenth century in several European states (promoted by political elites in Russia, Poland, England, France and Denmark, and also by religious reformers in Scotland, Holland, England, the Swiss cantons and the American colonies), very much rooted in radical readings of the *Covenant* in the Old Testament (ibid., chap. 5). The *republican nationalism* of the American and French Revolutions, though presented in a "secular" wrapping (especially in France), owes as much to biblical covenantalism as to Athenian republicanism (ibid., chap. 6).

hands of a faith-based political activist, and as a heuristic tool in the hands of an ethicist or political scientist, even if she does not consider herself part of the Judeo-Christian tradition. As contemporary philosophical discussions struggle to rethink Westphalian state sovereignty in a globalising world (which continuously invites us to take a new hard look at the historical conditions in which modern political theory was born), and as Catholic Social Teaching points us towards new sources of inspiration to develop a more concrete and workable ethics of migration, the Bible becomes an obvious and privileged locus of investigation.

In his famous 2004 debate with the then cardinal Joseph Ratzinger, Jürgen Habermas presented secularization as a twofold and complementary learning process. Religions and theological thinking can learn from and be enriched by secular reason, and purified from tendencies of imposing their worldview on all by using violence or coercion of consciences. Similarly, philosophy and secular political reason (with their "thin" or "moral" conceptions of practical reason) has much to learn from religion and theology (and their "thick" or "ethical" approach to practical reason), given the "ethical abstinence of a postmetaphysical thinking, to which every universally obligatory concept of a good and exemplary life is foreign" (Habermas 2007, 43). Faith-based *ethics* (and any ethics based on a wholesome comprehensive notion of the good) not only helps *motivate* citizens to act *morally* (through practices and narratives learnt in one´s community which could be deployed positively within civil society) but also provides concepts that *transform* the very substance of cross-cultural, universalist and secular "public reason" or "morality":

> *Philosophy must be ready to learn from theology, not only for functional reasons, but also (when we recall philosophy's successful "Hegelian" learning processes) for substantial reasons. This is because the mutual compenetration of Christianity and Greek metaphysics not only produced the intellectual form of theological dogmatics […]. It also promoted the assimilation by philosophy of genuinely Chris-*

> *tian ideas. This work of assimilation has left its mark in normative conceptual clusters with a heavy weight of meaning, such as responsibility, autonomy, and justification; or history and remembering, new beginning, innovation, and return; or emancipation and fulfilment; or expropriation, internalization, and embodiment, individuality and fellowship. Philosophy has indeed transformed the original religious meaning of these terms, but without emptying them through a process of deflation and exhaustion (Habermas 2007, 44–45).*

Our discussion explores a series of "normative conceptual clusters" related to the phenomenon of human mobility, as they are presented in the Bible, using narrative and juridical literary genres, in view of enriching the philosophical reflection in the previous chapter and present an ethical framework in the next chapter which will integrate philosophy and theology while remaining accessible to dialogue partners who are non-believers. Of course, modern Political Philosophy has inherited many of the concepts we shall discuss below and reset them in a universalist, cross-cultural conceptual framework which makes the historical development of such notions opaque and separates them from the underlying worldview. Taking the "detour" through the original texts and contexts of a particular tradition will help us return to universal concepts more keenly aware of their deeper meaning, nuance and concreteness. As noted in the introduction, we explore three conceptual clusters in this chapter: **hospitality and kinship** (6.2), **national identity** (6.3), "**strangeness" and "otherness"** (6.4).

6.1.2 The Bible as Inspiring Classic

The Bible is not only a source of *concepts* which are useful to formulate ethical theories and **deduce** moral principles, but also a source of *narratives* which help us see and comprehend the reality we face in our daily lives from a different point of view through the use of imagination, which helps us cultivate moral virtues and make **inductive** prudential judgments on complex contemporary issues. The Bible is a showcase of human experience, and a "classic" in the Gadamerian sense. It has a way

of reformulating *history* and narrating what is *beyond history* — what we call "myth" in the best and richest sense of the word[269]. All this provides great food for thought, especially for those wanting to "think outside the box". As Paul Ricœur (cf. 1959; 1974) would say, *le symbole (mythe) donne à penser*. In other words, embarking on a reflection on the *ethos* of a particular tradition and a particular "people" implies a shift from the universalist discussion of *morality* (*Moralität*), which we presented in the previous chapter, to an *ethical* perspective (*Sittlichkeit*): the richness of this "particular" perspective — which nonetheless unveils *eternal and universal* aspects of human social behaviour, albeit using the *particular* lens provided by the narratives and concepts of a unique tradition, more than qualifies it to be a suitable conversation partner in a public dialogue on the issue of borders, sovereignty and human migration.

6.1.3 The Bible as Authoritative Source for Jewish and Christian Ethics

"The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself" (Lv 19:34). Biblical texts like this have an authority for believers — especially practicing Jews and Christians — which does not obtain for a secular audience; even though the natural law tradition claims that the universal moral principles expressed in the biblical text may be deduced through human reason from other sources (cf. International Theological Commission 2009), the text itself does not have the same purchase on non-believers as it does on believers. While noting this fact, and being conscious that believers will read the reflections in this chapter from a different stance, and probably find them more convincing, we may nonetheless seek to remain in dialogue

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[269] Cf. Ricœur´s (1980) remarks on Rudolf Bultmann´s project of demythologization of the biblical text. For other reflections on the function of myth in the Bible see Levenson (1987, 102ff) and Westermann (1984, 4ff).

with all “people of good will” in this chapter. In our discussion, we view the Bible mainly as a narrative through which reality is “revealed” (in a secular sense), rather than as a code of religious law through which morality is revealed (in a theological sense).

The critical methodology and narrative focus implicit in this approach helps us to avoid some of the critiques of “cherry picking”, which are often addressed to moral theologians who construe the Bible as a univocal, coherent and systematic code of religious law through which God reveals morality directly to believers. If one looks up terms like “stranger” or “border” in a biblical concordance, several texts come up, some suggesting hospitality and openness, and others provoking fear of the stranger and the need for closure to avoid contamination from evil external influences, be they religious, moral, political or cultural. To be sure, examples of conduct towards strangers which most person today would deem immoral, abound in the Hebrew Bible, sometimes permitted or even presented as actions “commanded” by God. Classical examples of this are the “ban” (which implies the evils of “genocide” and “terrorism”) in the deuteronomistic history, and the repudiation of wives on ethnic grounds given a valid common law marriage (which is clearly an evil, at least from a Catholic viewpoint) in Ezra-Nehemiah. Ethical scholars who adopt a simplistic and non-critical approach to the Bible often cherry-pick from the Bible the texts which seem to “prove” the ethical posture that they consider correct, following their understanding of their religious tradition, or on the basis of the common-sense notions of right and wrong prevalent in their day and age. Other texts are simply ignored, or explained away in a footnote. Such scholars end up creating *ad hoc*

their own canon within the canon, substituting their authority for that of the Church, or to engage in cover-up operations of scarce intellectual honesty[270].

The excommunication of Marcion of Sinope in 144 CE meant that ethical and cosmological coherence were not the primary criteria in establishing the canon. The Church values the *narratives* and the *worldview* of the Hebrew Bible, complete with bans and repudiations and xenophobia (sometimes presented as divinely-inspired commands), as an intrinsic part of *revealed salvation history*[271], and is aware that the *simplistic* reading of singular texts cannot be taken as a *sole* source of a Christian or universal moral law (Pontifical Biblical Commission 1993). Since then, and especially since Augustine proposed the adoption of Tychonius´ rules for the interpretation of Scripture in *De Doctrina Christiana*, there has been a lively discussion in mainstream Christian Churches on how to use Scripture correctly and honestly in ethics (cf. Spohn 1996). In our reflection, we use both **synchronic approaches** (which are centred on the final form of the text) and **diachronic approaches** (which focus on historical contexts through which the text emerged), but prefer the latter since they lend

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[270] "At one level, it is important to acknowledge [a certain] ambivalence in the Christian tradition and to counter passages and stories which could be used to justify hostility towards and oppression of asylum seekers. As postcolonial biblical scholars have pointed out, the Bible is a multilayered and ambiguous text and it is vital to challenge exclusive and oppressive elements within it. At another level, however, it is important to hear these negative voices and to engage with them. This is because the hatred of foreigners and immigrants found in the Bible is no different from many people's attitude towards asylum seekers today" (Snyder 2007, 356).

[271] The idea of a "revealed salvation history" can, of course, serve to create yet another "canon within the canon", and, indeed any "canonical" reading of the Bible, which seeks to make sense of the many books and literary genres which are contained in the canon, requires some organizing ideas or principles which allow us to make sense of the whole. However, the notion of "revealed salvation history" is a deeply ecclesial criterion, derived from the Bible itself, and not simply a particular theological doctrine considered central by a theologian at some moment in history.

themselves better to the reflection we would like to make on the biblical source in the context of the present work.

6.2 Hospitality, Yes; Kinship, No: Integration in the Bible

In this section we will quickly introduce what may be considered as the major problem with the application to modern polities of the biblical approach to strangerhood, namely, its **resistance to the notion of integration**. In the rest of the chapter, we will seek to understand the *sources of this problem*, and determine *what an ethics of migration can learn from the Bible due to, and in spite of, this problem*.

One of the key issues raised in chapter 4 is that most Western polities today do not object to some understanding of the "right to hospitality", not only for castaways or people lost in the desert[272]. The more serious problem is moving from mere hospitality to integration, recognising the right of certain "former sojourners" to become "future citizens" through the granting of permanent residency and the implementation of sensible integration policies, converting the "other" to a "kin". Biblical Israel found ways of both **hosting** *sojourners* and of **integrating** *foreign* individuals and *other* ethnic groups so as to make them part of the *self*. In this section we will see that the hospitability of Israel is *explicit* in the text, while the openness and inclusivity of Israel is *implicit and hidden* by the biblical editors.

[272] For instance, the right of people to enter a country to apply for asylum is generally admitted (even if petty and Kafkaesque policies are put into place, seeking to make this physically and legally impossible) and visitors having some money to spend and no urgent motive to stay are actively lured in as "tourists" or "potential investors".

6.2.1 Hospitality: Transit and Sojourn

The first level of hospitality concerns the **right of safe transit** (*maʿᵃḇār*) of the non-resident (*nŏḵrî*) through one´s land; refusal of such a right is deemed by the Bible as a grave evil, as can be seen in Nm 20:17f; 21:22f[273]. The second level of hospitality, which is to be shown towards wayfarers or temporary sojourners, is one step further than the mere right of transit. We come here to the proper meaning of "hospitality", which translates the Hebrew *ʾôreaḥ,* that is, the **"taking in of a guest"**. Though the host is not obliged to take in a guest, once she does, violation of hospitality is considered a grave evil in the biblical worldview, as illustrated by the sin of Sodom in Gn 19: Lot would rather offer his daughters to be raped than renege on his offer of hospitality. Yet, Lot´s ability to provide hospitality is limited by the fact that he himself is a "guest", a temporary resident in Sodom (Gn 19:9); he is quickly reminded of this by the men of the city when he tries to protect his guests[274]. According to the Bible, Sodom's inability to offer hospitality and to recognise the dignity of strangers makes it an unliveable, uninhabitable space, a non-city doomed for destruction (Bianchi 2009, 82). Lot´s two guests (called "messengers" or "angels" [*malʾāḵîm*] in vv. 1 and 15, and

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[273] Here the Israelites request to pass unharmed through the land of the Edomites and Amorites without looting the land: "we will not turn aside into field or vineyard; we will not drink the water of any well". Both the Edomites and the Amorites refused, and this is considered by the Bible as unacceptable. In the first case, Israel turned back, but in the second case the Israelites decided to pass through all the same, were attacked, and while defending themselves ended up conquering the land (according to the text). In the Rabbinic midrash, this text is seen to argue that refusing the right of transit in times of peace (especially to persons or groups which do not pose a threat of invasion or conquest) is ethically unacceptable (Novak 2001, 232). The irony of the text is that, by pretending that the weak Israelite tribes were a real military threat and refusing them safe passage, the Amorites ignited the ire of Yahweh, and ended up totally crushed by this puny band of refugees.

[274] In comparison, Abraham does not need to be reminded of the precariousness of his situation as resident alien in Egypt and Canaan; he takes the initiative of offering the sexual services of his wife-cum-half-sister to ingratiate himself with his hosts (Gn 12:10-20; 20).

"humans" [*ʾanāšîm*] in vv. 8, 5, 12, 16) were part of a group of three who had just visited Abraham in Mamre (Gn 18:1-33) where they were shown extraordinary hospitality. We discuss Abraham´s hospitality in Mamre in more detail in Chapter 6; it is a well-known paradigm for Jewish and Christian "settler" hospitality (Bianchi 2009, 66ff; Moyaert 2011; Sacks 2006), where Abraham acts as though he were an autochthonous landowner, all the while keenly aware that he, too, is a guest. To be sure, the Bible is not ashamed to admit that Abraham´s hospitality is not always practiced among his descendants (e.g. Jgs 19)[275].

6.2.2 Kinship: Residency and Belonging

Some strangers simply want to pass through, others may require hospitality for a few days or weeks as wayfarers or sojourners, but still others stick around. This is where things start to become more complicated, when the *nŏḵrî* becomes a *ger* (non-integrated resident[276]). We discuss the problems

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[275] This text mirrors the Sodom story, but this time, it is the Benjaminites who gang rape to death the Judahite concubine of a Levite who was being hosted by an Ephraimite (another vulnerable non-integrated resident like Lot). The reader gets the impression that the Israelite wayfarers would probably have been safer had they stayed the night in Jebus, a *nŏḵrî* city, instead of Gibeah, an Israelite city.

[276] The Hebrew word *ger*, as we shall see below, refers to a person residing in Israel but not considered part of the people of Israel in general, or not fully integrated into the native Israelite population of a particular region (e.g. a non-Judahite or a non-Jerusalemite Israelite residing in Jerusalem). Scholars today claim that the lack of integration was mostly due to landlessness and should be understood more in terms of class difference than on the basis of ethnicity, though the landlessness may be linked to immigration many generations prior (Jobling 2009), or to the pauperization of autochthonous ancestors. "Immigrant" is therefore not a very good translation. Similarly, "temporary resident" or "sojourner" do not properly convey the reality of persons whose integration is long due, but being a political hot potato, are permanently conceived as individuals who will be "moving out" sooner or later. "Resident alien" is legal jargon popularized by US immigration law, however, referring to non-nationals as "aliens" sounds odd and possibly offensive in everyday language in most English-speaking countries. Furthermore, using immigration terminology of a supposedly egalitarian *jus soli* polity to designate the class-related alienation of native-born persons completely warps our understanding of the Hebrew concept of *ger*. "Non-national resident" comes closer but the words "nation" and "national", when used to translate biblical concepts, are problematic, and should be understood as premodern references to the social "we", rather than prefiguring the modern (ethno-cultural or civic) sense

relating to this transition below, in section 6.4, as we identify different meanings of the term *ger*, and different attitudes towards the "other" who wanted to become part of the "self" present in the Bible. In general, we see a double attitude. The editors of the Old Testament who had returned from the Exile in Babylon identified themselves with the *gerîm.* Yet, at the same time, they felt threatened by those who had not gone into Exile, the so-called "people of the land", who, being labelled as "foreigners" living in Israelite space, were technically *gerîm*. The typical biblical attitude towards the *ger* is to propose laws that protect her rights, but do not offer legal, religious or political means for these persons to emancipate themselves from the status of subordinate metics or second-class citizens and become fully integrated members of Israelite society, or the returnee ruling class in Yehud. The only real means of political integration, after the canonical listing of a set of faithful client "tribes" by the monarchy, was to claim to be linked by blood to these tribes, and if that was put into question by one´s neighbours, one could only "re-establish" one´s political, cultural and religious belonging through intermarriage.

> *"The only way [resident aliens] were able to gain full status in that landed society was to somehow or other assimilate with the people of Israel. The process seems to have taken a number of generations in order to be complete. It was usually done through intermarriage, especially the marriage of gentile women with Israelite men. At least in the explicit norms of Scripture, intermarriage was only prohibited with the sons and daughters of the Canaanite nations" (Novak 2001, 223).*

After the Exile, when the mixing of populations became the inevitable reality in a world of transnational empires, a dominant group of returnees to the Persian province of Yehud, sought to block the access of the people they considered "foreign" to integration by the only available means, and preached divinely-mandated endogamy. We hear voices of protest against this group in biblical

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of "nation". We thus resort to the seemingly tautological term "non-integrated resident", mostly for lack of a better term.

texts considered “secondary”, such as Ruth and Jonah. Though, at the level of ideas, these voices were probably drowned by those of politicians, religious leaders and intellectuals supporting strong identity markers and “ethnic” purity, pragmatic solutions were found on the ground by legal scholars who silently bridged the divide between the self and the other using clever legal hermeneutics. Post-exilic Judaism eventually developed a process of naturalisation-conversion (*giyyûr*) which allowed “others” to become part of the Jewish “self”. The problem with *giyyûr,* when conceived as the only pathway to political integration (e.g. in the Hasmonean Kingdom, and to a great extent, in modern Israel), and especially when imposed via social pressure or public law on the immigrant, is that it assimilates the other into “national” religion and culture, and does not allow legitimate plurality. Even so, and in spite of the antiquity of the practice, the canonical Bible does not mention *giyyûr*, indicating that the final editors of the Old Testament books (and possibly the community which established the canon of the Hebrew Bible) preferred to keep silent about the possibility of a systematic integration of outsiders within God´s people.

A key to understanding why the Bible finds it so hard to shift from hospitality to kinship, to admit that integration has always happened in the history of Israel and to provide the legal, narrative and conceptual framework necessary to make this transition from stranger to kin a normal practice is Israel´s insistence on its distinctiveness. Let us therefore start to unravel the integration problem in the Bible by discussing this notion.

6.3 National Identity and the Distinctiveness of Israel

6.3.1 Israel´s Awareness of Its Distinctiveness

Tracing the understanding of ethnicity in the history of sociology in the US, Roger Waldinger observes that what the early scholars had in mind was the Hebrew notion of *gôy*, rendered in modern scientific jargon through derivatives of *éthnos*, following the Septuagint rendering of *gôy* (Waldinger 2003, 21–2). The *awareness* (and polemic assertion) of distinctiveness of one´s people (*ʿam*) from among the nations of the world (*gôyim*) is indeed characteristic of the Hebrew Bible. Though, *in actual fact* (as far as can be discerned from history and archaeology), it is very hard and maybe impossible to determine a trait which clearly distinguishes pre-exilic Israel from the other peoples of the Near East (monotheism, aniconism, and other characters have been tried, but they did not exist in pure form at the time and were not exclusive to Yahweh religion in biblical Palestine), the Old Testament is *written and edited in a way* that seeks to convince the reader that such a distinctiveness is obvious and indubitable. The process of editing and canonizing of the Bible was "part […] of a wider struggle to articulate and propagate national-cultural identity during a period when such identity was threatened with major change and even extinction" (Machinist 2000, 426). As we shall see below, Israel´s awareness of its distinctiveness lead it to shape a national identity that is (a) anti-autochthonous, (b) narratively-construed, (c) anamnestically-solidary (cf. 6.3.4), and (d) religious.

6.3.2 An Anti-Autochthonous Identity

Peter Machinist (2000, n. 22) lists 433 "distinctiveness" passages in the Old Testament. It became clear to the groups involved in the process which gave us the Hebrew Bible that it was futile to try to re-establish an independent Israelite or Judahite kingdom with clear territorial borders in a world

of multicultural and multi-religious grand empires. Thus, a normative-narrative text is produced which serves as an ideological boundary wall around the Palestinian clans that subscribed to the Yahweh-worship considered "orthodox" in Jerusalem in the post-exilic period. Machinist draws two important conclusions from his survey of "distinctiveness" passages in the Old Testament. Firstly, given their *quantity and ubiquity*, "distinctiveness […] seems to have been an established and not unpopular preoccupation in Israel well before the advent of the canonical organizers in the sixth century BCE" (ibid., 431); hence this **concern about Israel´s uniqueness is not *merely* a post-exilic one**, but one which has deep roots in the old literary and cultic traditions of Yahweh religion. Secondly, given that they focus mainly on the distinctiveness of the *people* of Israel (and of her *God*, who is the source of such uniqueness), it is presumed "that **this people has a beginning *within* already known time**: the Exodus from a long established Egypt" (ibid., 432, my emphasis).

Let us start by examining the **second conclusion** concerning the "historical consciousness" of Israel; we deal with the first conclusion in the following section. A people which traces its origins *outside* of time (using "classical" cosmogonic narratives) cannot claim to be truly distinctive since it posits itself as co-originary and coextensive with the first human inhabitants of the earth (and their progeny): *cosmogony "totalizes" while history "particularizes"*. From the point of view of Egyptian or Mesopotamian cosmogony, while "new" peoples may be created through separation from that origin, such peoples will be only dysfunctional peoples, barbarians, severed from the origin and from the order and harmony it provides: *distinctiveness is tantamount to decay* (Machinist 2000, 434; Albertz 1994, 24f). The Bible does not directly dispute the idea that the ancient inhabitants of the earth may have been Egyptians (or Mesopotamians, or Canaanites) *by creating a parallel cosmogony* (in the classical sense); nor does it deny that Israel´s ancestors may indeed have been born

of such "ancestral peoples"; it simply claims that the Israelites were separated from their ethnic and cultural roots by Yahweh´s salvific action *within history* and constituted into a *new* people and that this separation and novelty was a "*very good thing"*. Biblical cosmogony also readily concedes (mostly for the sake of the argument) that while other peoples may have been created on their own land and have a *prima facie* title to the land they reside in (cf. Dt 32:8-9), Israel´s ancestors were removed by Yahweh from their ancestral lands, and then ordered to invade and take for themselves the land of other peoples. This means that the Israelites have *no real "originary" title to the land* (they have simply been stationed there as stewards by Yahweh) and can be removed (by Yahweh) at any moment. It also means that Israel, as a nation, *can exist apart from the land*.

Indeed, Old Testament prophetic theologies concur that this precarious link to the land is what Yahweh uses to chastise and purify Israel when it tries to copy the decadent ways of its older and more powerful neighbours. Leviticus 25:23 insists that "the land is mine [Yahweh´s]; you [Israel] are non-nationals and residents (*gērîm w^{e}tôšābîm*) with me". Clifford (1988) argues that even in the cosmogonic priestly creation narrative of Gn 1, when humankind is ordered to "fill the earth and subdue it" (1:28), the text is not intended to give humans license to exploit nature (as some anachronistic modern interpreters would have it), but it is rather projecting backwards Israel´s "historic' Exodus narrative: Israel needed to fill and conquer Canaan to have a land of its own (Nm 32:21f; 1Chr 22:17-19; cf. Gn 10:1-11:9; Dt 32:8-9).

In a way, the cosmogonic setting of Gn 1 universalizes this experience and hints that all peoples have been reconstituted in the course of history and have had to conquer the land they now claim as their own. After this creation narrative, the Bible presents a series of "cosmogonic myths" (inte-

grated within a genealogy, and laid out as quasi-historical narratives – cf. Westermann (1984)): Adam and Eve (the banished founders of the first family), Abel and Cain (the fugitive founder of the first city), Noah (the migrant and colonizer after the flood) and the Babel story (where peoples spread out from a dysfunctional and uninhabitable city to found all the known nations away from it). All these stories repeat the same theme that nobody was created on the land she is living in and so all are daughters and sons of migrants, and no nation has an absolute right to the land it is occupying. Without resorting to a "classical cosmogony" in competition with that of "older" nations, the Bible subtly demolishes the claims of people who consider themselves autochthonous.

Furthermore, as Machinist (1991, 432; 1994, 50ff) argues, Israel turns on its head the traditional claim made by the ancient empires (Egypt, Mesopotamia, China) that to be an "outsider" is to be a barbarian, member of an inferior people. Rather, for the Bible in its polemical rhetoric, to be a "native" (such as the oppressive Egyptians in the Exodus narrative, the Canaanites in the conquest narratives, and the Baylonians in the Exile narratives) is to be "contaminated", while to be "separated" and constituted as a people *on the outside* is a "virtue". Distinctiveness, in the biblical worldview, is not decay, but rather *a call to excellence in worship, social justice and the use of political freedom*, in a world dominated by "old", idolatrous and oppressive nations.

Political philosophy and universalist moral thought are not always comfortable with history and particularity, but ironically, consciousness of the latter two is essential to the development of the former disciplines. **Israel´s distinctiveness lies in the historical consciousness that a nation´s pedigree and claim to antiquity is no guarantee of its holiness, justice and respect towards the politically marginalised**. Nations are not tasked to *stay* "civilized" as the gods made them in some golden

age beyond history; rather, every nation, given humankind´s history of sinfulness, has to struggle in history to *become* a "civilized" nation. This is not an easy process, as we shall see; even though Israel construed its history as one of marginalised, oppressed and excluded "others", it did not always treat the "others" in its midst as the Israelites wished to be treated while in exile, and as the Israelite slaves of the Exodus narrative desired to be treated in Egypt.

6.3.3 A Narratively-Construed Identity

There is a distinction to be made between the *consciousness* of being "historical", "non-originary", "sons and daughters of wanderers" (which makes Israel "distinctive" insofar as other nations did not have such a consciousness, and insofar as Israel saw itself as "distinctive" for this reason), and the *narrative* which is used to convey this idea. Machinist´s first conclusion above, as the reader will recall, is that the ubiquity of the distinctiveness passages in the Bible suggests that the *consciousness* was deeply rooted in Israelite society and not merely something that post-exilic authors could have invented *ex nihilo*. However, the *narrative* which is told to make sense of most biblical assertions of Israelite distinctiveness — the Exodus-Wilderness-Conquest narrative — is not, in itself, a *distinguishing* feature, since other nations in the Mediterranean formed in the Late Bronze to Iron I transition seem to have told similar stories about their origins[277], and is *historically problematic*.

The history of pre-state Israel is told, in the Bible, as a three-part Exodus-Wilderness-Conquest narrative. The "Exodus-Wilderness" part of the narrative, in its essence, is not too problematic from an archaeological and historical point of view: one can assume that small groups most probably did

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[277] Moshe Weinfeld (1988a; 1988b; 1988c) has discovered similar reversals in the tales of the foundation of cities in the Greek and Roman world: city founders are often portrayed as descendants of a hero coming from the outside.

migrate in and out of Egyptian-controlled areas, and in and out of Palestine, at the time, as has always happened throughout history of the Near East (Albertz 1994, 45). The "Conquest" part of the narrative, however, is much more problematic. In the past, three scenarios have been proposed concerning Israel´s presence in Palestine in the pre-state period: (a) **conquest from outside** (the narrative as presented in the Bible, and defended by W. F. Albright and his disciples); (b) **infiltration of pastoral nomads** (proposed by A. Alt and M. Noth, and by their disciples) and (c) **indigenous revolution** (proposed by G. Mendenhall, and in a modified version, by N. Gottwald). Today, most scholars reject (a), while considering (b) and (c) obsolete, at least *as originally presented* (Dever 2003, 167). Scenario (c) retains some value since "it draws attention for the first time to the largely indigenous origins of the early Israelite peoples, which previous academics tended to resist but which virtually all scholars now accept"[278] (Dever 2003, 74; cf. Killebrew 2005, 181 for a more nu-

[278] According to the **revolution scenario** (more recently recast as a **ruralisation scenario)**, many peasants, shepherds and poor labourers — given the hard economic times and weakened military might of the Palestinian city states — "revolted against their aristocratic masters in the cities and built up an independent tribal and egalitarian society outside the feudal structure" (Albertz 1994, 71), possibly supported by groups of social outsiders and immigrants escaping other declining urban areas (e.g. convict forced labour camps in Egypt), or semi-nomads forced to settle permanently, given the decline in trade (cf. Machinist 1994, 35). The archaeological evidence seems to support at least the notion of a mostly indigenous origins of early Israel, given a decline in the population of the Syro-Palestinian cities during the late Bronze – Iron I transition, and the establishment of unfortified new settlements in the hill country and semi-arid regions, a development which became sustainable during Iron I, with the development of new agricultural technologies (e.g. terracing, impermeable cisterns, iron-tipped tools – cf. Stager (1985, 5ff)). The original conjecture of a *violent revolution* (in Mendenhall and Gottwald), with its Marxist underpinnings, has been seriously disputed, but one could however imagine a *gradual depopulation and exodus* from the cities and their surrounding plains (including groups of fugitive slaves and serfs), as suggested in the modified version of this thesis (proposed by C.H.J. de Geus, N.P. Lemche and L.E. Stager). The unfortified new settlements unearthed in recent decades by archaeologists indicate that their inhabitants did not fear being attacked by their old masters in the city states. Cf. Stager (1998, 128–142), Hackett (1998, 193ff).

anced but similar conclusion). Scenario (c) has given rise to the **ruralisation** scenario considered most plausible today by the leading scholars[279].

To be sure, this conclusion does not completely discount the "Exodus" part of the biblical narrative: claiming that Israel arose *largely* from indigenous peoples in Iron I Syro-Palestine, does not exclude the possibility that small groups of immigrants from the outside may have mingled with the families and clans who fled the cities and colonized the hill country of Palestine, and contributed their own inspirational family and clan narratives to the bigger "urban" group.

The distinctiveness question, nonetheless, is not completely settled if we accept that the pre-state Israelites were mostly descended from Syro-Palestinian indigenous people. Was there an Israelite "tribe" or "people" or "tribal amphyctyony", distinct from other populations in the hill country of Palestine, before the establishment of a monarchy which called itself and its faithful client tribes "Israelite"? Diana Edelman claims that, "given the present state of **textual** and **artefactual** evidence, *nothing definitive can be said about the ethnicity of premonarchic Israel*" (Edelman 2002, 25; my emphasis). As **regards textual (historical) evidence,** there are two main sources available to historians, at present: the *Bible* (in particular Jo and Jgs) and the *Mernaptah Stele*; Jo and Jgs were written many centuries after the events and are seen today as anachronistic and idealized reconstructions of a period mostly unknown to the authors, while the Mernaptah Stele gives us little reliable information and some scholars even doubt whether it speaks of Israel or Jezreel (ibid., 36).

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[279] The scenario of a total conquest (Jo 11:23) is contradicted by the Bible itself (Jo 13:1), and the assumption that most of the indigenous peoples were eliminated through the ban and disappeared is also contradicted in the Bible (Jo 11:13 claims that only Hazor was utterly destroyed) - (cf. Coogan 2010, 205f). Regarding the other scenarios cf. Coogan (2010, 224), Stager (1998, 128–142), Hackett (1998, 193ff).

As regards the **artefactual (archaeological) evidence,** the classical methodology, which supposedly identifies the presence of "Israelites" — as a population group clearly *distinct* from other groups in Iron I Syro-Palestine — on the basis of some artefact, which is visibly distinct from contemporary artefacts in other areas in the Near East, is extremely suspect (cf. Skjeggestad 1992; Edelman 2002; Whitelam 1989). To make such comparisons in *archaeology*, one needs to know the boundaries of pre-state Israel (so as to compare the artefacts from that area with those from adjacent areas of Syro-Palestine); boundary demarcations are however socio-political (they require some form of ethnic or national self-consciousness) and can be only derived reliably from contemporary *textual* sources, which, as we said above, are lacking or inconclusive[280]. The "collared rim jar", the "pillared four-room house", the "circular enclosure of an open-space by peripheral buildings", the "absence of pork bones", the "absence of divine representations", "traces of past nomadism", and distinctive "burial practices" have all been proposed as archaeological markers of pre-state Israelite identity, but they can all be dismissed, since they might just as well represent differences in social status, regionalization of the same culture, adaptation to the local environment and different patterns of transmission of ideas and materials via trade routes (cf. Skjeggestad 1992; Edelman 2002).

The conclusion is that, though there might have been, in Palestine before the monarchy, a group of people clearly distinct from others (or who *thought of itself* as clearly distinct), and who is cotermi-

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[280] For this reason, some contemporary archaeologists try to cleverly avoid the problem of ethnicity and the claim of the existence of an "Israelite" population group in the Iron I Near East distinct from its neighbours; Israel Finkelstein, for instance, uses a retro-projection of identity to define pre-monarchic "Israelites" in ethnic terms: "An Israelite during the Iron I period was one whose descendants described themselves as Israelites. They were the people who resided in the territorial framework of the early Monarchy before the expansion began. Thus even a person who may have considered himself a Hivite, Gibeonite, Kenizzite, etc., in the early 12th century, but whose descendants in the same village a few generations later thought of themselves as Israelites will, in like manner, also be considered here as an Israelite" (Finkelstein 1988, 28).

nous with pre-state Israel referred to in the Bible, we have no reliable historical or archaeological evidence of that today; the Bible (which quite consistently offers an outsider narrative to highlight this), and the Mesha Stele (which seems to indicate that the Israelites were just another autochthonous Near Eastern tribe (cf. Machinist 1994, 47–48)), were written by people with strong political agendas many centuries after the events on the basis of few or no primary sources. Though possibly not "totally" historically construed, the distinctiveness of Israel owes much to a desire of some intellectuals in the late monarchic period (and after the exile) of presenting Israel´s history as clearly *distinctive*, as that of a people who has a *clear beginning in history*, and to claim for all the peoples integrated into the "Israelite" identity during the monarchy the stories of the Exodus group, and of the wandering patriarchs (Nestor 2010, 208–215).

6.3.4 An Anamnestically Solidary Identity

6.3.4.1 Wandering and Migration as Markers of National Identity

Walter Benjamin (1969, 253ff), developing a term coined by Christian Lenhardt (1975), uses the term "anamnestic solidarity" to speak of the debt owed by a "liberated" generation (one which finds itself living in a reasonably just political society) to its oppressed and marginalised ancestors (Pensky 2013, forthcoming). Keeping fresh the **memory** of the suffering experienced by past generations (*anamnesis*), and seeking thus to maintain the **contact** between generations (solidarity), does not erase from history the weight of genocide, slavery, or even less dramatic forms of oppression and marginalisation, but is necessary *in the present* to prevent complacency about justice (and

the perception that it is something cheaply obtained), and also necessary *for the future* to prevent vanquished forms of oppression from resurfacing[281].

Two things should be noted at this point. *Firstly*, we do not have to be related through **blood lineage**[282] to the actual people who suffered to be able to be anamnestically solidary with them. We can see ourselves as the political, spiritual or cultural progeny of the exploited and impoverished French peasants who revolted in 1789, of the Jews who were led to the gas chambers in Nazi Germany, or of Martin Luther King. *Secondly*, as we have seen, anamnestic solidarity can be placed at the service of **social inclusion** and **hospitality** (to promote justice in the present and spare others the evils suffered by one´s "ancestors"), but it can also be used to justify **isolationism and/or hostility**. The memory of the suffering of one´s forebears can be used to separate oneself from certain persons in the present who have different "ancestors": people who are to be *seen as "different"* (since their ancestors "did not suffer like ours"), or even people who should be *treated as "different"* (as inferior, or as legitimate targets of hatred, since their ancestors were "those who made ours suffer"). This distancing from the other may at times be warranted (e.g. to protect one´s group from someone who is truly dangerous) but at other times may be simply an expression of xenophobia and/or a form of scapegoating.

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[281] William O´Neill has, in recent years, reflected on the relevance of the notion of "anamnestic solidarity" in biblical approaches to the ethics of immigration, but has not developed his reflection at length (cf. O´Neill 2009a; 2009b, 229). Walter Benjamin´s ideas and the Frankfurt School´s debate on memory of oppression as a possible central methodological principle in historiography (starting with Horkheimer in the late 1930, and continuing today in the writings of Habermas and his followers) was introduced into theology by Johann Baptist Metz using the notion of "dangerous memories" and the *memoria passionis* (cf. Metz 2007).

[282] The Bible builds kinship between biologically unrelated groups through the construction of mythical genealogies (cf. section 5.5.3.3 below). We discuss civic kinship ties at length in chapter 6.

The notion of anamnestic solidarity helps us to understand a central feature of Israelite identity. As regards the *first* point noted above, **Israel´s solidarity with the "Exodus group" does not primarily pass through blood**. The historical evidence explored in the previous sections clearly indicates a situation where **persons mostly derived from groups of "natives" engage in an exercise of historiography** (mainly in the late Judahite monarchy and in the early years of the Judean Province of Persia, *Yehud Medinata*) **wherein a generation (which deems itself "liberated") adopts the memory of a minority group of immigrants.** We do not know where the Exodus-Wilderness stories come from, but they are not complete fictions: true stories of oppression and liberation abound in the history of humankind, and Israel´s link to the oppressed persons in the stories is pervasive in the biblical text[283]. We do no not know if they speak of the blood ancestors of the generations which produced the canonical text of the Bible, but certainly these generations somehow felt anamnestically solidary with the people in those stories.

As regards the *second* point, concerning the inclusive/hospitable or isolationist/hostile uses of anamnestic solidarity, we need to ask **why** Israel adopts this memory (given the lack of historical warrant for the adoption of the Exodus-Wilderness-Conquest narrative by the *whole* of Israel). As we shall see, the **isolationist/hostile** element is clearly present: Israel seeks **to distinguish itself from rival "natives"** (which, it seems, the Israelites seek to dominate or exclude, in neighbouring areas of Palestine). Firmly established in the land, the so-called "outsiders" behave as natives claiming to be

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[283] Bible scholars like Peter Machinist (1994), however, argue that this idea of migrant origins must have had deep roots in Israel´s history, given that (with very few exceptions) the many biblical texts tracing the origins of Israel agree that the "Israelites" had entered Palestine as outsiders (Machinist actually lists and categorizes all the texts). The only three texts with a seemingly dissonant narrative can be explained as polemical provocations (Ez 16:3.45) or truncated versions of the "orthodox" narrative/genealogy (Dt 32:10-14; 1 Chr 1-9).

the sole rightful owners of the land, and treat other "natives", as well later newcomers, as "outsiders". By itself, an "outsider" national narrative does not exorcise the tendency of the oppressed to become oppressors (in the past, many European royal families, in fact, adopted outsider narratives to separate themselves from the plebs and rationalize institutionalized oppression). Thus, calling someone a "Canaanite" in the Bible is often not an indication of ethnic origin, but a way of telling the person: "you are different, and I am justified in wanting to mistreat you or even destroy you". Yet, the **inclusive/hospitable element** is also present, and there are many voices in the Bible which constantly remind Israel: **"You shall not oppress a resident alien; you know the heart of an alien, for you were aliens in the land of Egypt"** (Ex 23:9; cf. Ex 22:21).

6.3.4.2 Different Voices, Complex Stances, One Narrative of the People´s Origin

The different voices and groups which contributed to the text *all adopt the same* narrative of the people´s origin; they tell the same story of Exodus, Wilderness and Conquest, but often for different reasons. One may be tempted to associate the **isolationist/hostile** voices too quickly with xenophobic tendencies clearly present in the Bible as in our societies today, but we have to be careful not to stereotype the complex stances in the Bible too quickly. Two things are assumed in the Exodus-Wilderness-Conquest master narrative that becomes the standard way of retelling Israel´s past, starting with the Josianic (Deuteronomist) Reform Movement, but consolidating itself during and after the Exile. As Machinist (1994, 49) claims, the first assumption is that "the land that the Bible understands as home *has to become Israel*" and this partly explains why there is a "*sharp differentiation between Israel and other inhabitants of the land*, whether understood as autochthonous or also as outsiders. […] Contamination, thus, is a basic fear, perhaps most pervasive in, but by no

means exclusive to, the Deuteronomic corpus" (my emphases). In other words, there is a transformation going on, and the isolationist/hostile voices are afraid it might be hijacked by "outsiders" or people who sympathise with the "outsiders"; this fear leads to an "us" against "them" mentality.

We should note two things about this first assumption. Firstly, the "outsiders" who are most feared are **powerful and hostile nations outside the boundaries of Josiah´s Kingdom or Persian Yehud**, not primarily the non-integrated residents (*gerîm*) living inside Israel´s boundaries, but the distinction is hard to keep in politics and popular movements, and the contamination language and the weakness of the *gerîm* makes them easy and obvious targets. Secondly, the transformation sought by the Deuteronomist reformers was not some racial apartheid or ethnic cleansing, but a number of **socio-political reforms seeking to render Israel more holy and more just than its neighbours**.

According to the reformers, the Israelite monarchy had copied the oppressive ways of neighbouring regimes. It allowed its protégés to accumulate large landholdings at the expense of poor farmers, who were further burdened with crushing taxes to support the central government and military, and with unpaid infrastructural labour drafts, e.g. for the upkeep of roads and fortifications (cf. Albertz 1994, 110–114). The monarchy came to believe that there was no other way to develop a modern economy and protect oneself against foreign aggression than to adopt those oppressive social structures that all neighbouring nations — peoples who did not believe in Yahweh, a God who fights for the poor and the underdogs — deemed necessary. In contrast, the reformers believed there were less oppressive ways of building a stabile polity — especially when one trusts in Yahweh´s protection and when one fears the righteous anger of a God who loathes oppression more than the expansionist schemes of the hostile nations — and part of the purification they

sought was a *purification from the imperialist and militarist ideas* brought in by the outsiders, rather than from the outsiders themselves. It was hoped that this purification process would create a model political regime cleansed from oppression, and with a good dose of optimism, one could assume that when such a regime would be in place, it would actually be very beneficial to the *gerîm*. The fact that, in the master narrative adopted by the Deuteronomic and Deuteronomistic reformers, Israel´s ancestors are identified as being a group of oppressed *gerîm* living in Egypt, and that Yahweh is presented in the Bible as an "outsider God" who intervenes personally on behalf of the downtrodden and marginalised, cannot be ignored when dealing with the *ger*. In this ideal scheme, being **isolationist/hostile** towards the *oppressive ideas of the powerful "others"* should allow a new Israel to be **inclusive/hospitable** towards the *powerless "others"***.**

The second assumption, actually a corollary of this first assumption, is that "the community of Israel *can exist apart from the land*, as its experience in Egypt and the Wilderness demonstrates" (Machinist 1994, 49). We discuss in the following section (6.3.5.4).

6.3.5 A Religious Identity

6.3.5.1 A "Nation of Strangers", Worshipers of a "Stranger" God

We have just noted that the Exodus-Wilderness-Conquest narrative not only construes Israel's ancestors as oppressed *gerîm* in Egypt, which one should *revere* through anamnestic solidarity, but also presents their God as a *ger* to be *adored* with full awareness of God´s strangeness and otherness. Indeed, if Israel and the first Christians considered themselves "nations of strangers" (cf. Feldmeier 2002) — an expression which reads like an oxymoron, and which a Nietzschian commentator would treat with contempt as the transvaluation of the "natural" values of ethnic and national

belonging — the ultimate basis for this conception of the self as "permanent" outsiders is not so much *historical* as it is *theological* (and Christological, in the case of the first Christians). For instance, an instructive, yet problematic, text in the Holiness Code, Lv 25:23, argues in favour of not selling land in perpetuity, which also implies not allowing the *gerîm* to integrate themselves fully into the people by acquiring land permanently. In the text, YHWH justified this command thusly: "the land is mine; for you are strangers and sojourners with me". The biblical God hence presents himself as a **temporary resident**, a *ger*, who is also a **native** (having an ancestral title to the land). To the critical reader, this sounds quite cynical and Orwellian: the big boss is a proletarian, the small bosses are proletarians, everyone is equal, but some are "more equal than others" and have a right to control the means of agricultural production, unlike the others. Some "*gerîm*" are Israelite and have irrevocable ancestral titles to the land, others are non-Israelites and will forever be considered as non-nationals and migrant labourers (unless they suddenly get rich and buy property in the city, as we shall see below).

How can we make better sense of paradoxical texts like this? Historians believe that there is good historical warrant for this depiction of Yahweh as a stranger. Various texts in the Old Testament tradition, as well as some ancient Egyptian lists, suggest that "the god Yahweh was connected with a mountain in the desert region of southern Palestine, even if there are only vague ideas in the Old Testament about its precise location. The God whom the Exodus group got to know through Moses thus comes from an area which was not part of the territory of later Israel" (Albertz 1994, 51). According to Albertz, the Exodus group (the members of which probably adored various tribal gods and gods incorporated in the Egyptian pantheon), under the leadership of Moses, recognised the God who liberated them to be precisely a Midianite (Kenite) god whom Moses had come to know in

his fugitive years through his Midianite wife's family (Ex 2:15f; 3:1; 18:1f). “In view of the markedly hostile relations with the Midianites at a later date, this account cannot have been invented and may therefore be regarded as historical” (ibid.).

The Exodus group’s experience of Yahweh, as presented in the Bible, is nonetheless not one of a shrine deity or an ethnic god of a semi-nomadic group (as the Midianites related to their mountain god), but as the liberator-God of a group of “wanderers”. The Exodus group ended up living far away from the mountain of God; they wanted a God who could get down from God´s mountain, travel with them and establish himself on other mountains to the north of Midian, thus remaining accessible to his “new” people[284]. Thus, according to the Bible, the Israelites “despoiled” the Midianites of their settler god (as they had “despoiled” the Egyptians of their wealth) since Yahweh reveals himself as a migrant God bent on joining them in their quest. The Bible obscures the origin of Yahweh worship and the location of his “original” mountain; it assumes that there is no point looking for Yahweh there anymore.

How can we make sense of a story in which a group of people find their God in a strange land, and a God finds his “real” people in a group of wandering strangers? Authors such as Albertz, who clearly believe that the Exodus narrative does have a historical basis, argue that Yahweh worship was not very widespread in Bronze Age Egypt and hence Yahweh had not been incorporated into the Egyptian pantheon and co-opted by state ideology; this was surely important for the Exodus group since

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[284] For a discussion of the religious, social and political functions of “cosmic” mountains in ancient Syro-Palestine (i.e. divinely-inhabited mountains conceived as spaces which bring together heaven and earth, and for this reason, have an important role in the government and stability of the universe), see Clifford (1972). For an interesting reflection on the shift of Yahweh´s dwelling place from Sinai to Zion, and the central role that this transfer played in shaping Old Testament Theology, see Levenson (1987).

Yahweh could then easily be identified as the politically subversive God they came to know through the experience of their liberation (Albertz 1994, 52). However, for them this was a stranger-God (non-Egyptian), who becomes the God of a stranger-people (marginalised metic residents of Egypt, now wandering in the Middle East); his "official" or "original" residence was in the territory of a stranger people (and later an inimical group, the Midianties) and his "original" cult is a strange cult (unknown and irrelevant to the Exodus group and to the later Israelites who identified themselves with this group), the tangible elements of which (shrines, images) are out of reach. Yahweh-worship is thus soon recast as the worship of a God who does not let himself easily be fixed by images or confined by a residence, who can give up his mountain residence (as Abraham and Moses left their family home) and face the precariousness of life as a sojourner. The only relevant feature of the original Yahweh worship that seems to be kept in the Israelite religion is the mere fact that this God "originated elsewhere" and once inhabited a mountain in a strange land[285]. Interestingly, this experience of walking and wandering with Yahweh (before God was enthroned on Mount Zion, transformed into the distant and monarchic God of a settled and hierarchical people, and "confined" to the Holy of Holies) is what affords Israel a personal relationship with God which is the source of Israel´s peoplehood[286].

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[285] While scholars today situate Yahweh's mountain not in the present Sinai peninsula, but in the Gulf of Aqaba or east of the ʿArabah (Albertz 1994, 54; Coogan 2010, 114), the older texts in the OT use the Sinai as a vague geographical reference, and more recent Deuteronomical additions render this reference more obscure by using the geographically untraceable name "Horeb".

[286] "The other religions of the Near East know such a personal relation to a god only in the case of small groups and individuals ("personal god", "guardian deity"). The personal bond between a god and a larger group is a peculiarity of Israelite religion. By contrast, the Babylonian gods, for example, are related to particular cities or to the land of Sumer and Akkad. There is no word in Akkadian for "people"; rather, *nišū*

As presented in the Bible, Israel´s national consciousness and identity thus emerge from this **relationship** with God (which expresses itself in laws, traditions and narratives — the "Torah" or "Book" — and founds a political society) rather than from the **land**. However, Yahweh´s personal relationship to Israel means that God needed to settle down with God´s people as they became (or became integrated in) a sedentary agrarian society, and as he came to be adopted as the central divinity of the peoples living in the hill country of Palestine. "Yahweh very probably got into the position of the *ʾādōn*, the Lord of the land, like Baal or El before and alongside him. As such, he was of course also 'responsible' for its fertility" (Albertz 1994, 89–90). In the early period, according to this reconstruction, Yahweh´s area of competence was simply extended to the agrarian world, with its festivals and cultic rituals. Later, however, Israel was tempted to turn Yahweh into another fertility god competing for attention with (or manifesting himself as yet another mask for) the gods of the land. Israel's relationship to God grounded in historical experience of liberation of a group whose story had been adopted by the unified "Israelite" people under the monarchy had been forgotten, a development which prophets like Hosea attacked as apostasy in the direction of the cult of Baal.

After reflecting on the history of the Israelite religion we can go back to Lv 25:23 and better appreciate this paradoxical or oxymoronic justification of ancestral titles to land which invokes a god who is at once a temporary resident and a native with an ancestral title to the land. On the one hand, the cultic idea that national gods such as Yahweh are the real owners of the land is widespread in the ancient Near East; the god El, who was gradually syncretized with Yahweh, was probably con-

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means the "population of the land", which could change in the course of history without any far-reaching change in the divine world" (Albertz 1994, 62–63).

sidered as the owner of the land in ancient times (Albertz 1994, 79). On the other hand, the biblical idea that YHWH is a temporary resident or a stranger in the land of El and Baal is the result of the Exodus-Wilderness-Conquest narrative. The biblical YHWH is presented as both a native and a *ger*, as the biblical authors fused both ideas together in the name of social justice. The purpose of this "both / and" is to argue that poor Israelite farmers who had lost their lands due to pauperization and usurious loans — thus becoming serfs on their former land or migrant *gerîm* in some other part of Israel — should be given their land back by those who cunningly profited from the situation to accumulate huge holdings. The claims of current landholders are refuted twice: first, the land is of YHWH the ancestral landholder and humans are merely stewards or squatters (and YHWH may re-distribute it as he pleases); second, ownership is temporary and should be willingly relinquished (since if even YHWH is a *ger* in YHWH´s land, then all God´s people are likewise *gerîm* and should be willing to pack their belongings and move out). This, in theory, should make it possible for the impoverished and dispossessed farmers to reclaim their ancestral property during jubilee years, after having been forced into usurious loans and having lost their land.

Historically, all this points to a desired land reform proposed before the Exile, or a way of reorganizing landholdings after the Exile, which offers a way to give agricultural property to landless Israelites. However, if taken literally and understood anachronistically to confirm some hypothetical "fair" system of land distribution going back to the pre-state period, it does sound like an Orwellian slap in the face of the poor *gerîm* who technically, following this logic, could not integrate themselves through permanent acquisition of agricultural property. Of course, as we shall see, there is a real problem in the Bible concerning the integration of the *gerîm* — and especially of non-Israelite *gerîm* — and this text, which uses imaginary autochthonous claims on land to advocate for the

landless, is an example of how Old Testament biblical authors seriously committed to social justice issues struggle to think of ways to effectively integrate the *gerîm* and to let the Exodus-Wilderness-Conquest narrative truly help them *think* (and not only *speak*) outside of the box of the sedentary peoples of the Near East.

6.3.5.2 Religious Reform, Xenophobia and National Identity

The above discussion shows us two things. On the one hand, in the *utopian* mode[287], **religious traditions and ideas can help make political societies more just and less oppressive by critiquing the *status quo*.** To be sure, Lv 25:23 may not have much purchase in national parliaments today (and similarly, it wasn´t taken too seriously by the authorities in Persian Yehud), and its proposed system of land reform would be a logistic nightmare, but the insistence that something had to be done about the widening inequalities and the pauperization of farming families in Israel at the time was something that those in power needed to hear. On the other hand, in the *ideological* mode, religious traditions and ideas, especially when read literally and used out of context, **could be used to rationalize structural injustice implicit in the *status quo* and further marginalise powerless persons on the basis of religious difference**. Lv 25:23 could thus come to mean that if you can´t trace your ancestral lands back to the mythical "time of the Conquest", then you have no right to acquire land permanently and leave a lasting inheritance to your descendants: your progeny is doomed to perpetual landlessness and to be *gerîm* forever. When infused with religious language, the utopian call for change can become incendiary, and the ideological defence of the current system can be-

[287] I am following here the distinction between *utopia* and *ideology* proposed by Paul Ricoeur (1988).

come despotic; the violence related with religious zealotry and with the ambiguous use of religious traditions has led to a call to secularize politics, especially in modern times.

Using religion as a *defining* feature of a polity´s identity, for us in the 21st century, is clearly problematic, even though there are many examples of modern polities which are *technically* confessional, or whose visible symbols of identity (e.g. the British Monarchy) are *coloured* with strong links to religious institutions. Of course, we cannot expect biblical Israel to construe its identity as modern polities do, seeking to be *practically secular* (i.e. neutral as regards to religion) or at least *tolerant* of legitimate religious diversity, and also *committed* to promoting religious liberty. Yet the problems relating to religious freedom emerge very clearly in Israel´s history, and, it is important to catch a glimpse of this in the Bible.

Ironically, the very "zealot" insistence on having one´s relationship with YHWH as a defining feature of Israel´s identity is what makes the apologetics of religious freedom surface in exilic Israel as in pre-Constantinian Christianity. Let us start, in this section, with the political use of religious identity in the late monarchy and its xenophobic bent; we will come back to religious freedom in the following section. A key figure in the rise of an exclusivist Israelite national identity is King Hezekiah of Judah (who reigned from ca. 715 to 686 BCE), who witnessed the destruction of the Northern Kingdom by the Assyrians and played dangerous political games to maintain Judahite independence (courting Egypt, accepting Assyrian vassalage and then reneging on the treaty). Hezekiah initiated a cultural and religious reform which sought to homogenize Israel and close its ranks in the face of the Assyrian threat, especially given the Assyrian policies of mass deportation and ethno-cultural hybridization.

Rainer Albertz, who considers the Book of the Covenant (Ex 20:23-23:19) as the basis of the Hezekianic reform, argues that one key element of the reform is a suspension of toleration and religious pluralism: the text "threatens anyone who worships another God than Yahweh with the ban, i.e. with death and the confiscation of his property [Ex 22:20, Christian numbering[288]], and prohibits even the mention of the names of other gods in the Yahweh cult [Ex 23:13b. …] The overall aim of the religious and cultic reform is clear: it is to relate Israel as a cultic community clearly to Yahweh and to mark it out from the surrounding world [cf. Ex 22:31: 'you are holy men to me']" (Albertz 1994, 184). As we shall see, the reform also sought to protect the rights of the *gerîm*, but this term probably designated people who were predominantly Israelite refugees from the conquered Northern Kingdom (in Ex 22:21 and 23:9, the suffering of the Exodus group in Egypt is possibly being used to elicit sympathy towards these refugees fleeing Assyrian oppression).

For reasons disputed today by historians (cf. Grabbe 2003), Sennacherib appeared in Palestine in 701 BCE, occupied huge tracts of Judah and imposed his cultural and demographic hybridization policies. In reaction to this, the reform movement developed a "purist" form of Yahweh worship (with high levels of aniconism and iconoclasm, hitherto unknown in Palestine), which tried to force the Israelites in the occupied provinces to refuse the syncretism promoted by the Assyrians. Yet the royal house soon grew weary of this political contest of attrition. Manasseh (and his successor Amon), unlike Hezekiah, decided not to take any further risks and to respect the vassalage treaty with the Assyrians. They therefore had to put an end to the reform (or shift it "underground"). The royal family soon had to find ways of accommodating some public expressions of Assyrian cult in

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[288] Given the discrepancy between the Hebrew and Christian numbering of Ex 22, we shall assume Christian numbering throughout this chapter.

Jerusalem while privately seeking to maintain the exclusiveness of Yahweh worship demanded by the reformers. Under Assyrian occupation in the north, and vassalage in the south, "the internal religious pluralism in the late monarchy developed into a regular syncretism which far surpassed the diplomatic syncretism that had arisen of necessity at an official level" (Albertz 1994, 194–5), and this syncretism is the target of Zephaniah´s polemic.

After the assassination of Amon, which conveniently placed the eight-year-old child Josiah on the throne (c. 641-609 BCE), the reform movement emerged once again in what is known as the "Josianic" or "Deuteronomic" reform movement (which continues during the Exile and beyond as the "Deuteronomistic" reform movement). Emboldened by the gradual collapse of the Assyrian Empire and the newfound independence of Egypt, the reformers supported military sorties outside the borders of Judah-Benjamin to destroy iconic shrines in the former Northern Kingdom which they deemed "unorthodox" (cf. 2 Kings 23:15-20), and centralized the *public Yahweh cult* in Jerusalem. However, this was not enough. Aware of the risks of syncretism both in the countryside and in the city due to foreign cultural influences, the reform of the cult sought to stamp out religious diversity and pluralism even at the level of religious traditions and cultic usages *at the family level*; this possible avenue for syncretism had to be closed.

The Josianic **cultic** reform was a great success; historians note that it created an unprecedented form of national and religious identity — "Jewishness" — deeply rooted in practices at the family level, that survived two and a half millennia of political events under a variety of rulers and political regimes, some of whom tried to *violently convert Jews to some other religion* and/or assimilate them into some other culture, and some of whom (especially the Hasmoneans) tried to *forcibly*

convert and assimilate other nations into Jewishness. The reform, however, contained a **social** element (visible in the laws concerning the *gerîm* in Dt), which historians believe failed to materialize[289].

It is in this historical context that we have to place most of the biblical passages concerning the stranger. As we shall see, the Deuteronomic polemic against syncretism is picked up by a xenophobic party after the exile, at the time of Ezra and Nehemiah, which seems to use a particular reading of the reformists´ texts to block the social mobility of persons in the Persian Yehud who were not of Golah[290] extraction, labelling them as "contaminated". Historians (e.g. Albertz 1994, 232ff; H. V. Bennett 2002) believe that the reform did not manage to promote better integration and political participation of landless migrant labourers, and to enshrine this in the Law (but simply regards the *gerîm* as a permanent underclass to be cared for charitably, but not emancipated). For this reason, the post-exilic political élites found little in the law which could counterbalance or put into question Ezra´s claim that the Bible banned intermarriages with the "people of the land" (mainly composed of the lower classes who were not sent into exile), which conveniently kept these people out of the spheres of power[291]. The Deuteronomist reformers' attitude towards the other is central to understanding the complex biblical attitude towards the "other", often construed anachronistically and pejoratively as a "Canaanite" (cf. Albertz 1994, 209). "Canaanite", in the Bible, is often a code-word

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[289] "Nothing had come of the renewal of Judah as a society and state which had been intended, and the reform was completely abandoned under Jehoiakim" (Albertz 1994, 203). During and after the exile, in fact, the cultic reform continued to solidify, while the social divide grew.

[290] I used the term "Golah", in general, to refer to Jewish diaspora communities, and treat it as an adopted word in English. The more accurate transliteration is *gôlāh.*

[291] We discuss this below, in section 6.5.2.

designating people who blocked the Hezekianic reform and who threatened to put an end to the Josianic reform and its successor movements, people who supported or consented to the cultural hybridization policies of the Assyrians, or deportees from other parts of the Assyrian empire brought in to dampen Israelite nationalism (this mostly happened in the North, but Sennacherib may have tried it in some Judahite province in his campaign in 701 BCE[292]).

Interestingly, however, the voice of hostility against the "Canaanite-Assyrian fifth column" is not the only voice in the Bible, and as the Babylonian empire takes shape, some of the reformists separate themselves from the nationalist élites, and realize that the reform can be completed even under foreign rule, and possibly better than under the nationalists: Israel could paradoxically become more faithful to YHWH under rulers who did not worship YHWH. One example can be found in Jeremiah´s letter to the Judahites deported to Babylon by Nebuchadnezzar in 597, where, for the first time, a few years before the "definitive" exile, it is suggested that Yahweh can bring salvation to Israel even when in foreign lands far away, and that this salvation also reaches beyond Israel to include the hostile pagan environment (Jer 29:7; cf. Albertz 1994, 238). The deportees are thus ordered to "seek the welfare" of Babylon.

6.3.5.3 From Zealotry to Religious Tolerance

In a way, these examples highlight two of the most important theological consequences of the successful cultic reform achieved by the Josianic reform and the election theology it promoted. On the one hand, **religious cult is "personalized"** (though perhaps not in the strongest modern sense of

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[292] The Babylonians did not continue this policy, and the Persians reversed it, and promoted cultural and religious pluralism, believing that this was more conducive to fidelity by their vassals and to stability in the Empire (Albertz 1994, 444).

the word), and this eventually gives rise to the notion of conscience and to the idea of a right to religious liberty. If it is true that the Hezekianic and Josianic reforms try to create unity by obliterating religious pluralism, at the same time, they start to shift religion to an inner world (not yet the subjective "conscience" as understood in modernity, but a world of family and indoor "private" practices) that becomes impossible to eradicate by political oppression (excluding genocide, of course). Religion, after these reforms (and especially after all world religions had come in contact with Christianity, which is a major offshoot of these reforms), comes to be understood as a personal relationship of a group with God. **This relationship cannot simply be betrayed when moving to a new city or being conquered by a new ruler, even when these cities or rulers require loyalty and allegiance to their patron gods.**

Ironically, then, the process set in motion by zealous reformers transforms the very essence of religion, and creates a stronger basis for the religious toleration that the Hezekianic and Josianic reforms set out to eradicate in the first place. During the Exile, and after the Exile under Persian, Seleucid and Roman rule, the Jews demanded a total form of religious freedom in ways that other conquered nations never dared to ask of their foreign rulers before: they resisted the imposition of imperial cults and the introduction of foreign gods. The Maccabee revolt was a fight for religious freedom, which however engendered a new regime — the Hasmoneans — who had little respect for the religious freedom of others. Similarly, persecuted Christians before the Edict of Milan wrote impressive texts in favour of religious liberty, but when Christendom was established, those texts were quickly forgotten. After being confronted by Modernity on their opportunistic use of the notions of freedom of conscience and toleration, most Christians and Jews today agree that a state which is secular (at least in the sense of *not imposing a "national" religion*) has become a must in

modern polities for very reason of protecting that religious freedom that the zealotic Hezekianic and Josianic reformers had unwittingly revealed to be an inalienable right.

On the other hand, **YHWH is, in a way, "universalized"**. If Yahweh is the one true God (and all other divinities are simply human creations, "carvings"), Yahweh is therefore the God of all peoples. The one God who acts through history must be acting among foreign nations as well, and even through foreign rulers like Nebuchadnezzar and Cyrus. This is why all peoples can pray in the Temple, and have a right to be heard by YHWH without adopting Jewish identity markers[293]. Ironically, the Deuteronomic reform, therefore, in nationalizing Yahwism and stamping out religious pluralism, ended up at the same time **universalizing Yahwism**, and making the very notion of a national God unacceptable (if God is God, then God must be the God of all peoples). Since the time of that reform, Judaism has been trying to understand better what the "election" actually consists in, how it relates to the promise of the "land" (which we shall discuss in the next section), and how to interpret the "distinctive" relationship between a universal God and "his" particular people. Many answers have been proposed, but what seems to be excluded from the start is a triumphalist nationalism: Yahweh is not a "stronger" God who subdues the gods of other peoples and includes them in his pantheon as subordinates (as some Israelite theologians probably thought during the early years of the monarchy, following their counterparts in Mesopotamia and Egypt), but simply the "only" God who acts in history to save Israel from oppression, and acts to punish Israel when it became unfaithful and oppressive.

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[293] Cf. Benka (2010, 45) on the petition of the foreigner in 1 Kgs 8:41-43.

6.3.5.4 Does National Identity Lie in the Book or in the Land?

In the previous section we mentioned the distinction to be made between the "Election" of Israel, and the Possession of the Land; we here make a short excursus to further investigate this distinction and the understanding of the link between a nation and "its land" in the Bible. As we saw in the previous chapter, a key feature of the identity of many nations is that of a "native land", which philosophers like Jacques Maritain (1998, 6) are careful to distinguish from the actual territorial expanse of a polity, unlike most nationalist authors. The relationship to the "land" is emblematic of Israelite identity, but "landedness" is not listed among the *features* of Israelite identity in sections 6.3.2 – 6.3.5, since the relationship of Israel to its land is particular: Israel´s identity is markedly **anti-autochthonous**, as we have argued above, and Israel´s national narrative (the Exodus-Wilderness-Conquest narrative), when read through the eyes of a people who knew the Exile, implies that **Israel can exist apart from the Land**.

Behind this conclusion, quite startling when first proposed in antiquity, lies a very old polemic between what we may call a "materialist" and an "idealist" notion of national identity. On the one hand (A), the Hebrew Bible points to the fact that a Jew can be fully Jewish without a physical link to the land (and Paul, in the New Testament, takes this further by saying that Christians do not require physical 'identity markers' to be Christians[294]): what is essential is the **spiritual relationship** to

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[294] Concerning Paul and Jewish "identity markers" see Sanders (1977), Wright (1997), and Dunn (1990). It is interesting to note that most historians believe that the identity markers which today we would most clearly associate with "Jewishness" were most probably adopted by the exilic community; for example, circumcision (which was common in Palestine and Egypt, but not in Mesopotamia), could function as an *Israelite* identity marker only among the Babylonian exiles (cf. Albertz 1994, 407ff). The Golah communities clearly felt that Yahweh worship (mostly practised in the family circle) was not enough to keep the community together and

God (the Election for the Jews, the Immersion in Christ´s Paschal Mystery for Christians), conveyed by the notion of a **Covenant**, and symbolised by the **"Book"**. The "Book" trumps the "Land" as the main substrate of Israelite identity.

Yet, on the other hand, (B) as we see in the Jewish Golah and in early Christianity, the more one separates a group´s identity from physical and material markers (the most important of which is, precisely, the land), the more it risks becoming politically uprooted and marginalised, unless (B1) one had the property and wealth to influence political decision-making, or unless (B2) we move towards the modern "secular" notion of political belonging where one can be fully active within a particular political society without belonging to the culture, ethnicity and religion of the majority of the people residing in that physical space. We do not discuss (B2) here, but simply note that the inclusion of minorities in political decision-making and the protection of their rights is very much linked to the discussion above concerning the secular state and freedom of conscience. We will rather focus on (B1): in premodern societies, **a group needed wealth to be politically significant**, and **wealth was mostly based on land**: both in the sense of *productive agricultural property*, and in the sense of a group´s *control on the economy of a region* (often attained through political hegemony over that region). This is why, for several centuries, many Israelites resisted the "idealist" position.

In fact, in the late years of the monarchy, the land was a deemed a central part of Israelite identity. For the Deuteronomic covenant theology, in particular, the land is seen as a concrete manifestation — a "sacrament" — of salvation and election (cf. Albertz 1994, 230). Jerusalem could not possibly

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faithful to its God, and the existing "cultural" boundaries among the immigrants needed to be reinforced or labelled as distinctively "Jewish" to become henceforth the functional substitutes of the territorial bounds of the pre-exilic state.

fall into the hands of the enemy since Yahweh, being faithful to his covenant, could not let his people go back to being exploited non-nationals in the land of the foreigner, as they were before the covenant, according to the Exodus-Wilderness-Conquest narrative. The prophets challenged this, and were at first disregarded, but the experience of the exile vindicated their thesis whereby *the land is not necessarily an irrevocable part of the Covenant*: Israel could remain Yahweh´s own people even in exile. The issue, nonetheless, returned after the Exile[295], and the contention was eventually resolved (at least until the advent of modern Israel) only with the destruction of the Second Temple in 70 CE: mainstream Judaism "finally" concluded that Jewishness was rooted in the "Book" (Schmid 2012). Of course, the Egyptian Golah and those who did not return from Babylon had long before decided that their "national" identity, their "Jewishness", was based on their holding on to a **narratively-embedded Law** — rather than to a piece of the **Land**[296].

6.3.6 Conclusion: National Identity and Contemporary Migration

We have introduced in this section many ideas which we continue to develop in the sections below. The notion of Israel´s distinctiveness and its historical development is key to understanding the Bible´s conception of nationality, national territory, otherness, hospitality and integration. As we did in Chapter 4 with Maltese history, we can draw conclusions that support both the deconstructive

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[295] Politically, it presented itself in the form of a power struggle between the landed gentry and the intellectuals (scribes and sages): the latter insisted that Jewish identity lies primarily in the "Book" not in the "Land", and likewise, political authority emanates from the sacred texts (cf. Novak 2001, 221), while the former disagreed and wanted to put religion at the service of the landowning elite, as was the case during the monarchy.

[296] "Many Jews did not return to the land of Israel when Cyrus the Great had permitted them to do so […]. Although some of this was because of gradual assimilation, more of it seems to have been because large numbers of Jews believed that their religious and social identity did not depend on their physical presence in the land of Israel" (Novak 2001, 222).

and constructive purposes of our dissertation. On the deconstructive side, the section consolidates the arguments in Chapter 5 by providing two important ideas which challenge some aspects of modern ethno-cultural nationalism and of Westphalian sovereignty:

1. **Autochthony is mostly a myth and migration is not a marginal phenomenon in human history (6.3.2)**. In biblical times, the idea that nations were formed outside their lands surely challenged the way ancient empires looked at outsiders and the myths they used to legitimize their possession of the land they inhabited. It can also be used today to help us debunk similar nationalistic myths born in Europe in the Romantic Period, and in some newly independent countries in the 1960s and 1970´s, even though, ironically, many nationalist movements can trace their ideological origins to some interpretation or other of the Old Testament. Political societies, as we saw in the previous chapter, have a beginning in history, and are not "natural". They do not sprout out of the land, as autochthonous mythologies and ideologies claim. Groups of peoples move across borders, start new political societies, and, when they establish themselves as polities, have to struggle with political and cultural "others" both within their borders and outside.
2. **Religion is a problematic source of national identity (6.3.5)**. To be sure, religion, in the Bible, is a primary shaper of national identity, but the Bible also shows the serious limitations of this "cultural" approach to national identity. By insisting on faithfulness to YHWH, even in exile or under foreign rulers, and by proposing YHWH as the God of all peoples (who should not be co-opted by particular polities or states), the Bible points to a certain decoupling between religious and political identity. This allows freedom of conscience, which people of faith have often demanded from others when powerless, but not always granted to fellow

residents when in power. Modernity has helped Christians and Jews become supportive of the religiously-neutral state and to respect the right to legitimate religious freedom for all, not only for philosophical reasons, but out of faithfulness for their own religious tradition. Of course, religion is not the **only** problematic source of national identity. Imposing certain elements of the majority culture on minorities can be very problematic, but this does not violate the freedom of conscience in the same way as imposing a religion.

On the constructive side, we will likewise mention two important ideas:

1. **National narratives are necessary, but not any narrative will do (6.3.3)**. Mythical national narratives are useful and often necessary in politics, but one must remain critical of such myths. The importance that Israel gives to internal cohesion, to the building of a stable and united community, is instructive. The insistence of the Bible on Jewish distinctiveness to defend Israel´s political and religious unity and its cultural identity — even at the risk of becoming xenophobic or distinguishing itself polemically from surrounding nations (when the actual differences were not so great) — speak of a nation's need for unity. Though actually offering outsiders very few or no formal means of integration, the Bible's insistence on national unity and cohesion can support the claims of theological ethicists and Christian political activists today that integration is crucial. This, in turn points to the need for an **"adoptable" national narrative** — one that is not assimilationist, and that we can *reasonably expect* resident political others (who do not want to excise their past but who nonetheless want to become part of the political self of the receiving polity) to adopt — and, the parallel need of

"**adoptable" immigrants** — ones who do not refuse to buy into the national narrative and integrate themselves.

2. **Anamnestic Solidarity should be a prime shaper of National Identity (6.3.4).** Israel adopts for itself an outsider narrative, and is adopted by an outsider God; this helps it to see social outsiders with greater sympathy than its neighbours. Most polities today can revive memories of oppression, destitution or wandering in positive ways, to see and sympathise with the oppressed and marginalised in their midst, and to fight the amnesic adoption of the selfsame attitudes and behaviours of past despotic rulers and colonizers, suffered and denounced by the "mothers" and "fathers" of the polity. Furthermore, as can be seen in the Bible, national narratives are most powerful and longest lasting when constructed from the perspective of the oppressed and the "outsider", not the from that of the "insider" with an iron grip on power and wealth.

The tension between national identity and strangers is resolved in the Bible, paradoxically, by the notion of being a "nation of strangers". Of course, from a Christian faith perspective, the gradual deepening of the understanding of what this expression actually means forms part of God´s pedagogy, and can be fully grasped only with the advent of Christ which illuminates all biblical revelation. It is nonetheless still a struggle, even for Christians today, to truly *see* the stranger from the loving eyes of a stranger God, to truly understand the implications of being "sojourners" on Earth and to be ready to live up to our vocation of walking the road with a Stranger God and with common strangers created in God´s image, rather than brandish this "strangeness talk" as a mere banner of distinctiveness and a weapon to fend off those who seem different and strange to us.

6.4 Strangeness and Otherness: Who is the "Ger" in the Bible?

6.4.1 Different Kinds of Strangers

In a nation, such as biblical Israel, well aware of its distinctiveness and its peculiar identity, and uncomfortable with the notion of integration, resident strangers tend to stand out, and could easily end up being marginalised and oppressed. In this section, we explore the notion of "*ger*", or *non-integrated resident*, which is probably the most important concept discussed below. Israel is asked to take special care of the *gerîm* in the Codes of Law of the Pentateuch, which is unusual in the legal systems of the Ancient Near East. The Israelites are called to **love the stranger**, remembering that they were strangers in the land of Egypt. Yet, xenophobia and hostility towards the foreigner are also present in the Old Testament, and when one looks more closely at who exactly is designated by the term *ger* and why Israel needs to be reminded not to exploit the *gerîm*, a very complex world of inter-ethnic relations and structural injustice starts to emerge. Let us start with some of the terminology.

> *The Hebrew language uses a number of different expressions to refer to persons who do not belong to the majority, however the latter might be defined. Some of these expressions are generally used in a more negative sense, always emphasizing the otherness of those persons and their separateness from the majority, such as nokrî (e.g., Deut. 17:15) or ben-nēkār (e.g., Exod. 12:43), and zār (e.g., Isa. 1:7). In other cases the difference is not as evident and not always emphasized, as with tôšāb which is often used together with gēr (e.g., Gen. 23:4), the latter being the most frequent among these expressions (Rendtorff 2002, 77).*

The terms *nŏ̱krî, bęn-han-nekār* and *zār* belong together (P. D. Miller 1988, 1); some scholars understand these terms to generally refer to "those who occupied what was taken to be essentially

gentile space" (cf. Novak 2001, 222f)[297], often seen as potential enemies and hence treated with suspicion and hostility, and sometimes referred to with strong hatred language[298]. They were to be avoided, or simply suffered, by Israelites who had to enter their space as merchants, diplomats or captives. In general, however, Israel recognised one major right of such foreigners: the right to territorial integrity.

The terms *ger* and *tôšāb* too belong together: they mostly designate people classified as "strangers" or "others" who occupied what was seen as Israelite space, or foreigners passing through Israel (such as wayfarers), who, being often poor and defenseless (*ger* is mostly found in the singular, in the Old Testament), were not seen as a threat, and hence were treated with less hostility, hospitality, and at times with brotherly love. As Jobling (2009, 314) claims, "some uses suggest persons living in a place not their own, even a foreign country, but *ger* should probably be defined in class rather than ethnic terms. Landlessness seems fundamental to the meaning." In-

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[297] There are, of course, exceptions to this rule. In 2 Samuel 15:19-20, we find a case of a foreigner (*nokrî*), Ittai the Gittite occupying Israelite space. Nonetheless, "the story underscores the fact that he is not really at home among the Israelites, that he has come "only yesterday" and is an exile from his own home who by all rights should return home" (P. D. Miller 1988, 2). In Trito-Isaiah (Is 56:3,6), *bęn-han-nekār* is used in a positive sense, as a foreigner who could be joined to Israel. 1 Kings 8:41,43 could refer to visiting foreign dignitaries or diplomats, who are not seen as hostile or dangerous.

[298] Hatred toward the *nŏḵrî* is crudely expressed in Ps 137:8-9: "O daughter Babylon, you devastator! Happy shall they be who pay you back what you have done to us! Happy shall they be who take your little ones and dash them against the rock!" It is important to note that the deprivation suffered by the wealthy Judahites in their first years of exile surely enhanced such negative feelings. Furthermore, the "little ones" here are seen mainly as the historical extension of an oppressive people, and are not "hated" as individuals, in the modern sense. One of the texts which rekindles the painful memories of those years is the book of Esther. The desire of vengeance builds up along the narrative, and when we reach the dénouement, we could find ourselves hating the Babylonians (at least the "bad" ones) and applauding at the words: "the Jews struck down all their enemies with the sword, slaughtering, and destroying them, and did as they pleased to those who hated them" (Est 9:5). Nonetheless, not all uses of emotive language in the Bible function as actual expression of emotion (as in modern literature since Romanticism); sometimes they are standardized legal or commercial formulas implying tort or satisfaction, distancing or rapprochement (Muffs 2003).

deed, the word *tôšāb* seems to indicate a landless resident, it is sometimes associated with *ger*, especially in Lv 25, which uses the hendiadys *ger w^e^tôšāb* several times to indicate "non-integrated resident". Possibly the hendiadys is used to indicate long duration (Jobling 2009, 315). At other times *tôšāb* is associated with *śāḵîr* (hireling/journeyman). "[The distinctions in Lv 25:39-46 give] the impression of a certain social hierarchy: *gēr-tôšāb-śākîr*-slave, whereby the first three groups can be differently juxtaposed. But this hierarchy does not mean that the *ger* will always be the most wealthy of these groups" (Rendtorff 2002, 79).

The term *ger* is by far the more commonly referred to "proximal other" in the Old Testament, and, following the reasoning above, some authors understand it to mean "non-integrated resident" *tout court*; Novak (2001, 222), for instance, defines the *gerîm* as "those people living among the people of Israel in a subordinate capacity, although one having definite rights and duties and enjoying the protection of the due process of law". However, at different moments in Israelite history, and in different situations, *ger* referred mainly to particular groups of excluded neighbours; in the diasporic context of the Septuagint, for instance, it was understood to mean (and translated in Greek as) "proselyte". In the following sections we explore the complexities of such a seemingly simple concept, attempting a diachronic reconstruction of prime lexical referents of the term "ger", and include a discussion of the rights of strangers in Israel.

6.4.2 The Referent of "Ger" in the Deuteronomic Law Tradition

6.4.2.1 The "Ger" in the Covenant Code

Who is a "resident alien" (*ger*)? How should she be treated? After reviewing the different codes of law in the Pentateuch, Christiana Van Houten (1991, 158–165) argues that there is a development:

> *The laws dealing with the alien developed and became more inclusive. What began as an appeal for justice for the alien in the Covenant Code (Exod. 23:9), comes to be understood as a legal principle in the Priestly laws: "There shall be one law for the alien and native-born". This then opened the door for the inclusion of the alien into all the rights and privileges of Israelite society [...]. The inclusive tendency is the working out, in the legal tradition, of God's purpose to include and save all (Van Houten 1991, 175).*

Such a simplistic progression towards greater openness and inclusiveness is frowned upon by other scholars such as Smith-Christopher (1996). The major problem (which is very much related to the first) concerns the meaning of the word "*ger*" in the different codes. This is compounded by the current controversies regarding the dating of the different codes, which we will have to bracket for the purposes of our present discussion[299].

Let us start with the Book of the Covenant, which traditionally was considered to be the oldest collection of laws in the Bible, possibly dating from the pre-state period. Scholars today consider the Covenant Code as an early stage of the Deuteronomic Law tradition (Jobling 2009, 315); Rainer Albertz, for instance, has argued that Ex 20:19–22:33 is not necessarily older than the Hezekianic reform, and may actually have been the basis of this reform:

> *"A dating in the eighth-century situation which I have assumed is supported by [several arguments, including] the fact that the Book of the Covenant pays quite special attention to the protection of the alien (22.20; 23.9), which could well be a reaction to the increasingly serious refugee problem which Judah faced after the fall of Samaria" (Albertz 1994, 182–3).*

If Albertz is correct, the word "*ger*" in the Book of the Covenant refers to a very particular type of non-integrated resident: landless Israelites from the Northern Kingdom, who sought refuge in Ju-

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[299] For instance, Van Seters (2007) argues that the Book of the Covenant could be post-exilic in origin, and ultimately based on the Deuteronomic and Holiness Codes. Such a late dating would bring us to question the historical reconstruction attempted below, but is rejected by most scholars and we will not take it into account.

dah around 700 BCE, at the time when archaeologists document a demographic explosion in Jerusalem[300].

6.4.2.2 The "Ger" in the Deuteronomic Code

In the Deuteronomic Code, assuming this body of law was the basis of the Josianic reform, *ger* could refer *mainly* to a very particular group of people, namely unemployed Levites, as in Jgs 17:7; 19:1f, or at least, such persons may have been considered as the archetypical *gerîm* of the day (cf. P. D. Miller 1988, 12). As has been shown by the investigations of A. H. J. Gunneweg and H. Schulz (cf. Albertz 1994, 58), the ethnological tribe of Levi seems to have perished early on in the history of Israel, and was then replaced by a religious "clanless clan" of Israelites who distanced themselves from their ethnic groups (becoming thus landless) to live with no tie to clan or tribe (cf. Ex 32:29; Dt 33:9), entrusting themselves uniquely to Yahweh´s protection (Dt 33:11; cf. Jgs 20). In Dt 26:12 the Levite and the *ger* (as well as the fatherless and widows) are listed as beneficiaries of charitable tithes; the Levites and the *gerîm*, though mentioned separately, are classified together.

Historians concur that one of the main features of the Josianic reform was the abolition of public Yahweh worship outside of the temple of Jerusalem (including the destruction of temples outside the official borders of Judah – cf. 2 Kings 23:15-20), and this meant that "the provincial priests ('Levites') who had lost their jobs became a significant social problem [and] attempts were made to

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[300] "One can claim with certainty that around 700 B.C. the city had expanded to three to four times its former size. This growth cannot be explained by natural population increase or by normal economic growth. [The archaeological evidence points to the fact] the main reasons behind this expansion [were] the immigration of Israelites who came to Judah from the Northern Kingdom after the fall of Samaria in 721 B.C., and the influx of dispossessed refugees from the territories that Sennacherib took from Judah and gave to the Philistine cities" (Broshi 1974, 21).

cope with it by charitable measures" (Albertz 1994, 208f; cf. 219f)[301]. If this thesis is correct, in the last years of the monarchy, such Levites became the most prominent and visible resident aliens, probably refusing to seek "normal" employment and living on alms. However, this problem most probably disappeared after the Exile[302], and *ger* means something else in post-exilic texts (and in the post-exilic edits and re-appropriations of Deuteronomy).

6.4.2.3 The "Ger" in the Holiness Code

Most scholars today consider the Holiness Code to be post-exilic (Meyer 2005, chap. 6), and so the referent of the word "ger" in this text has changed since we are in a political context which is quite different from that of the Judahite monarchy. The Priestly laws, as Van Houten claims, are indeed more inclusive and sympathetic towards those they call *gerîm* than the Deuteronomic laws towards those they call *gerîm*. For instance, according to the Holiness code, the *gerîm* are to be treated as "the children of your people" (Lv 19:18) and Israel is commanded to love the foreigner "as yourself" (Lv 19:34). But here again, whom do these texts refer to when using the word "*ger*"? Mary Douglas (1994), famous for her anthropological interpretation of Leviticus, asks this question regarding Lv 19:34, and suggests "that the *gēr* was one of the other descendants of Jacob, not descended from Judah, nor from Levi or Benjamin, but those other remnants of the twelve tribes who had

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[301] According to Albertz (1994, 222), the reformers attempted to integrate them into the Zadokite priesthood in Jerusalem, but the Jerusalem priesthood looked at them with suspicion as possibly unorthodox, theologically syncretistic competitors.

[302] According to some authors, the "urbanization" of rural land for legal purposes in post-exilic Judea, and the commercialization that ensued, "led to the gradual obliteration of the old distinctions between those who owned land and those who were landless. Thus the Levites, who were only assigned a number of villages that could not support sufficient agriculture for their needs and thus had to live off of the tithes that the rest of the people paid them, were eventually integrated into the rest of the population" (Novak 2001, 220).

been defeated and scattered by invaders and who still lived in Canaan during and after the exile in Babylon. His special status at law would be precisely that he was neither a foreigner nor a Jew" (ibid., 286 note 1). Rolf Rendtorff (2002, 86), after analysing the use of the term, especially in Ez and Lv, concurs: "This seems to me to be exactly what Ezekiel had in mind, and it fits precisely the role of the *gēr* in the priestly laws". If Douglas and Rendtorff are right, we should probably translate *ger* as "non-tribal resident" or "resident of non-local ancestry" and conclude that biblical law has little to say about non-Israelite *gerîm*. This could mean either that the all the *gerîm* living in the land of the (former?) kingdom of Judah (and possibly of the Northern Kingdom as well) at the time of the writing were considered somehow as "Israelite", or else that biblical law assumes that "non-Israelite" residents do exist in the land, but has nothing much to say in their regard. Unfortunately, it is hard to obtain more clarity than this from the texts, and we need to keep this in mind as we present the rights that are granted to the *gerîm* in the Bible.

6.4.3 What Rights did the Gerîm Enjoy?

6.4.3.1 Rights Recognised in the Deuteronomic Sources

Given what we have said above, let us start this section by a little warning. By translating *ger* as "non-integrated resident" *tout court*, we are probably being much more inclusive than the biblical law codes ever intended, and by discussing the problems of the *gerîm* in a dissertation dealing with immigration policy we might be assuming too quickly that the otherness of the biblical *gerîm* can be compared to the otherness of contemporary immigrants. To be sure,

> *we should not entirely deny a connotation of alienness to ger in Deuteronomy. Perhaps the existence of the class of gerim was rationalized, with whatever degree of truth, in terms of their having originated elsewhere than where they live. Perhaps ger was an available legal category for people who continued*

> *to arrive as refugees. But the simple definition of ger as "resident alien" is not viable (Jobling 2009, 315).*

This is why our approach to the question of immigration in the Bible does not place the legal texts at the centre, as many theological ethicists tend to do in similar work on immigration. We cannot, of course, completely ignore the "classical" discussion of the "legal rights" of the *gerîm* in a work like this, and so we cover this material briefly (and critically) at this point of our discussion.

According to some authors, non-integrated residents living in pre-exilic Israel and Judah are sometimes seen as persons having "definite rights and duties and enjoying the protection of the due process of law" (e.g. Novak 2001, 222f). To be sure, this is how things are presented in the final (post-exilic) edition of the Pentateuch, though the actual legal structures in the pre-state period and during the early monarchy were very limited, especially in rural areas (Albertz 1994, 92f), and as the wealth gap between the rich and the poor widened during the monarchy, poor and marginalised persons often found it very hard to have their rights upheld by local tribunals, easily corrupted or co-opted by the wealthy landholders (Is 5:20, 23; Am 5:10; Mi 3:1-3, 9, 11; cf. Albertz 1994, 165f). The *gerîm*, it seems, were easily and routinely exploited (cf. Mal 3:5; Ps 94:6).

In the Deuteronomic sources, "gerim are separated rhetorically from Israel in that they are not part of the 'you' to whom the law is addressed; they are referred to as a separate group in the third person" (Jobling 2009, 315). Even in ideal situations where justice could be obtained by the non-integrated resident, his[303] rights — as recognised by biblical law — were very limited: if he was a slave, he was entitled to little more than bodily integrity (he could not be raped or mutilated), while

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[303] The masculine, here, is clearly intended. As we shall see below, the rights of women were generally less than those of wayfarers. Even claiming that female *gerîm* had legally-recognised "rights" would seem grossly anachronistic.

if he was a free person, he could, in theory, avail himself of the legal structures (mainly arbitration by elders) which sought to somehow redress criminal and civil injury (cf. Dt 24:17). Generally, a *ger* could do this when "exploited" (Ex 22:20), which could include forcing him to work without any days of rest or Sabbaths (Ex 23:12), or withholding wages (Dt 24:14). Israelite law codes, especially Deuteronomy, refuse to offer a path to integration, and simply assume that the *ger* will be a marginalised other, to be listed with the two other traditional Eastern *personae miserabiles*, the widow and the orphan (cf. Gowan 1987). For this reason, they are to be given "special treatment" (given their inescapable misery) in the form of *charity*: they may glean after the harvesters (Dt 24:19-22; cf. Lv 19:9-10) and benefit from the proceeds of the voluntary third-year tithe for very poor (Dt 14:28-29). However, the Josianic reformers and some of the post-exilic reformers cannot seem to think — or do not want to think — of concrete ways to *legally and politically* resolve the social structures which marginalise these persons (H. V. Bennett 2002). Their social justice projects automatically exclude non-integrated (and especially non-Israelite) residents (cf. Albertz 1994, 217–8; 435). Some authors, such as Donald Gowan (1987), however, suggest that we should not overemphasize the poverty of the *gerîm* and be too critical of the reform movements' failure to offer them better means to social and economic integration.

6.4.3.2 Rights Recognised in the Priestly Sources

The Holiness Code (e.g. Lv 24:22) makes the claim that there is a single law for the *ger* and the socio-politically integrated Israelite (*ʾęzrāḥ*); the *ger* is here seen as an "equal" subject of the priestly law, meaning that she is not normally exempt from observing purity rules and religious laws, and exhibiting the Jewish identity markers developed mostly during the Exile (Lv 17:15; 18:26; 24:16).

Thus, the *ger* is here assumed (or forced) to be culturally and religiously assimilated to the Jewish identity developed during and after the Exile: he is mostly "other" not in terms of culture, religion or ethnicity but in terms of class, and is roughly equated to the "people of the land" in Ezra-Nehemiah (i.e. Judahites who did not return from the exile and were considered as inferior Jews by the returnees), as we shall see in section 6.5. The projection of alienage onto non-exiled Israelites (implicit in the recycling of the term *ger* in the context of foreign domination), and the resulting distinction between *ger* and *ʾęzrāḥ*, established by the returnees, "satisfied their sense of being the only authentic Jews and justified their economic privilege" (Jobling 2009, 316).

In the priestly laws, such *gerîm* have gleaning rights (Lv 19:10; 23:22) similar to those of the *gerîm* in Dt 24:19-21, and have the right not to be oppressed (Lv 19:33-34), as in the Deuteronomical sources. They may keep the Passover and participate in certain public religious rituals (of course, they are Israelites! — cf. Nm 9:14). They are to be loved "as though they were kin" (which they were! cf. Lv 19:34) but this does not mean they should be emancipated from their subordinate social condition. The rights of these *gerîm*, do not go much further than that.

6.4.4 Conclusion: Biblical Gerîm and Contemporary Ethics of Migration

Many theological ethicists writing on immigration focus on the biblical term *ger* as used in the legal materials, read **synchronically,** and on some verses of the Holiness Code that insist on "loving the *ger*". However, they generally avoid drawing the more socially problematic consequences of this reading, which gives the overall impression that the land laws in the Bible, in trying to protect the rights of poor Israelites, deny poor *gerîm* the right to hold property in an agricultural society, condemning them to being a permanent social underclass, and then recognises this as an unavoidable

"fact" and provides some meagre legal remedies. Yet, when analysed **diachronically**, one starts to see that the different layers of the legal code may be referring to different social groups designated by the term *ger*, and that the property laws as presented to today´s reader may have never been enacted in pre-exilic Israel, and never fully enforced in post-exilic times, under Persian, Greek and Roman rule.

A diachronic reading sheds more light on the reality of immigration today. *Firstly*, the evolution of the historical referents of the term "*ger*" in the Law points to a double process. (a) The Bible is aware that the social reality of who is considered "stranger" changes with time, and seeks to keep its laws up to date: from a modern ethical viewpoint, it is hoped that laws concerning strangers would be continually updated to adequately respond to changing realities. (b) The Bible is acquainted with the polysemy of legal categories and with the fact that the interpretation of certain terms might be expanded or restricted by legal scholars: from a modern ethical viewpoint, it is hoped that the interpretation of terms such as "refugee" in certain laws which are politically hard to change be expanded through legal hermeneutics to ensure that the human rights protected by the spirit of the law are not denied through politically opportunistic restrictive interpretations. *Secondly*, the problem of the *ger* status, seen in historical perspective, is better understood as a problem of class than of ethnicity or race; it shows how one could exaggerate the cultural, religious or ethnic difference of certain poor or under-educated groups to justify and increase their marginalisation. Though we cannot deny the existence of racism and xenophobia towards immigrants and refugees today, it is important not to overemphasise these factors, and to remember that many of the problems of the integration of immigrants today boil down to problems of class (i.e. marginali-

sation linked to poverty and lack of education): Muslim millionaires, Indian scientists and Black pop stars usually find our doors wide open.

6.5 Integration Capacity and Post-Exilic Attitudes Towards the Other

6.5.1 Integration Capacity

The transition from offering hospitality to offering "kinship" or "fraternity" through integration and naturalisation is clearly a difficult one, as we saw in Chapter 4. In pre-exilic Israel, integration simply "happened"; but the texts, as edited by post-exilic Judeans, pretend that there was no such process in the past, and there is no need to think about one for the future. In this section we examine different attitudes towards the other in the post-exilic community, in order to try to better understand why it found the notion of integration so taboo. As we shall see, the major problem of the receiving community in this case — the handful of Babylonian returnee families to whom the Persians had entrusted the administration of Yehud — was one of **integration capacity**. The returnee community had a *low integration capacity*, especially due to (a) *demographics* (the community was small and needed to be built up slowly; they were not against the admission of the "people of the land", but it had to happen in an orderly way, and on their terms), to (b) *psychological* reasons (they had to wrestle continuously with all the complex identity issues faced by typical return migrants) and to (c) *political* reasons (they were collaborators with the foreign colonizer, and felt they had to continually and radically prove that they were "Jews" not "Babylonians"). All these stress factors make it very difficult to develop the *literary, legal* and *ritual* tools necessary to incorporate others into the community.

All this is made manifest in a number of different attitudes towards the "other" in the post-exilic community (Zohar 2001, 243f). These attitudes, present in the biblical text, are at times contradictory, and are kept together without a clear resolution in the canon; they are not different shades of a single theological movement. The claim that the Bible "must speak with one united theological voice" (Smith-Christopher 1996, 141) on all issues, and that "apparent contradictions" should be airbrushed away by clever hermeneutics, is ultimately a modernist and Cartesian presumption, or one which mistakes the Bible for some medieval systematic treatise. Rather, it is the task of the theologian to take stock of the different voices in the Bible and to propose to the believers of her day what stance to adopt in front of the contemporary versions of the great biblical dilemmas.

6.5.2 Fear and Hostility Towards the Other

One group of returnees, whom we shall call the "Pure Blood Party", feared that, especially when subjected to foreign domination, Israel risked contamination by the unorthodox (or idolatrous) religious practices of the stranger[304]. This group, as most returnees, sees the exile as the result of Israel´s unfaithfulness to Yahweh. However, they are tempted to take the easy way out and look for a scapegoat — e.g. the so-called "Canaanites" or "people of the land" — to blame for the unfaithfulness of Israel, rather than blame themselves and their ancestors, as if the sinfulness of Israel were ultimately due to a contamination coming from the outside. They therefore tend to propose a "simple solution" to Israel´s tendency to be seduced by other gods and by the unjust socio-political structures of other polities, viz., isolationism, clear separation from the perceived external source of contamination. It is however hard to see how such isolationism could be put into place under Per-

[304] I associate this group primarily with Ezra-Nehemiah and with the priestly materials in the Pentateuch.

sian rule, in a territory standing on the trade route between Mesopotamia, Egypt and Greece and pretend they are living alone in the middle of nowhere, without adopting extreme measures of ostracism against whomever seemed an "outsider" or maintained relations with outsiders, and thus fomenting xenophobia.

Of course, the "outsiders" most relevant to the debate in Persian Yehud were not the mythical abominable ancient "Canaanites", or the hated Assyrians and Babylonians who waged war and deported the fathers of the returnees, but rather those people living in Jerusalem and the surrounding countryside who were "different" mainly because they were not marked by the experience of the Babylonian Golah. Should they be written off as hopelessly evil, impossible to integrate in a pious and self-righteous "New Israel", or should the returnees try to reach out to them and build a new polity together with these "strangers"?

To be sure, the more nationalistic and xenophobic Judeans found the latter suggestion quite hard to swallow. The most representative texts of this group are in Ezra and Nehemiah. In Ezr 9-10 and Neh 13:23-31, social contact between Israelites and "foreigners" is forbidden and mixed marriages condemned. As noted above, the problem is that it is very doubtful that these texts are actually speaking of "foreigners". Rather, it seems that they are simply labelling non-Golah Israelites (Judeans whose ancestors were poor and rural Israelites whom Nebuchadnezzar did not bother to deport) as "foreigners", simply to keep them out of power circles firmly controlled by returnee families.

6.5.2.1 Demographic and Psychological Stress Factors

Let us first consider Ez 9-10, examined at length by Katherine Southwood (2012) using various exegetical tools and insights from social sciences. In the past, it was believed that the "foreign" women, whom the Israelites are being ordered to repudiate in this text (following a distorted reading of Deuteronomic Law, but without resorting to any recognised legal process), were simply the daughters of Babylonians who decided to "squat" in Palestine during the Exile, or the daughters of families transplanted by the Assyrians in Samaria: women, in sum, who did not practice a Yahwist religion. If this were true, we could actually speak of an "intermarriage crisis" (given the marriage between persons of *different* religion and *different* ethnicity). Yet, most scholars today concur that this is not the case. Nothing in the text suggests that these women were not Yahwist or Israelite. What they seem to lack, it seems, is the practice of the Yahwist family rites developed as identity markers by the Babylonian Golah to assert and maintain its "Jewishness". Their "Israeliteness" is not modern enough, and hence not purified enough, and hence they are not "Jews".

The text uses various rhetorical devices to denigrate and stigmatize non-endogamic marriages between the "children of the exile" and the "people of the land", portraying the latter as deviant, and using Yahwist religion — narrowly defined as to coincide only with the traditions practised by the Babylonian Golah community and their blood descendants — to shore up its ethically problematic claims. The anachronistic Deuteronomic prohibition of marrying "the Hittites, the Girgashites, the Amorites, the Canaanites, the Perizzites, the Hivites, and the Jebusites" (Dt 1:3-4) — which obviously no longer existed as separate nations during the Josianic reform — is extended by Ezra to all gentiles, and "gentile" is made coterminous with "people of the land", which, in post-Exilic Yehud, were

patently Israelites, though not cultural and religious clones of Babylonian Golah which provided the paradigm of "Jewishness" for the returnees. Southwood (2012, 215f) concludes that such texts and behaviours are best analysed when situated in a context of heightened awareness of a group´s "ethnic" identity, coupled with a context of a (real or perceived) imminent threat to that identity which elicits strong fear.

As mentioned above, two major sources of this fear are **demographic inferiority** and **return-migrant** psychology, which are considerable community stressors. Smith-Christopher (1996, n. 14) compares the text with the fear of extinction present in some Native-American communities; Job-ling (2009, 316) notes the small size of the community: their minority status was a sure motive of fear of the other. Southwood uses the notion of "hybridity" from Homi Bhabha's post-colonial theory to help us understand that, just like many post-colonial intellectuals and converts to post-modern "fundamentalist movements" (who absorbed a great deal from their Western-style education and from their colonist or "lay" friends, but hate to admit it), the returnees were cultural hybrids who felt they did not really belong, neither in Babylon, nor in Yehud. Their "fundamentalist" interpretation of tradition and obsession with recreating an archaic "pre-state Israelite" world was mostly an effort to prove to themselves that they belonged and were "more native than the natives". In this way, they showcase many of the identity issues seen among forced migrants and return migrants today, seeking to prove they belong by being more traditionalist and archaic then the people who remained in the land, and often interpreting developments in their ancestors' village as "corruption" and "decay".

6.5.2.2 Political Stress Factors

All this was further complicated by the issue of power: given their hybridity, the returnees were a "collaborator" minority placed in positions of power by an imperial power, as Anglo-Indians in India or Tutsis in Rwanda, and feared losing their power and being "punished" or discriminated against in the event of political destabilization. However, while the political situation is stable, they do not want to lose their privileges and their grip on power, and tend to ostracize those who marry out of the group (and hence "marry down"), providing footholds for ambitious social climbers from the majority group to "marry up"; Smith-Christopher (1994) mentions various studies in "hypergamy theory" (e.g. on interracial marriages in the US, and inter-caste marriages in India) which can shed light on the text. Hence, though the texts are sometimes assumed to be dealing with the same "ethnic" and "religious" problem (and frame the issue using such language), they could be dealing mostly with what we would call a "class" issue, where one construes one´s class as "religiously superior" and "ethnically distinct" from the "plebs", as the Bourbon and Hapsburg ruling families did in early modern Europe.

This issue of political power, according to Smith-Christopher (1994, 258ff; 1996, 126), is clearly central to the Nehemiah texts (especially Neh 13:23-31) which are to be distinguished from Ezr 9-10, especially since they seem to perceive the threat coming from outside Yehud. The returnee-administrator class is threatened not only by the "people of the land" (who dislike being lorded over by their "Babylonianized" kin imported as a new "ruling class" by the Persians), but also by the rulers of neighbouring Persian provinces. These political neighbours are angered by the concessions and preferred treatment that the "new" rulers of Yehud are obtaining through their contacts in the

Imperial court. Tobiah ("the Ammonite") and Sanballat ("the Horonite") — both probably "Israelites" in spite of Nehemiah´s labelling[305] — opposed Nehemiah´s rebuilding of Jerusalem (Neh 2:19; 4:7); they believed that the Persians were shooting themselves in the foot by giving political autonomy to what they saw as the most rebellious and traitorous region in Palestine, and furthermore putting its economy or religious steroids by allowing the rebuilding of the Temple[306]. Yet seeing that the returnees often got what they wanted from the emperor, these powerful neighbours decided they wanted a share of their political influence, and tried to get it through intermarriage with the returnees. Nehemiah was however decidedly bent on frustrating their plans.

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[305] Tobiah (Tovi-YAH, "Yahweh is good") indicates a Yahweh worshipper. Sanballat, according to many historians, was a "Samaritan", a person living in Persian Samaria, culturally and religiously "Israelite" just as most of the "people of the land" in the neighbouring Yehud (though not a "Jew", as defined by the Bablyonian Golah). Albertz (1994, 524) argues that the text in 2 Kings 17:24-41, which polemically depicts the population of Samaria as alien syncretists, does not probably apply to the post-exilic population of Samaria in general; after the Assyrian conquest of the Northern Kingdom (c. 722 BCE; 2 Kings 17:1-6) and the deportation of the "Samar*ians*", the new "Samar*itan*" population (made of deportee-colonizers from other parts of the Assyrian empire, and landless Judahites who moved north in search of land) fell within the cultural and religious sphere of influence of the South, and was particularly targeted by the Josianic reforms (which destroyed the high places in Samaria and centralized the Yahweh cult in Jerusalem; cf. 2 Kings 23:15-20).

[306] Rebuilding the Temple was not a simple expression of "religious freedom": since Davidic times, and especially after the Josianic reform, the Temple and the continuous pilgrimages it generated contributed hugely to Jerusalem´s economy and its ability to finance large armies. Historians, based on a reading of a passage in Josephus´s *Antiquities* (XI, ch. 8) in part corroborated by archaeological finds, argue that Sanballat, the Persian governor in Samaria, wanted to share the wealth generated by the pilgrimages by rebuilding a "legitimate" Israelite temple in Samaria (probably on Mount Gerizim) and buy into the Golah returnees´ privileged status in the Persian court by marrying his daughter to Manasseh, a member of the high priest´s family in Jerusalem. The élite in Jerusalem, however, ostracized Manasseh and started castigating such political intermarriages (cf. Albertz 1994, 524ff). The case of Manasseh´s marriage is probably the emblematic case in the mind of the author of Nehemiah and his readers: even marrying rich and powerful people from neighbouring provinces is portrayed as "marrying down" and eroding the political and economic privileges of the Judean élite. In the view of this biblical author, such people vying for a higher social status, or trying to regain social status at the expense of the returnees, should be labelled as "foreign" and excluded.

6.5.3 Hospitality and Hints of Integration

Other groups in post-exilic Yehud/Judea had very different attitudes towards foreigners. Smith-Christopher (1996, 119) distinguishes two types of **non-exclusionary** attitudes: **transformation** and **inclusion**. The "dangerous" foreigner (inside, or outside), rather than being fought, subjected or destroyed, may be **transformed** (into a non-hostile or even amicable "other"), with God´s help: this is the leitmotif of many of the regal stories in Daniel, as well as the book of Jonah. The "non-dangerous" resident alien, on the other hand, should be integrated; the authors here probably assume they are speaking to "reasonable" Judeans, not afraid of some imaginary treacherous "fifth column" of "Canaanites" or "Hivites" or "Jebusites" arising from among the populations integrated many centuries prior to remove the returnee Judeans from power (as some of the "Pure Blood" party seemed to believe).

6.5.3.1 Hints of Integration in Trito-Isaiah

In Trito-Isaiah (Is 56-66), everyone who binds himself to YHWH, native or foreigner, can be included in the people, and can become a servant of YHWH (cf. Beuken 1990, 69ff; Westermann 2001, 212–3):

> *Do not let the foreigner joined to the Lord say, "YHWH will surely separate me from his people". […] The foreigners who join themselves to YHWH, to minister to him, to love the name of YHWH, and to be his servants, all who keep the sabbath, and do not profane it, and hold fast my covenant — these I will bring to my holy mountain. […] Thus says the Lord YHWH, who gathers the outcasts of Israel, I will gather others to them besides those already gathered (Is 56:3.6.7a.8).*

Interestingly, the term for "foreigner" in vv 3 and 6 is *bęn-han-nekār*, which is usually used to designate others deemed dangerous or hostile, and living in non-Israelite space. The text seems to recognise that, under Persian rule, the spatial distinction is hard to maintain, and counters the scare-

mongering of the "Pure Blood" party — for whom every *ger* is a potential *nŏḵrî* — by inverting the argument, and claiming that every *nŏḵrî* can be a potential "servant of YHWH". In fact, the main theme of the Trito-Isaiah, according to Beuken, is precisely that of the "servants of YHWH". The post-exilic Isaiah elegantly and delicately dismisses the "Pure Blood" party´s thesis that the (only) "real" remnant of Israel are the returnees, people descended from the Judahites deported by Nebuchadnezzar (who were mainly educated citizens and landed gentry of the time of the monarchy), who could claim ancient titles to the land, and who liked to project those titles back to the pre-state period. Rather, according to Trito-Isaiah, those who love YHWH and are devoted to YHWH´s service are the real Israelites, whatever their ethnic origin or status during the monarchy.

However, as André Wénin (1995, 297f) argues, this can be understood in two ways: foreigners can become part of the People of the Promise either on the condition of **complete (or quasi-complete) assimilation** (submitting to all the laws of the Torah, reneging their cultural identity), or by the acceptance of a reasonable subset of the basic ethic principles of the Old Testament (e.g. the second "tablet" of the Decalogue, or the so-called "Noahide laws") coupled with some form of Yahweh worship, in such a way as to be able to **retain most of their cultural identity**. The second possibility starts to be seriously explored among Christian Jews in Paul´s writings, and in Rabbinic Judaism in Medieval times and more intensely in the last two centuries (Sagi and Zohar 1995). The first reading is, however, the best that the excluded others could hope for in post-exilic Yehud[307].

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[307] Over the years, there have been different interpretations of what conversion to Judaism actually entails. According to Cohen (1989, 26), there must be these "three elements: practice of the Jewish laws; exclusive devotion to the god of the Jews; and integration into the Jewish community. The three elements are stated forthrightly by the book of Judith. When Achior the Ammonite 'saw all that the god of Israel had done, he

6.5.3.2 Hospitality and Assimilation in Ruth

In the same vein, the book of Ruth advocates for the integration of the stranger, though it dares not propose anything besides complete assimilation. Scholars consider this text today as a post-exilic text, even though it poses as a pre-state novella (Cohn Eskenazi and Frymer-Kensky 2011, xvi–xix): remember that we are in a context where, to be convincing, you needed to sound archaic. Given the hostility towards the "other" harboured by the post-exilic political authorities, the community behind this text needs to convey their counter-cultural message tactfully. As Estévez López (2003, 25) argues, "the book of Ruth is not simply a story concerning some women, but rather a metaphor of the collective construction of a people". It challenges the idealized "us" brandished by the re-turnees while seeking to make its message receivable to its intended audience, for this reason, this group of post-exilic authors propose a story situated in the pre-state period, to argue that what was needed in their society was not *restoration* (of the social structures and social fabric of the late monarchy, the "true we"), but *reconstruction* (of a new and inclusive social fabric, a "new we"). No-emi´s family, like the exiles, was obliged to migrate to a foreign land. She had come in contact with foreigners in Moab, just as the deportees in Babylon, and in spite of ethnic rivalries, had built close friendships and family ties: the "other" is not so different from the "self", after all, especially when one is living in the other's land. The problem, however, is how to treat the "other" when one is back in one´s own land, in a position of power, and precisely how to treat those "others" who, like Ruth (and unlike Orpah), have nowhere else to go, or have no desire to go and live elsewhere. How

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believed firmly in god, and was circumcised, and joined the house of Israel, remaining so to this day' (Jdt 14:10)".

do we deal with those "others" who feel that "our" land is truly their home? What do we say to Ruth when she pleads: "'do not press me to leave you or to turn back from following you! Where you go, I will go; where you lodge, I will lodge; your people shall be my people, and your God my God. Where you die, I will die – there will I be buried'" (Ru 1:16-17)?

Ruth´s only route to integration in Israel was through (second) marriage, but her Israelite next of kin (like the "Pure Blood party") considers that marrying a foreigner entails "damaging [his] own inheritance" (Ru 4:6). Ironically, however, Noemi´s (and her husband´s) inheritance seems tied to a Moabite´s marital rights: the coded message here is that the returnees will never justly reclaim the whole land of Israel unless they are ready to intermarry with the "impurely bred" resident population, given the miscegenation promoted by the Assyrians and Babylonians. Boaz, however, does not see things as does Ruth´s next of kin. Boaz accepts to marry Ruth. For this reason, he is commended by witnesses and elders at the gate and in Ru 4:11 is compared to Jacob (who married the foreigners Rachel and Leah, and built the house of Israel precisely through such unions with foreigners). As for Ruth, she is compared to Tamar (who, by hook or by crook, found a way to bear a Judahite son, as was her marital right, from a "close kin" when her "next of kin" refused – Gn 38). The text is clearly ironic, especially if we take into account modern scholars' claim (e.g. S. J. D. Cohen 1999, 268f) that Ezra and the Pure Blood party were at the time insisting on the adoption of matrilineality as proof of Israelite origin: if we follow the logic, the Israelites, being the offspring of Aramaean mothers (Rachel, Leah and their servants, whom Jacob obtained from Laban, the Aramaean), are not "true" Israelites after all. According Ru 4:17, Ruth then goes on to become the great-grandmother of David (who may not be Moabite, like his grandfather Obed, but rather "Aramaean", given his *mother*´s assumed lineage.)

6.5.3.3 Biblical Genealogies: Integrating Backwards

Besides the attitudes of exclusion, transformation and inclusion, an interesting position is taken by the biblical genealogies. Genealogies reconstruct links between different populations, and provide a **classification** of other: some peoples are closer while others are more distant, some should be trusted on the basis of past interactions while others should be distrusted, some are stereotyped as weaker and others as stronger (Cohn 2003). Genealogies project into the past current alliances, enmities, and stereotypes, and help premodern societies prudently discern what attitude would be most appropriate towards this or that neighbour. By positing "others" as close or distant relatives, however, genealogies do not necessarily simplify the complex relationships between diverse ethnic groups. In the genealogical system of Genesis, for instance, those most closely related to Israel (e.g. Amalek), according to this scheme, are not necessarily the friendliest, nor the most desirable as in-laws and co-inhabitants of the land (Crüsemann 2002, 71). The main function of "segmented" genealogies in Genesis, as Robert Wilson's (1977) famous analysis concludes, is to connect neighbouring tribes and convert the "other" into a "kin" by defining the boundaries of community, rights and obligations of members, permissible marriages and titles to land. The first 11 chapters of Genesis also extend the genealogies backwards to provide a framework for the story of primeval events and argue for the stratified interconnectedness of all peoples (Westermann 1984, 6ff).

6.5.4 Conclusion: Integration Capacity and Contemporary Migration

The Bible presents a complex mosaic of ways to see and treat the "other", and part of that complexity comes from the fact that many of the writers and editors of the biblical texts in post-exilic Yehud saw themselves as return-migrants with a tenuous grip on power. On the one hand, they

sympathized with the *gerîm*, since they are the children of exiles who were *gerîm* in Babylon (cf. Ruth, Trito-Isaiah, Holiness Code, pervasiveness of the Exodus-Wilderness narrative in the post-exilic Deuteronomistic editing, etc.) On the other hand, however, the post-exilic editors were also afraid of the "people of the land" – the Palestinian Israelite majority whose religious and social customs evolved separately from those of the Israelites of the Golah ("Jews"): given their forced return migrant *psychology*, they saw these other residents as religiously impure and ethnically "contaminated"; given their *political* and *demographic* weakness, they saw these others as socially and economically threatening. The receiving society established by imperial decree in Persian Yehud was a small and stressed community, with diminished receiving capacity: this is something to note as we seek to reflect on immigration policymaking today. However, we can go even one step further: we can assume these people mostly returned (when most other Jews stayed) because they found it hard to be integrated in Babylon: **they had a low integration capacity as refugees in Babylon, and they now have a low integration capacity as ruling class in Yehud.**

Reading between the lines in texts like Ezra and Nehemiah, we can see the sociological and psychological complexes created especially by forced migration and by the return of forced migrants. The resentment of the deportees towards the Babylonians is redirected by some of the returnees towards the "people of the land". Furthermore, the search for a clear identity in the face of a perceived forced assimilation in Babylon becomes a religious, ethnic and cultural "fundamentalism", imposed on people who are actually similar, and who manifest the richness and diversity of a grand religious, ethnic and cultural tradition which gets lost in the frantic search for a uniform and distinctive national identity.

We have mentioned, in Chapter 2, some of the problems related to the integration of refugees and asylum seekers, and also the problems faced by second and third-generation immigrants who grow up in marginalised social contexts, are not fully "integrated" and who feel they were uprooted from an idealized "homeland" and forced to grow up in a "foreign" country (not fully appreciating the difficult choices made by the parents and grandparents). Whether they stay in the country they call "foreign", or return to the homeland of their ancestors, these persons have particular social and personal needs and have to be encouraged to integrate themselves "somewhere" with just and intelligent policymaking. Furthermore, their particular social and psychological issues are not to be projected onto the whole immigrant population.

6.6 Conclusion: Immigration Policy Priority Rules in the Light of the Bible

At this point, without repeating the conclusions above, we briefly show how the above discussion fits into the project of this thesis and helps us move towards formulating immigration policy priority rules within a philosophical and theological ethical framework. Overall, the contribution of the Bible to our discussion is that it "particularises" the reflection and helps us realised that some of the general priority rules have to be tailored to particular societies and take into account their conceptual tools and their history. More particularly, the discussion above leads us to formulate **three principles** which will help us develop further the priority rules proposed in previous chapters.

1. *Polities need ethically-warranted* ***National Narratives.*** As we have seen in Section 6.3, polities need to create cohesion by asserting their distinctiveness, so the way they reconstruct their histories and tell who they are is very important (6.3.2, 6.3.3). **Anamnestic solidarity**,

in its more inclusive and hospitable form, can strengthen such narratives (6.3.4). References to autochthonous origins (6.3.4) and religion (6.3.5) in such narratives are problematic. This leads us to formulate the following principles: *Receiving societies should adopt National Narrative which they could reasonably expect newcomers to adopt* (i.e. the buy-in price, in terms of identity markers, should not be too high)**,** *and which should be expanded and revised to include the stories of the newcomers. Immigrants wishing to be fully integrated into a receiving polity should be willing to buy into such narratives***.** These principles lead us to propose the following priority rule:

a. **National Narrative Rule:** *Receiving societies have a greater duty to integrate immigrants who demonstrate a willingness to buy into the National Narrative, assuming that such a narrative is ethically acceptable, inclusive, revisable, and (reasonably) adoptable by newcomers.*

2. *Immigration policy should be aware of the real (not simply perceived)* ***integration capacity*** *of both the receiving society and the immigrants*. In section 6.5.2, we mentioned *demographic, psycho-social and political* stress factors on the side of the receiving society. We should also include, today, *economic and environmental* stress factors. All these limit the integration capacity and the ability to produce *literary, legal and ritual* channels that facilitate the integration of the other. A society can eventually welcome more immigrants once it has faced up to the reality of immigration and developed such conceptual tools. Similar stressors may also be present on the side of the immigrants, especially traumatized refugees. All this points to the **Integration Capacity** rule, with three parts:

a. **Stressed nations with limited integration capacity and with underdeveloped conceptual tools (narratives, laws, rites) to integrate strangers may have a lesser duty to receive and integrate immigrants (depending on the stressors) while they develop such conceptual tools.**

b. **Stressed migrants** (especially "forced security migrants" who were violently pushed out of their land (cf. 5.3.3)), **though they may have a greater *a priori* right to be granted residence (and eventually citizenship) in a safe receiving nation on the basis of need, often need more help** to integrate well (and deal with trauma, conflicting identities, becoming kin to those they perceive as "strangers")**.**

c. **Regional and International Coordination and Specialization are desirable in dealing with stressed immigrants.** Polities whose public culture is relatively similar to that of the migrants in question are usually better suited to take them in and integrate them, and their integration capacity should be expanded with the help of the international community if needed. Other polities may opt to limit more strictly the stay of stressed immigrants, and "specialise" in the reception and integration of certain groups of stressed immigrants, provided that they (i) offer adequate help to the polities more suited to integrate them, and (ii) accept to integrate other stressed migrants with an adequate investment of resources. The international community may have a bigger responsibility in this case to provide temporary sanctuary for these migrants in countries with "similar" cultures, and to seek effective means of avoid the radicalization of cultural, ethnic or religious identities within poorly-managed refugee camps or ethnic ghettos in the big cities of poor, stable countries.

3. *Immigration Laws and policies should* ***adapt to changing social realities****, and when it is politically difficult to change certain legal formulations,* ***legal hermeneutics should be used to protect and expand, rather than deny or restrict, human rights protections enshrined in law***. This reflection comes out of our discussion of how the referent of the term *ger* evolved during the history of Israel (section 6.4). The different codes of law in the Bible somewhat adapted the "*gerîm*" laws to the different groups of the persons labelled *gerîm* at the time of writing, but the rights of the *gerîm* were not expanded by the post-exilic community when the majority class of the Israelites — the "people of the land" — was placed in this legal category. Rather, the legal category of "*ger*" became a convenient legal contraption to restrict the basic rights of the majority and strengthen an oligarchic form of local government. Modern representative democracies cannot afford to emulate this and keep large amounts of *de facto* residents for decades or generations without some legal status that can provide them certain rights similar to those enjoyed by citizens.

The Bible teaches us a lot about hospitality, but its struggles with integrating the other are probably more instructive as we reflect on immigration today. The reflections, principles and rules proposed above will certainly be of great help as we reap the harvest of ideas presented in this thesis up to this point, and move towards more concrete policy proposals and community practices in the next chapter.

CHAPTER 7: SOLIDARITY AND MIGRATION POLICY. PRIORITY RULES IN A VIRTUE ETHICS FRAMEWORK

7.0 Introduction

This chapter seeks to bring together the priority rules developed in previous chapters and place them within a virtue ethics framework and an understanding of human interconnectedness, both included in the notion of solidarity. To better understand what solidarity towards migrants entails, we first seek to clarify this term with the help of secular authors (7.1). In the process, we distinguish between two modes of solidarity: ***kindred (or fraternal) solidarity****, or "civic kinship", and* ***hospitable solidarity****, or more simply "hospitality", practiced both as "settled" and as "itinerant" hospitality. The remainder of the chapter examines the virtues of hospitality (7.2) and kinship (7.3), and include, for each of these virtues, (i) a discussion of how the virtue can be understood in secular/political setting, (ii) a Christian reflection on the virtue using biblical materials and practices adopted by faith-based organizations, (iii) a number of suggestions of how the virtue could engender ritual practices and narratives that lend support to some of the immigration policy priority rules we have proposed in previous chapters.*

The previous chapter provided a biblical approach to immigration issues based on the Old Testament. For reasons mentioned in the introduction to that chapter, this dissertation does not use the New Testament extensively as a source for an ethics of migration. This chapter, however, while not primarily biblical or exegetical, briefly explores some texts in the New Testament relevant to our discussion.

7.1 Solidarity: Clarifying the Concept with the Help of Secular Thought

7.1.1 What is Solidarity?

We all have a sense of what solidarity is; we tend to relate the term to several words in our vocabulary, such as "'community spirit' or 'mutual attachment', 'social cooperation' or 'charity' and – from time to time – 'brotherly love' or 'love of mankind'" (Bayertz 1999, 3). Many authors, as we shall see, often use it as a more modern version of the term "fraternity". Etymologically, it is derived from the *obligatio in solidum* contract made with a group of persons, wherein *each* member of the group pledges to fulfil alone the *whole* contractual obligation, or repay the *whole* amount of the loan, should all the others default or renege (Goffi 1992, 1729). Today, solidarity is generally understood as a term *describing* and *prescribing* a mutual attachment between individuals: it is therefore a term with both a descriptive and a normative component. The notion of "solidarity" is often used *rhetorically* in politics or religious ethics to spur people to act in the way advocated by the speaker. Yet, from a *theoretical and critical* point of view, it remains a largely unexplained term. "As other central concepts within ethical and political terminology, [it is not] defined in a binding manner, and consequently [is] used in very different and sometimes very contradictory ways [; however,] other than is the case with comparable terms such as 'justice', 'liberty' or 'equality', this heterogeneity does not stem from an abundance of competitive theories" (Bayertz 1999, 3)[308]. Political ideologies

[308] The polysemy and ambiguity is also present in similar terms used by other cultures, such as the notion of "ubuntu" or "botho", originating in the Bantu cultures of southern Africa, which Leymah Gbowee (2010) translates as "I am what I am because of who we all are". Authors like Magolego (2013) have tried to list the ideological components of this term, claiming that "[Black South African] botho can be identified by, among others, the following five characteristics: extroverted communities, socialisation of prosperity, redemption, deference to hierarchy and humanism"; but the term has different interpretations among South Africans of African descent (SAADs) (Gade 2012). Some SAADs do not consider all human beings as "persons" — i.e., as

based on *liberty* (economic liberalism, political libertarianism) are alive and well today (in spite of the excesses of *laissez-faire* capitalism and anarchism), and similarly those based on *equality* (egalitarianism) though less popular these days (and dented by the horrors of Stalinist and Maoist communism); however, ideologies based on solidarity and fraternity (corporatism) have taken a big hit since the fascisms of Mussolini, Hitler and Franco. The atrocities perpetrated by these regimes indicate that solidarity and fraternity are tricky concepts to incorporate into modern political life.

Let us however focus on the normative or prescriptive aspect of solidarity, that is, the virtue and/or duty of being solidary with others. Authors like Bayertz (1999, 4) argue that one of the main problems with solidarity is that it points to *positive* obligations to act (beneficence), whereas modern political though has focussed on *negative* duties (non-maleficence): the *main* duty of modern states and citizens is *not to hinder* other citizens from legitimately enjoying their rights to personal, political and socio-economic freedoms. This does not mean that modern political societies lack implicit systems of positive obligation; more simply, only negative duties are showcased and the positive moral structures which undergird the normal functioning of modern polities are obfuscated with a political rhetoric and a philosophical conceptual apparatus that highlight only rights and negative duties. We have already mentioned this problem in Chapter 2 (regarding the insistence in CST that every right implies a corresponding duty) and in Chapter 5 (regarding Henry Shue´s argument that negative rights imply *positive* duties on the part of citizens and of the state — e.g. paying for a po-

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participants in the interconnectedness assumed in *ubuntu*, and even those that are get treated differently, given a hierarchy of peoples assumed in the notion. As Magolego (2013) notes, “the lens of hierarchy of peoples might explain why Mozambicans disproportionately bear the brunt of [Black South African] xenophobia more than the populous Zimbabwean migrants”.

lice force, doing jury duty, etc. — and not only *negative* duties — e.g. simply refraining from stabbing people – cf. section 5.3.3).

Many modern political authors such as John Rawls have sought ways of keeping in balance the liberty and equality, often seen as *soeurs enemies* in perpetual competition. However, fraternity, the third term of the French Republican triad (or solidarity, its "twin") is typically not even considered as a third sister, but as a total stranger, and is kept out of the mix altogether. Mona Ozouf (1998, 86) argues that "fraternity is clearly of another order, the order of duties rather than rights, of bonds rather than statutes, of harmony rather than contract, of community rather than individuality". In other words, solidarity and fraternity are (a) covenantal, not contractual, and they focus on a possible social harmony, rather than probable social conflict. They often subsume (b) a positive (Thomistic/Catholic) theological and philosophical anthropology, rather than a negative (Augustinian/Lutheran) one. They see (c) human persons as "city animals" wishing to build deep political bonds among themselves, rather than lonely individuals and small groups occasionally purchasing services and protection from a minimal state apparatus. They assume (d) that even in plural societies, a shared notion of the *common good* can be found, on the basis of which one can define a limited, but non-banal, list of *positive* political duties. To be sure, this is not the place to propose a new political theory based on solidarity, or to argue why we should help modern political theory rediscover the value of covenantal thought, positive moral anthropology, the social dimension of the human self and the common good, while avoiding some of pitfalls of contemporary communitarian-

ism[309]. Rather we focus on another problematic aspect of the notion of solidarity, namely that of *scope*.

7.1.2 The Scope of Solidarity

7.1.2.1 Solidarity and Fraternity: A Historical Overview

With whom ought we to be solidary? This is where a distinction between solidarity and fraternity starts to emerge. There are two typical answers to this question. (a) We can and should be solidary with the whole human race[310] (universal solidarity) and this entails being solidary with strangers. (b) We can and should be solidary only with some particular human group. Actually, both answers can be true if we distinguish between different forms of solidarity. (a) There is a level at which we can and should be solidary with *the whole human race*, and in any case with people *outside our particular social and political spheres of belonging*. The bond and corresponding duties are wide and less demanding here: we will call this hospitable solidarity, or hospitality, in our specific context of solidarity with immigrants[311]. Yet (b) there is also a level at which we can and should be solidary with other members of our social and political groups. The bond is narrower and deeper here, and

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[309] Certain forms of communitarianism can, in fact, reinforce the very notions that solidary political thought seeks to resist by becoming ways of retreating from mainstream politics, and ultimately (a) considering political belonging in modern polities as a rescindable and banal contract, (b) assuming facilely that other social partners are sinful, hence not willing or not able to build a just society on the political level, (c) promoting the isolation of small groups from bigger society and hence implicitly fomenting the fragmentation of political belonging and political individualism, and (d) limiting themselves to seeking a good that is *communitarian*, but not truly *common*.

[310] Some would extend this to non-human creation, and to past and to future generations of humans. Though we mention *anamnestic solidarity* in this thesis, we do not go into the other forms of solidarity in the present work.

[311] The universal form of solidarity also includes the virtue of humanity (*philanthropia*, or universal compassion) where one practices solidarity with the other away from one´s home.

the duties more demanding: we call this (civic/religious) kinship[312] solidarity, or kinship *tout court* and relate it to the traditional restricted notion of fraternity (as used in nationalist or religious contexts). In this section, I explain the above distinction, and why I believe that kinship or fraternity is to be understood today as mainly a form of in-group solidarity, and why solidarity is to be understood as having an out-of-group component which does not apply to the term "fraternity" as it has been used in politics since the 19th century.

In fact, the terms "solidarity" and "fraternity" are sometimes considered coterminous since their scopes crossed over at some point. Before the 19th century, given the demands of the *obligatio in solidum*, only people who were closely bonded in a tightly-knit group could describe their relationship as "solidary". Yet, fraternity had a mainly universal (or at least cross-cultural and supernational) dimension based on the idea that all members of Christendom were *soteriologically* adopted children of God, and brothers and sisters in Christ, and to a lesser extent, being created by God in God´s image and likeness, all human beings were in some sense daughters and sons of God, and thus united by *creational* bonds of kinship. This Christian notion of fraternity was adopted as a major political virtue by some of the movements during the French Revolution (Munoz Dardé 1999, 82), and represented symbolically by a sheaf, or bundle of stalks (Ozouf 1998, 82). The *vertical and theological* stratification of Christian fraternity (Christ – the Most Christian King – the Clergy – the Nobility – The Third Estate) was replaced by a more *horizontal and secular stratification* (the left-to-right fan of the Revolutionary *Assemblée nationale* and *Assemblée nationale constituante*). Yet, in

[312] In the discussion below, "kinship" is used as a more gender-neutral equivalent of fraternity, not as biological kinship.

the early days of the Revolution, the sheaf represented the *kinship of the whole of humanity* (universal fraternity), which the 1789 French Revolutionary "Declaration of the Rights of Man and the Citizen" assumed to assert the existence of *human rights* beyond those established by positive law.

As the Revolution progressed, and had to fight foreign monarchist armies, the scope of fraternity was gradually reduced: universal brotherhood become brotherhood in arms, and the distinction between brothers and foreign enemies emerged starkly, as in the *Marseillaise*, where one hopes that the furrows of the new France may be watered by the "impure blood" of those "hordes" sent to "slit the throats" of French children. In the 20th century, the sheaf of nationalist fraternalism, or patriotic solidarism, is recast as the emblem of fascist corporatism, which Mussolini and other far-right politicians (righty) believed would win Catholic support, at least until the Catholics wised up to the fact that the harmony between social classes that the Fascists were proposing would be achieved at the expense of those who "were not brothers" (xenophobia) and those who "did not act as brothers" (abolition of diversity). Of course, the misadventures of corporatism in the 20th century do not discount fraternity as a prime political virtue. They however underscore the limits of nationalist ideologies based **on** fraternal harmony, and restrict the use of the term to *in-group relationships* within a particular political society. The term "cosmopolitan" or "universal" fraternity today sounds like an oxymoron (that idea, in early French Revolutionary texts[313], is better expressed

[313] Internationalist revolutionaries, such as Anacharsis Cloots, were eventually side-lined by the likes of Louis de Saint-Just, who claimed that "Cloots liked the world, except for France" (Ozouf 1998, n. 27). Saint-Just started his political career declaring that the king was not a citizen, but a traitor, and should be executed; he ended up seeing enemies of France everywhere, and became the "angel of death" of the Reign of Terror. Coots was one of the many revolutionaries who did not survive the paranoia of Saint-Just and Robespierre.

today as "universal *solidarity*"[314]): fraternity or kinship in contemporary thought denotes a deep and proximal relationship which is hard to predicate of bigger human groups, at least given the current weakness and representational deficiencies of international institutions.

To some extent, the meaning of the term solidarity evolved in the opposite direction. As Bruno Mattéi (2001) notes, the notion of solidarity (as a new founding principle for the Republican movement in France) was proposed at the end of the 19th century (as part of the "solidarist" political project of Léon Bourgeois) in an attempt to substitute the third term of the French Republican motto[315]. Civic "Republicans have always thought and still think that, in general, solidarity is more 'positive' and scientific than fraternity, which has thus been relegated to the private, emotional or religious sphere, and that solidarity is more accessible to a public which could consent to forms of redistributive social justice in compensation for the social disequilibrium [caused by capitalist liberalism], when this becomes unacceptable to humanist reason" (ibid.). Authors like Mattéi invite us to rehabilitate the concept and virtue of fraternity, and avoid conflating it with solidarity. In the view of such authors, the vague and over-extended notion of solidarity (which often evokes institutionalised forms of charity) obfuscates and relativises the links we have with our political consociates, and hence the duties we have towards them.

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[314] In Catholic Social Teaching, the scope of solidarity becomes more and more universal during the 20th century; *Gaudium et Spes* 4, for instance, claims that "the world of today has a very vivid sense of its unity and of how one man depends on another in needful solidarity [Latin: necessaria solidarietate]"; similarly, *Populorum Progressio* 17, argues that "the reality of human solidarity [Latin: mutua universorum hominum necessitudo], which is a benefit for us, also imposes a duty." Cf. Coste (2004).

[315] The triptych "liberté, égalité, fraternité" was one of many popular slogans of the 1789 French Revolution, but it was only officially adopted during the 1848 French "February" Revolution, then banned during the presidency (and then dictatorship) of Louis-Napoleón Bonaparte (Second Republic, Second Empire), recovered by the Paris Commune in 1871 and slowly reintroduced during the Third Republic as power shifted from the hands of the monarchists into the hands of the Republicans in 1880 (cf. Ozouf 1998).

How did solidarity come to designate both in-group and out-of-group social bonding, and hence become an obscure term? Émile Durkheim was one of the major scholars who popularized the term in his famous work, *The Division of Labour in Society* (1893), and sketched an important distinction within the concept of solidarity, mostly from a sociological and *descriptive* stance, though not without *prescriptive* and moral/political intentions at a time when France was at a crossroads[316]. *Mechanical solidarity*, in Durkheim, is basically the kind of bond present among members of closely-knit groups, who bond "mechanically" because of their physical closeness and their patent cultural, religious, and ethnic **similarities**. *Organic solidarity*, on the other hand, designates the anonymous, distant, religiously-neutral, legally-sanctioned, culturally diverse, and economically complex web of relationships of large human assemblages in an interconnected modern world. What brings these amorphic masses together is the interdependency caused by the division of labour, and hence by the very **differences** that exist between members of modern political societies.

Durkheim clearly associates "mechanical" more closely with "pre-modern", and "organic" with "modern", but sees them as co-existing (at least in his day). His distinction, which retains its validity, entails that close bonding between citizens in modern societies has to happen not in spite of, but with the help of, the *fact of pluralism*, and the *availability of autonomy for the masses*. However, this does not mean that close political bonds are obsolete, that the market is the only thing which

[316] Mac-Mahon´s attempt to use the Third Republic as an excuse to re-establish the monarchy and the ancient "Moral Order" backfired, and it slowly became clear in the 1880s that republicanism and its modern ideas were there to stay. In this context, Durkheim´s distinction between "pre-modern" *mechanical solidarity* and "modern" *organic solidary*, given his non-conflictual and matter-of-fact approach to the latter, makes the political transition seem unavoidable, not too problematic (compared to the conflict-based theories of other sociologists of his day), and hence implies that it should not be resisted or deemed morally unacceptable by conservatives.

can bring us together, that we cannot find ways of creating close "kinship" ties within bounded, modern political societies and thus deal with the problem of *anomie*. The Industrial Revolution has not rendered Aristotelian "political friendship" any less desirable, and may actually have given us the technical tools and the social mobility necessary to put it into practice in the large-scale political entities created in early modernity[317].

From sociology, the term "solidarity" transits into philosophy, with early 20th-century authors like Max Scheler, Nicolai Hartmann and Henri Bergson: given modern moral philosophy´s strong orientation towards the universal (first due to its adoption of "natural law" tradition, and then given the importance of Kant), it is mostly "organic" solidarity which gets highlighted in these authors. Scheler, for instance, converts the kinship-based *obligatio in solidum* notion into a concept of universal moral interconnectedness whereby "each individual is "co-responsible" (*mitverantwortlich*) for the actions and desires, the faults and merits of every other individual" (Bayertz 1999, 6). Solidarity hence acquires the universal scope which fraternity had in the first years of the French Revolution, but which it lost during the Reign of Terror; in the process, however, solidarity does not lose its original meaning as kinship bond between members of a closely-knit group. In this way, solidarity

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[317] Aristotelian political friendship is a bonding between peers emancipated from a life lived at the service of necessity. It is elitist because it actually assumes a certain level of *autonomy*, which was available only to very few wealthy and educated persons in premodern times. Modern communitarians, when claiming to be inspired by Aristotle, and *at the same time* dismissing the value of autonomy, misunderstand ancient political Philosophy. Autonomy existed in ancient societies and it is necessary for political action: Aristotelian political friendship, just as modern political fraternity, *requires* autonomy to build political societies (and "communities" which can claim to be "political" in some fathomable way): without autonomy all we get is clans, not polities. Modernity has simply made autonomy available to many more people that the upper crust of society, and this makes the task of building political kinship bonds much more difficult. Regarding Aristotelian political friendship and its Christian rendering in the thought of Aquinas, see Heffernan Schindler (2008, 151ff).

comes to have both an in-group dimension ("fraternity" or "kinship") and an out-of-group dimension which we associate here with the notion of "hospitality".

The kinship element in solidarity is made visible in liberation struggles, from general strikes by trade unions, to the civil rights movement in the US, to the anti-apartheid movement in South Africa, to the NSZZ Solidarność (Independent Self-Governing Trade Union "Solidarity") in Poland. The hospitality element is visible in many practices through which people welcome strangers, such as those we will discuss in section 7.2. The tension between the kinship and the hospitality element is perhaps most visible in debates on the welfare state (which is probably what comes to mind for most people when one mentions the word "solidarity"). Libertarians ask: should we be forced by the state to share our hard-earned wealth with people who are not our biological kin? Eurosceptics ask: should Polish persons with a European health insurance card be allowed to use free public healthcare services in Spain during a severe economic crisis? Nationalists ask: should immigrants — and especially irregular immigrants — be given free access to the welfare system? Indeed, *with whom* ought we to be solidary?

7.1.2.2 The Scope of Hospitality: The Kew Gardens Principle

The above discussion indicates that *we can*, and to some extent, *we ought*, to be solidary with all human persons, but in different ways. So the question becomes: with whom ought we to be solidary through practices of hospitality? With whom ought we to be solidary through practices of kinship? With whom ought we to be solidary in a more abstract way, through cosmopolitan feelings of "love of humankind" or "respect for all persons", practices of global justice (e.g. ethical invest-

ments, reduction of one´s carbon footprint), and the occasional response to a grave need on the other side of the planet? In this chapter we focus on the first two. Let us start with hospitality.

A problematic way of approaching this moral issue is to use empirical science (e.g. sociology, ethnology, cultural studies, etc.) to draw concentric circles of belonging or dependence around the self and jump from there to moral claims such as: to social group A familial kinship is due; to social group B religious or civic kinship is due; to social group C hospitality is due, etc. This approach risks incurring the naturalistic fallacy (if the groups are purely the result of empirical observation, and do not have some ontological value which entails special moral duties to people in that group). It is also the approach that Jesus challenges in the Parable of the Good Samaritan: the delimitation of the scope of the social group of our moral "neighbours" (that is, those persons whom we ought to treat in a neighbourly way), is not primarily sociological, but moral. The Samaritan in the parable is very distant, *sociologically*, from the victim in need; let us say he is in social group E or F, among the potential enemies to be avoided. Yet, in the given circumstances, he is *morally* called to treat the victim as a neighbour, and to offer him hospitality. The distance which is relevant here is not primarily a sociological distance, but a moral distance; of course, morality does take into account sociological realities but answers the question "whom should I treaty in a neighbourly way, in this situation?" or "to whom should I show hospitality?" using various criteria and not just sociological ones.

This reflection has been applied by some authors, such as Kristin Heyer, to help us understand better when we ought we to show hospitality towards immigrants. Heyer (2012, 143) cites David Hollenbach´s analysis of a public stabbing of Kitty Genovese in Kew Gardens (New York City) in 1964

where 38 people standing nearby watched and did nothing[318]. Hollenbach (2008, 188) argues that "reflection on the Kew Gardens case suggests that an agent has a positive ethical responsibility to respond when four conditions are present: (a) there is a *critical* need; (b) the agent has *proximity* to the need; (c) the agent has the *capability* to respond; and (d) the agent is likely the *last resort* from whom help can be expected. These criteria cannot be applied mechanically, but they are quite useful in thinking about the scope of reasonability in the face of the suffering". Criteria such as these help us delimit better the scope of hospitality; I do not discuss them further at this point, but the application make by Heyer and by Hollenbach is very illuminating.

7.1.2.3 The Scope of Kinship: Equal Interdependence

Let us now reflect on the scope of kinship, in particular, what I call "civic kinship". Law and political theory, which are deemed by most people to have a clear moral component (unlike sociology or ethnology) given their orientation towards justice, may here help us to define groups of people towards which acts and attitudes of civic kinship are due. Here again, however, we might need to challenge legal and administrative distinctions between people who do not belong to the same neighbourhood, do not have the same nationality, are legally resident or not. A helpful criterion to determine "whom should I treat as my civic kin" is the notion of interdependence, not merely understood as a sociological fact, but as a sociological fact which can and should be shaped morally.

For example, David Hollenbach (2010, chap. 7) reflects on the poverty present in American core cities, and on the moral and political wall which keeps their inhabitants from fully sharing in the goods

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[318] Hollenbach´s analysis, in turn, is based on the "Kew Gardens Principle" proposed by Simon *et al*. (1972, 22–25).

visibly available in the affluent suburbs. He argues that the problem is not so much one of dependence (e.g. the poor being "dependent on welfare", or the rich being "dependent on the systemic exploitation of the lower classes"), but one of unequal interdependence. Hollenbach (2002, 187) describes "**interdependence in solidarity**" as a reciprocal relationship among equal partners, set in the context of "a transformed institutional framework that supports a more equal and reciprocal relationship with the larger society". The opposite of this is **unequal interdependence**, "the kind of relationship that exists between persons who hold very different amounts of power, both power which enables them to influence the shape of the larger society they live in and power to influence each other, whether directly and intentionally or indirectly and unintentionally" (Hollenbach 2002, 184). In such a relationship, "one of the partners has the power to make things happen while the other partner lacks such power" (ibid.).

Hollenbach links his distinction to that made by Pope John Paul II, in *Sollicitudo Rei Socialis* 26, between *de facto* interdependence and moral interdependence. The positive (solidary/moral) form of interdependence is one which "enhances the agency and well-being of all who are part of it" (Hollenbach 2002, 188), and in this process, greater respect for the human dignity of all is attained. Agency and human dignity are *common goods*, they are shared achievements rather than goods up for the grabs in a zero-sum game. This is why John Paul II defines the virtue of solidarity as a "firm and persevering determination to commit oneself to the common good" (SRS 38).

In the context of the relationship between core-city dwellers and suburbanites, who have to live together permanently, one would hope that such a solidarity would go beyond one of mere hospitality to being one of kinship solidarity. When speaking of relationship with immigrants, however,

this depends on the length of their stay and on the depth of the interdependence that develops. However, both in the form of hospitality and in the form of kinship, solidarity has a transformative element which seeks to reduce or compensate for the power differentials that exist in the relationships between inner-city poor and wealthy suburban residents, and between citizens and migrants – both sojourners and long-term immigrants wishing to become fully integrated into the polity. In this way, rather than posit a conflict between justice and love, solidarity demands that we *love* the other *justly*, a "caritas" which does not overlook the dignity of the other or suppress her agency, a love which does not perpetuate power differentials which cannot be morally justified, as traditional forms of philanthropy and "charity" often do[319].

7.1.3 Solidarity as a Political Virtue

7.1.3.1 The Importance of Political Virtues in Modern Polities

Speaking about solidarity in this manner places us clearly in the realm of virtues, not merely *personal* virtues (which aim towards the betterment of individuals) but of *political* virtues (which aim towards the betterment of society through the search for justice and the common good). Modern authors such as Rawls (2005b, 126–130) have cautioned us against counting on high levels of virtue in building modern polities, while Christian authors have always pointed to the pernicious presence of sin in the terrestrial city, and to the fact that "the fullness of charity will be realized only in the Kingdom of God" (Hollenbach 2002, 191). As we differentiate solidarity into the virtues of hospitality and kinship in the following pages, we will not forget this, yet, as we shall see, *in some form* and

[319] Regarding the link between "caritas" and solidarity in the Catholic tradition, see Coste (2004, 999f). Coste´s article also provides an account of the historical development of the notion of solidarity in Catholic Social Teaching, from its introduction by Pius XII in 1939 (*Summi Pontificatus*) until the 1990s.

at some level, both virtues are attainable in our modern political societies, and we can at least expect Christian communities to showcase this on a local level without expecting them to adopt very "radical" or "prophetic" forms of life.

Modern political philosophy also distinguishes between **virtues** (which habituate persons to adopt certain attitudes via shared practices) and **rights** (based on norms, enforced by positive law, which censures specific actions). The debate between liberals and communitarians, especially in Anglo-American literature, had led many to mistakenly associate virtue with pre-modern (and homogenous) polities and small groups (or "communities") and rights with modern societies and large (and plural) political groups (or "societies"). I do not seek to challenge this distinction directly[320], but the debate on the virtue of fraternity in the context of French civic Republicanism since the French Revolution, which I will refer to in the following sections, amply shows that modern polities require certain levels of civic virtue.

7.1.3.2 Political Virtues and Political Duties

Hospitality and kinship, I believe, are *duties*. The priority rules related to hospitality and kinship are not mere *suggestions*. Even so, I prefer to speak of these rules below in terms of virtues, rather than duties. I do not think hospitality towards migrants is something purely "optional", just as I don´t think that certain basic moral virtues are merely "optional" means of self-betterment. Aristotle may claim that they are not *necessary* for biological survival, but I believe they are nonetheless

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[320] Modern democratic polities function without excessive amounts of coercion because they depend on political virtues (e.g. consistently respecting the other person and her rights), which might be different from the virtues of the ancients, but are virtues nonetheless. Similarly, the idea of natural rights predates modernity (Tierney 1997).

political and moral *necessities*, both for individuals wanting to realize their potential of being truly "city animals", and for the proper functioning of the city itself (that is needed to satisfy biological necessities, and go beyond "bare life").

Indeed, in political life, virtue and duty are not as separate as one may think: *pace* Kant, the "voice of duty" does not come from nowhere but is cultivated by the narratives, practices, and rituals we usually associate with virtue ethics. A child would never understand why she should universalise the maxims that guide her actions unless she enters into real face-to-face relationships with other people and learns the value of reciprocity by playing games fairly, respecting rules, and discovering that she can "survive" better by collaborating with others instead of cheating and exploiting them when she can get away with it. Practices that train us in virtuous living (at home, at school, by watching people on television, and so forth) help us go beyond acting rightly out of fear of punishment or shame, and habituate us to respect the rights and dignity of others and thus allow us to listen to the voice of "duty".

In his discussion on the virtues of "solidarity" and "hospitality", Vogt (2007, 397ff) links *social justice*, *moral formation* and *virtue* in modern polities. For instance, if we treat "hospitality" as a political *virtue*, we can embed it in a series of narratives, rituals and other practices fostered by small groups (e.g. churches, sports clubs, associations) within civil society (even if they may understand it in somewhat different ways, and practice it for different reasons). This can help us provide effective *moral formation* (which goes beyond the language of law and duty) which promotes *social justice*. The "virtue approach" is thus relevant to policy debates, political reflection and action, especially

regarding difficult issues such as that of immigration which truly push the boundaries of modern political thinking.

To give an example of this, let us take hospitality. Rather than insist here on the duty of hospitality, I prefer to use a virtue language that is both more receivable and more fruitful: it can help us think of effective ways of encouraging ourselves and others to actually "do our duty". Indeed, for many people who may fear the "different" other, refuse to identify with her, and thus find it hard to treat her with respect, cultivating the virtue of hospitality is a prerequisite to be able to bend the will, and not only the mind, to universal moral principles such as those proposed by Kant, and to their respective duties. This is why I will endeavour, in this chapter, to present normative, pragmatic, priority rules concerning policy *within a virtue ethics framework*, and to link them to narratives and rituals.

7.1.3.3 Bridging the Descriptive and Prescriptive Elements of the Virtue of Solidarity

This discussion of virtue leads us back to the distinction between the descriptive and prescriptive meaning of "solidarity": the descriptive element (we are "one", we are all "brothers and sisters", etc.) is often used to argue in favour of the **rights** of the poor and the excluded, both within the polity and worldwide, and to undergird an understanding of kinship and hospitality as (moral) **virtues**. How can we best understand this relationship between the descriptive and the prescriptive levels? Is there a relationship, to begin with? I have already discussed this, to some extent, in the chapter on Methodology (1.2.1), but I believe it is useful to include some further remarks at this point.

Descriptive and normative, "is" and "ought", are often contrasted in ethics by simply invoking the "naturalistic fallacy", yet many authors misunderstand the distinction and the application of the

fallacy (cf. Ridge 2010). While it is true that we cannot infer from a *purely empirical* "is" to a normative "ought", *it is not true that we cannot infer from an ontological "is" to a normative "ought"*, since an ontological "is" is usually "theory-laden" with an implicit morality[321]. If we *simply* observe ravens, and note that "all ravens observed between time t and t' were black", it doesn´t follow that we should kill them. But if we *also* believe that black ravens cause persons do evil things, then maybe we should. In this last case, the normative theses "evil should be destroyed", and "black ravens are evil" inform our observation, and the observation of black ravens in this context should rightly spur us to action, if these theses were actually morally justified.

Similarly, solidarity is not merely a fact we observe empirically: empirical observation of human action can provide only lists of both egotistic and altruistic behaviours with no interpretation. We might try to explain altruism and solidarity as a form of "enlightened" egoism, as Richard Dawkins does in *The Selfish Gene* (1976) but this theory has little moral value unless we combine it with moral attitudes such as fatalism, or "biologistic" beliefs (such as the claim that biological processes are intrinsically good and we should imitate them). Yet, aware of the theory-ladenness of observation, we could take a different approach, and say that human interactions are to be observed *through the lens of solidarity*, sociological facts *through an option for the poor*, or economic data through *an option for the freedom of markets*, and so forth, stating clearly where we stand when we observe reality, and what moral stance undergirds our observation. This is why I took time to explain my epistemic starting points in the introduction of this thesis. When we do this, we do not

[321] This is why there can be such a thing as "Natural Law" ethics, if we are clear that "nature" in this context is not a purely empirical fact (R. M. Micallef 2009).

incur the naturalistic fallacy, and we can actually move from theory-laden observations (the "onto-logical descriptive" level) to moral duties and virtues (the prescriptive level).

This is why I believe that, even on the *descriptive* level, kinship, and especially universal solidarity (or "hospitality"), are best seen as concepts laden with an implicit morality, or a "metaphysical de-termination of the essence of the human race" (Bayertz 1999, 7), rather than as empirically-determined sociological facts regarding benevolent and friendly feelings or bonds between human persons. The former understanding, though beckoning to a worldview not accepted by all, has an implicit *prescriptive* component (a theory of the good) and can be used to support the notions of hospitality and fraternity as *virtues*. An approach to the different forms of solidarity which pretends to be purely empirical and inductive, or as a purely *descriptive* exercise, is of little use to us here, since it cannot lead to normative or moral claims without incurring the naturalistic fallacy.

In sum, we postulate the "metaphysical" existence of human solidarity because we assume egotism to be morally undesirable, and thus chose to see the former, not the latter, as an essential charac-ter of human beings, at least for the purposes of moral thought. Some authors object to this ap-proach, but the same can be said of all morally- and politically-operative terms, such as liberty, equality, justice, etc. For instance, human freedom as assumed by liberalism is a metaphysical fact, not an empirical one, containing an implicit theory of the good — whether *"thick"* or *"thin"*, it is definitely *there* — and without *some* theory of the good which allows us go from a *metaphysical* "is" to a *moral* "ought", no political discourse is possible.

7.1.3.4 Education for Social Justice and its Limits

Empirical fact, however, is not to be dismissed in moral reflection. We have seen, in all the previous chapters and especially in chapters 3 and 4, many examples of the lack of solidarity with migrants: refusal to welcome them *hospitably*, refusal to integrate them as political *kin*. There is an almost palpable fear of the other in many modern societies today. This is empirically observable in the sociological data and when meeting people and noting their attitudes in parish halls, conference centres and metro stations. This undesirable situation invites us to reflect, at the moral, political and pastoral level, as Christians and citizens, on how we should act in order to overcome it. Susanna Snyder (2012) analyses this situation, which she calls an "ecology of fear", and suggest ways of moving towards an "ecology of faith". Remember that the words "faith" and "credence" are related to "fiduciary" and "credit", and etymologically denote a socialization of trust, and not only religious belief[322]. Snyder however sees faith-based organizations among the best-suited entities within civil society to effectuate this transition from fear to trust. For instance, Snyder (2012, chap. 9) mentions the JRS (Jesuit Refugee Service) as one of the major Christian organizations with good practices in the accompaniment of asylum seekers and immigrants, which also does effective political advocacy and works at the level of Christian communities to overcome fear and build trust in their relationship with asylum seekers.

In my personal experience volunteering with JRS, and living with Jesuits who work full time with JRS in Malta (one of the places in Europe where this NGO is most effective and visible), I have seen how difficult it is to move from fear to trust, from hostility and distance to hospitality and kinship. Even

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[322] Émile Benveniste has written extensively on this (cf. 1973, chap. 15).

within Jesuit communities in Malta, I have heard heated arguments among Jesuits who strongly support the work of JRS, and other Jesuits, some with doctoral degrees in Sacred Theology and other human sciences, who believe that “Blacks” and “Muslims” don´t belong in Malta and should not be “treated nicely” by the government, who think that Jesuits working in JRS are wasting their time, betraying their vocation, espousing “Marxism” and contributing to the “Islamisation” of Malta. One of my closest friends in Malta, a plastic surgeon, whom I love to meet on occasion for a good meal and a hot argument, calls himself a well-informed “racist”, and cleverly cites all sorts of scientific and other data (interpreted in his very own way, of course) to justify his “beliefs”.

These examples highlight the limits of education, information provision and rational dialogue in helping people overcome fear and hatred, or even becoming more critical of beliefs they feel very strongly about. If it is so hard to get well-educated and “informed” people to recognise the rights of immigrants and to inculcate in them the virtue of hospitality, how can one reach the “masses in the streets” or the typical church-goer? Educating the public (and the Christian faithful) and providing correct information is necessary, but not sufficient, to help overcome the fear of the other. *Meeting immigrants and refugees face-to-face, listening to their stories, and empathising with them* is often a necessary pre-condition to be able to absorb objective information about immigrants and immigration, interpret it correctly, and allow it to challenge one´s xenophobic prejudices.

After several years organizing conferences and other awareness-raising activities for adults, JRS Malta realized it was much easier to work with children and adolescents in schools: children are less free to refuse to meet the other, or to refuse to listen to the other, and that actually makes them freer to let their prejudices be challenged. It is harder to get adults to meet immigrants and refu-

gees and engage in meaningful exchanges with them (unless they are forced to work with them, spend time with them in a hospital queue, or have them as neighbours in the same apartment block, and in Malta it is still easy to avoid such forms of prolonged contact). Furthermore, even when adults participate in face-to-face dialogues with immigrants which could potentially challenge their prejudices, or when they are provided with reliable and objective information that could correct their stances on emotionally-charged subjects, the information is dismissed or "creatively" re-interpreted to further entrench their beliefs.

Several recent sociological studies show how "facts" can backfire in this way (Keohane 2010). For example, Gaines *et al.* (2007), analysed how opinions in the US concerning the Bush administration´s handling of the Iraq war evolved as real-world conditions changed, and concluded that "actual beliefs […] become relevant for political judgments only when people interpret them. Interpretations provide opportunities for partisans to rationalize their existing opinions". In their study, it was clear that "most respondents held similar, fairly accurate beliefs about facts. But interpretations varied across partisan groups in predictable ways. In turn, interpretations, not beliefs, drove opinions. Perversely, the better informed more effectively used interpretations to buttress their existing partisan views." Similar results were found in studies by Taber and Lodge (2006) and Nyhan (2011): strongly partisan views on hot issues not only remain unchallenged when *scientific data* is provided that should normally weaken the basis of their arguments; they also fail to react to *personal testimony* in ways deemed reasonable or rational by eternal observers.

Nyhan *et al.* (2013) shows that when politically informed Tea Party Republicans were provided with clear factual information trying to correct myths regarding the Affordable Care Act, they became

even more convinced that such myths were true. Studies by Cobb and Kuklinski (1997, 114–115) also point to the fact that many a time, arguments *against* policy change, even when poor or not supported by rigorous studies, often carry more weight, since "people tend to be both risk and loss averse [and thus,] con arguments, which accentuate the unpleasant consequences of a proposed policy [tend to] quickly and soundly resonate with the average citizen. Moreover, fear and anger, which con arguments presumably evoke, are among the strongest emotions […], and serve as readily available sources of information when people evaluate an impending policy initiative". All of this has to be kept in mind when trying to change public opinion and public attitudes regarding immigrants, and when proposing policy changes that alter the *status quo*. Interestingly, in many of these studies, people who are better read and have a higher level of education seem to be less ready to put aside their prejudices, meet the other, listen, and let their opinions be challenged and their hearts be changed.

7.1.3.5 Habituating the Heart by Describing Solidarity: (a) Narrative and Ritual

The above discussion should not make us despair as regards the human capacity to reason, search for and discover the truth through rigorous, critical research and argumentation, and enter into a deep dialogue with the other which can thoroughly challenge some of our deepest-held personal beliefs. The problem is that, when troubled with strong emotions like fear and hate, the human intellect often ends up rationalizing prejudices rather than analysing facts and situations rationally. One tends to find all sorts of "reasons" to avoid meeting the other and being challenged by her testimony, and if that meeting happens, the listening becomes very selective.

When the intellect stops being "rational", we have to appeal to the "rationality of the passions". Normally, the intellect, via the will, can seek to *habituate the passions* so that they enhance, rather than impair, its rational functioning. When this system fails, however, we may have to move the will through the emotions, so as to *habituate the intellect* to think rationally. There is a long debate in philosophy and ethics behind all this, which I will not delve into here. It is the kind of debate that made staunch supporters of the rationality of the intellect, such as Plato, to grudgingly admit that rhetoric was an important discipline, or Aristotle to distance himself from Plato´s moral intellectualism and develop an ethics based on virtue; it has provoked Ricoeur´s investigations of the role of moral imagination, and Lévinas' reflection on the moral value of *truly seeking* the face of the vulnerable other[323]. Contrary to what most people believe, the emotive part of the self (figuratively referred to as the "heart", or the "bowels" in the Bible), properly habituated (for example, trained to be compassionate), can be a veritable repository for reason, at times more reliable than the intellect.

Narrative and ritual offer **descriptive** representations of solidarity which help us to imagine ourselves in a relationship with the other, one oriented by certain recognisable goods and requiring certain behaviours and attitudes. Listening to a narrative that helps us see the immigrant as our *guest*, or participating in a ceremony where the refugee is united to us as a *kin*, is not descriptive in the sense of an empirical observation of a link which exists out there as a "brute fact". It is descriptive of a reality seen from the perspective of what we consider as morally desirable. This is why nar-

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[323] Regarding Plato, cf. Griswold (2012). Regarding Aristotle, cf. *Nicomachean Ethics* 1095b (claim that training in good habits is a prerequisite to become a student of the Right and the Just); 1103a (distinction between intellectual and moral virtues). Regarding Ricœur, cf. Power (2003). Regarding Lévinas, cf. *Totality and Infinity* (Lévinas 1979, 187–253).

rative and ritual are very powerful means of converting the will and habituating the “heart” to go beyond a spontaneous tendency of fear or hate of the other, especially when persons feel threatened by the presence of someone they perceive as radically “different”. We have hinted at this in the previous chapter, when discussing integration capacity (section 6.5). Anamnestic solidarity (cf. Chapter 6), in its inclusive and hospitable form, can recreate bonds with marginalised people in the past, seen as one´s “ancestors”, through story-telling (narrative) and re-enactments of history (ritual). For this reason, a feature film on the hard life of Maltese emigrants which, at the end, points to the experiences of immigrants in Malta today, when narratively constructed in such a way as to promote the virtue of hospitality, can lead the viewer to strongly identify with migrants and then shocks him when he suddenly finds himself, in real life, on the side of the “baddies”. Sports events offer the possibility of inclusive public rituals where both fans and players of different ethnic origins and cultural backgrounds can come together and live moments of passionate fraternity which help them wonder why they resist similar bonds of civic kinship in everyday life. In a religious context, narratives and rituals are even more powerful tools to build communion, if our churches muster enough leadership, from above and below, to commit themselves to promoting hospitality and kinship using the immense theological, literary and praxical resources they command. This is, of course, a very important challenge for the Catholic Church and for other Christian churches, who are able to produce impressive bodies of teaching on the ethics of migration, but often find it very hard to inform the persons in the pews about this teaching, and to convince them that this is not “optional” (G. A. Smith 2006).

7.1.3.6 Habituating the Heart by Prescribing Solidarity: (b) Law

Law is another important tool to habituate the heart; it embodies the more directly **prescriptive element** of solidarity. Laws which intelligently but firmly force people to work and live in the same neighbourhoods, attend the same schools and parishes, use the same forms of public transport, respect the human rights of others, or make sure that minorities are represented and have a say in decision-making processes are very valuable. Such laws, at times, have to come from "above", as corrections to morally unacceptable policies and practices which local majorities are often not willing to change. This obviously challenges popular notions of democracy – especially those which simply conflate democracy with majoritarian rule.

European institutions, US Federal authorities, or national constitutional courts are also important organs of democracy which is not a system where people have rights only when the majority so decides. We have seen examples, in Chapter 4, of how the EU forced Malta to adopt a Refugee Act after decades of pretending that there was no "refugee problem" in Malta, and then to improve reception conditions (4.4.1.2). We mentioned, in Chapter 5, how the German Constitutional court nudged politicians to change citizenship laws and voting laws and hence to better integrate immigrants and guarantee their rights (5.3.2). Religious law has a role to play too, though it is not usually resorted to when promoting social justice issues: I am not referring here to simple condemnations of racism as "sinful", but of parish councils being pushed to plan Sunday masses and events in ways that bring together the native-born and immigrants, and parishes in ethnically-segregated vicariates to work closely together. At some point, when certain laws — such as anti-discrimination laws, or

affirmative action — have been in place for a number of years, most people come to see the injustice of the situation prior to such laws.

To be sure, simply imposing laws from above, to substitute current laws or practices deemed "morally unacceptable" by some "higher authority" is an extremely problematic way of proceeding today, especially in politics: this is why we focus on narrative and ritual in our proposals below, and why we emphasize the role of churches and faith-based organizations, active in civil society, in helping to overcome the "ecology of fear" and its perverse effects on the intellect. Fostering hospitality and kinship towards immigrants and refugees within civil society, as virtues rooted both in authentic Christian *discipleship* and in *citizenship* informed by justice and the common good, may actually bring about a change of attitude from the grassroots which is eventually translated into law through normal representative democratic processes.

7.1.4 Conclusion

This first part of the present chapter helped us to clarify the concept of "solidarity", mainly using reflections from Philosophy and the Social Sciences. We have distinguished two forms of solidarity relevant to our topic, hospitality and kinship, and have briefly explored the questions: "whom ought we to treat hospitably?" and "whom ought we to treat as our (civic) kin?" (7.1.2). We have proposed a *virtue ethics* approach to solidarity and an application of the component virtues of hospitality and kinship to immigration, while insisting that such virtues should be understood mainly as *political virtues* (which seek the betterment of society, and the common good), and not merely as virtues seeking personal betterment (7.1.3). In this context, we have seen how **descriptive**, morally-laden, approaches to solidarity (namely *narrative* and *ritual*, which provide morally-operative, non-

empirical representations of the desired unity of the human race, and of particular human groups) and how **prescriptive** approaches (expressed in the language of *law*) are important to habituate the heart to overcome prejudice and xenophobia.

In the following two big sections of this chapter, we discuss hospitality and kinship more in detail, apply them to immigration, and explore New Testament sources, Christian tradition, and the activities of faith-based groups as sources of narratives, rituals (and practices), and religious law which foster these virtues in civil society. What we hope to do in the process is provide a glimpse of *hospitable and kindred discipleship*, which can serve as a prophetic voice within society advocating for *hospitable and kindred citizenship*. Discipleship and citizenship, informed by solidarity in this way, provide a reliable framework for the priority rules proposed in previous chapters, allowing them to be something more than wishful thinking, and hopefully bring them to bear on actual policymaking.

7.2 Hospitality

7.2.1 Forms of Hospitality

7.2.1.1 Strategic, Reciprocal and Discommodious Hospitality

We reflect, in this section, on the kind of solidarity which we extend to people who are somehow "strangers", which we refer to as "hospitality". On weekends of village feasts in Malta, or during Thanksgiving break in the US, many families practice what is called "hospitality". Does this mean welcoming kin or welcoming strangers? Christine Pohl (1999, 4) claims that the vocabulary has shifted in recent centuries and has become confusing: "Today when we think of hospitality, we don't think first of welcoming strangers. We picture having family and friends over for a pleasant meal. Or we think of the "hospitality industry," of hotels and restaurants which are open to

strangers as long as they have money or credit cards". Pohl contrasts this to the Greek term *philoxenia*, required of Christians in the New Testament (Lk 16;19-31; Heb 13:2; cf. Mk 10:113-15; Mt 10:42; Lk 9:12-13; 10:38-42; cf. Meeks 1995, 104–106), and recommended by some pagan authors (cf. Berthelot 2003, 57–64):

> *"Hospitality is not optional for Christians, nor is it limited to those who are specially gifted for it. It is, instead, a necessary practice in the community of faith. One of the key Greek words for hospitality, philoxenia, combines the general word for love or affection for people who are connected by kinship or faith (phileo), and the word for stranger (xenos). Thus, etymologically and practically, in the New Testament, hospitality is closely connected to love. Because philoxenia includes the word for stranger, hospitality's orientation toward strangers is also more apparent in Greek than in English" (Pohl 1999, 31).*

I am not so sure, however, that the people we welcome on special occasions, and with elaborate dinner rituals, are seen as "kin", rather than "strangers", and that term has lost its proper or original referent in modern English. The advent of the nuclear family has made cousins, old friends, and most neighbours distant: they don´t come around to visit except on special occasions; we often treat them with elaborate rituals of hospitality to maintain a certain distance. Though less common today, even in wealthy and Westernised countries, we still have a sense of what kinship is: the "close" neighbour who knocks at least once a week to say Hi, or to borrow something; the "close" relative who walks into the kitchen and starts opening cupboards and washing stuff. When we open the door for these people we don´t call it "hospitality"; some of them might even have a key to our house.

Hospitality, therefore, primarily denotes welcoming people who are somehow "distant". We may classify these people into three categories: (a) important or useful people we would like to ingratiate (**strategic** hospitality), (b) peers and friends whom we would like to keep in contact with (**recip-**

rocal hospitality), and (c) strangers in need of welcome — temporarily, like the elegant gentlemen who just lost his wallet or had his car stolen, or constantly, like the homeless person begging for money or a nourishing meal — whom we opt to take into our house, or accompany to a restaurant, not seeking any recompense and accepting all the risks (**discommodious** hospitality).

In (a) *strategic hospitality*, the host expects to receive, in the long run, more than what he gives to the guest; a small business owner hosting a politician or an influential person for a banquet is the classical example of this, but sometimes even the rich and powerful have to treat useful underlings (especially underpaid or under-appreciated aides) to ensure their continued loyalty. In (b) *reciprocal hospitality*, the cost and benefit to the host and guest are roughly equal. Many Romance languages use the same word for "host" and "guest" indicating reciprocal roles. In some cultures, for example, after inviting a friend to dinner, one expects to be invited in return; in others, one brings a present to reciprocate the hospitality, and thus be freed of the *obligation* of inviting the host (though one often ends up hosting the host in turn, at some point). In (c) *discommodious hospitality*, the host gives without expecting a *material* return, and — at least when *first* engaging in such forms of hospitality — is challenged to move out of her comfort zone; many such hosts *later* comment that they receive more than they give in such exchanges, but what is received is on a different level and not comparable to what is given. Discommodious hospitality can be practised *superficially* (e.g. handing out a few coins to silence the person and one´s conscience) or more *radically*, by venturing out of one´s comfort zone to listen to the person and spend time with her. A classical form of radical discommodious hospitality, which authors such as Pohl (1995; 1999) would like our western societies and churches to recover, is that of welcoming strangers — especially those who are feared or avoided by many in our societies, and who cannot return the gesture — to share a meal with us, or

to sleep in our houses: engaging in such practices of hospitality is very important, but as we shall see, this is not the only way, and not always the best way, of being *radically* hospitable.

7.2.1.2 Is There a Distinctive "Christian" Understanding of Hospitality?

Authors like Rodney Stark (Stark 1997, chap. 6) highlight how paleo-Christian radical hospitality towards the sick, especially during epidemics, made the "Galileans" stand out in the Roman Empire, and helped the little "sect" grow into a significant religious movement. Stark, together with social historians like Wayne Meeks (1995), highlights the importance of hospitality as a distinctive moral trait of early Christianity. It is important to note, however, that early Christians put into practice the notions of *philanthropia* and *philoxenia* that pagan authors often proposed, but which had not yet been translated into widespread social practices and institutions. Christians thus sought to avoid the accusation of *misanthropia* often levelled at Jewish communities (Berthelot 2003) and their hospitality also had an apologetic function. Furthermore, over the centuries, Christians have not always been faithful to this tradition, as Pohl (1999) amply illustrates; Christian Ethics may even have to be reawakened to the hospitality tradition with the help of modern and contemporary Philosophy (Ogletree 2003).

Pohl (1995) has argued that early Christian hosts empathised better with marginalised guests, given their own situation of *marginality*[324]. Today, however, most Christians in Western countries have

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[324] However, the marginality of the early Christian hosts should be understood as a product of "*otherness*", not of "*alienation*". "In studying numerous historic texts on hospitality in the Christian tradition, it becomes evident that the marginality of hosts is better interpreted through the notion of being aliens than through the notion of being alienated because aliens are connected somewhere rather than nowhere, and the questions of identity, meaning, and community are different from those raised by the experience of alienation. In

no experience of social marginalisation, do not read the Bible or Christian tradition *from an experience of "otherness" or "strangerhood"*, and see the obligations towards strangers as mostly arising from supererogatory "charity". Solidarity with strangers — especially of the kind rooted in *personal experience* — is not easy to evoke through regular contact with Scripture and tradition. *Pace* American authors like Hauerwas and Willimon (1989) and some European authors who tend to overemphasise the impact of secularisation, most Christians in Western polities are not "resident aliens" today, will not become marginal in the foreseeable future, and should not seek to recast themselves — mostly through rhetorical constructs — in the situation of pre-Constantinian Christianity. Rather, as we have seen in Chapter 6, *anamnestic solidarity* (in its more inclusive form), the *memory* of being born to a "nation of strangers", is key to revitalising the Christian hospitality tradition today. This is not fomented by a distinctiveness of separation, but a distinctiveness of love and of service lived at the heart of modern political societies[325]. Sometimes, Christians may also need to adopt "fathers" and "mothers" from other traditions, closer in time and space, and be *anamnestically solidary* with them and their experiences of marginalisation, if they want to better understand the alien status of the early Christians 1800 years ago.

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an alien community, persons still have a place and an identity, though they experience vulnerability, need, and the loss of "home." Their reference point is still a community in which they have a place" (Pohl 1995, 123).

[325] This does not exclude the possibility — the necessity, even — of having some Christian groups who construct micro-societies which embody counter-cultural, prophetic and eschatological forms of common living; these groups, however, can incorporate only a minority of Christians, and must resist the constant temptation of an anti-incarnational or neo-gnostic spirituality, claiming that they are "more perfect" than the other Christians who opt to "dirty their hands" living in, and seeking to transform, a sinful world.

Christian leaders who have dedicated their lives to make the Church more hospitable, such as Enzo Bianchi who founded the interdenominational monastic community of Bose, and who was for a time censured for welcoming non-Catholics into the community, can teach us a great deal about hospitality. The Bose community is renowned for its sterling scholarship in patristic and biblical hermeneutics, but Bianchi does not side-line secular and humanistic thought when speaking of hospitality:

> *"Why should we be hospitable? Because we are human, so as to become human, so as to humanize our own humanness. If we do not become aware that we all have become the guests of humanness when we were brought into the world, hospitality risks remaining just another duty to fulfil. Seen as such, hospitality may still be a significant gesture on an ethical level. Yet, it will remain a fundamentally extrinsic practice, rather than become a way of answering to humankind´s profound calling, a realization of our humanness as we open our arms to welcome the humanness of others. (Bianchi 2009, 90)*

To be sure, there is a great deal of material in Scripture and in Christian tradition which should make today´s churches shining examples of hospitality towards strangers, and, as we shall see from the examples below, it is true that faith continues to be a major inspiration and motivation for the pioneers of radical hospitality today. Nevertheless, one has to be wary of Christian triumphalism and remember that non-Christian and secular voices have often had to remind the Church to live up to its ethical tradition, and to revise certain interpretations of authoritative Christian texts which deprive them of all their original radicalism and vitality, and turn them into religious rationalizations of given, unjust, social structures. The Christian tradition on hospitality is not univocal, and has time and again been badly reinterpreted to reinforce, rather than challenge, latent or explicit fear and hate of the other.

The temptation to refuse hospitality is present in Christianity as in other religions and ideologies and is visible already in the canon: Meeks (1995, 106) notes how the author of 2 Jn asks his readers

to refuse hospitality to Christians who have a different understanding of the faith than he does (2 Jn 10), then, presumably the same author laments in 3 Jn 10 that those who conform to his reading of the Christian tradition have been refused hospitality. Chapter 53 of the Rule of St Benedict starts with the command: "Let all guests who arrive be received as Christ"; yet, in practice, such hospitality "does not imply that Benedict also accepted non-Christian guests, a thing unthinkable in that pre-ecumenical age" (Kardong 1996, 422). Benedictine hospitality was often restricted to monks and pilgrims (Milis 1999, 60), and did not preclude the establishment of separate guesthouses for the rich and the poor, as in the Benedictine abbey in St Gall, or guesthouses intended only for the rich, as in the Carthusian monastery outside Florence. Luther´s (1971, 275–6) abuse of Jews as unworthy guests of the German nation, the welcoming of whom is incompatible with the welcoming of the real "little ones" (cf. Mt 25:45) — i.e. deserving German Christian guests — is a classic example of how a text traditionally used to showcase Christian hospitality can be turned inside-out by clever, xenophobic, interpretation (Pohl 1999, 81).

In sum, one *could* doubt that there is a distinctive "Christian" understanding of hospitality, or that the Christian tradition of hospitality automatically leads to better practices than those found in other religions or among non-believers, but one *should* hope that Christian hospitality will distinguish itself by being more hospitable towards other traditions, and towards the critiques that they may want to level at it.

7.2.1.3 Settler and Itinerant Hospitality

In one of his books, Bianchi (2009, 87–107) provides a valuable phenomenology of hospitality, and discusses features of monastic hospitality towards strangers, such as "leaving the door open", "lis-

tening", "suspending judgement", "practicing sympathy and empathy", "engaging in dialogue", "offering whatever you have", and recognising that being hospitable is a gift "from beyond". Pohl (1999) similarly describes many elements of the hospitality that Christian households and communities can afford to their guests. Such texts describe forms of hospitality within the reach of everyone, however, most authors seem to assume and focus on settler forms of hospitality, and ignore that itinerancy is another prominent feature of the early Christian churches, and that Jesus and the Twelve were not only itinerant *guests*, but also itinerant *hosts*. In this vein, James Keenan (1999, 234ff) distinguishes between what he calls "Benedictine" and "Jesuit" hospitality. Quoting various foundational documents of the Jesuit Order, Keenan (1999, 236) concludes, in agreement with Brian Daley, that St Ignatius seems to picture the typical Jesuit as a "kind of apostolic vagabond", and asks how such a person could ever be hospitable.

Jerome Nadal, one of the closest collaborators of Ignatius, and probably the most influential Jesuit during the difficult transition upon the death of Ignatius, considered the road or the "journey" as the main and most characteristic dwelling place for Jesuits. He believed that Ignatius saw this feature of Jesuit life as a recuperation of one of the most important traits of the primitive church. Adopting this hermeneutical key from Nadal, Keenan (1999, 238–9) traces the leitmotifs of itinerancy and hospitality in the major contemplations of the *Spiritual Exercises*. Keenan concludes that, even though the world is a place where people *are sinning*, even though it can only be a *temporary* home for Christians, and even though living as though the whole world is our home entails *embracing homelessness* of some sort, Jesuits, and indeed all Christians are missioned to go out to the ends of the earth. This missioning is ultimately *a response to a commission*, the one received by the disciples at the end of the Matthew´s Gospel (28:19). According to this evangelical and Pauline itiner-

ant model of hospitality, which is better evoked by a Christian presence in a refugee camp than by life in a Benedictine monastery, "our welcome is not into a particular domicile but into a world where God labors" (ibid., 240). The "Benedictine" or settler model of hospitality, of course, retains its value, but the "Jesuit" or itinerant model helps us explore new ways of being creatively faithful to the primordial Christian tradition in today´s world, and has the added advantage of not requiring the guest to adjust herself to an existing order, implicitly imposed upon her by the host, and adopting the set of values that structure the host´s domicile.

7.2.2 Settler Hospitality

7.2.2.1 A Biblical Example: Abraham at Mamre

Abraham´s hospitality at Mamre in Gn 18 is one of the most significant narratives of hospitality in the Judeo-Christian tradition. In the first scene, we see Abraham sitting at the entrance of his tent in the heat of the day when most would be tempted to go inside and take a nap.

> *I would like to underline the fact that Abraham positions himself on the threshold of his tent, in that spot which gazes towards the outside while also guarding the inside, on the line that marks the boundary between intimacy and public life. The threshold, both our own and that of the other, is the existential locus where we should always position ourselves when meeting the other: it marks difference while being open to relationship, to what is beyond that difference, it becomes the first site of a renewed exchange with those who pass by or suddenly show up (Bianchi 2009, 68–69).*

In verse 1, YHWH visits Abraham, yet in verse 2, Abraham sees three men. What is the relationship between YHWH and the three men: is the trio the actual form of manifestation of YHWH, are there two divine manifestations at once (YHWH and the trio), or are the men simply travelers who happen to visit while Abraham is having a theophanic experience? Though many Christian commentators consider Gn 18 as a single pericope and tend to equate the men with Yahweh, Jewish commen-

tators (partly in reaction to past Christian apologetics which often claimed that the Trinity is prefigured in this passage) make it clear that the Lord is not to be confused with the three visitors (Sacks 2006)[326]. The typical rabbinic solution is to dismember Gn 18; v. 1 is construed as a quick visit by Yahweh to Abraham (e.g. Rashi depicts it as a sort of hospital visit after Abraham´s circumcision in Gn 17:24-27), vv. 2-15 as a successive visit by a group of strangers (and annunciation of Sarah´s pregnancy), and vv. 16-17 as a separate visit by Yahweh (after the strangers depart), where Abraham bargains with God, seeking to spare Sodom and Gomorrah. Chief Rabbi Jonathan Sacks, however, suggests another way of making sense of Gn 18, while keeping it as a single pericope and distinguishing two sets of visitors. In his reading, Abraham starts by welcoming Yahweh at the entrance of his tent, but before Yahweh gets the chance to speak, Abraham sees three men approaching. Abraham, therefore, interrupts Yahweh and welcomes the three visitors in his tent (since they are hungry and tired, they seem to require more urgent and more prolonged attention than Yahweh, who gets out of the way and waits patiently for his turn). Finally, when the men leave, Abraham continues his conversation with Yahweh (ibid.).

To be sure, readers who conceive God as a busy corporate executive who cannot possibly be kept waiting in line, and who have never travelled on foot in a desert "in the heat of the day", will quickly dismiss this interpretation (or even find it offensive): nobody in his right mind would interrupt God and keep him waiting in this way. Yet, readers more accustomed to Near Eastern hospitality and the conception of time in agrarian and nomadic societies will see that this interpretation ex-

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[326] Maimonides, however, considers Gn 18:1 as a title of sorts ("The Appearance of YHWH to Moses Near the Great Trees of Mamre…") and so assumes, like many traditional Christian authors, that Yahweh appears in the form of the three men (Sacks 2006).

plains the singular form in v. 3 ("If I have found favour in your[singular] eyes, my lord {[a]donāy}, don't [you[singular]] pass your[singular] [singular] servant by") better than the more "pious" classical interpretations: Abraham seems here to be politely telling YHWH to wait until he is done serving the other guests, rather than addressing the senior member of the trio. It also explains better the transition between vv. 16 and 17 ("Abraham walked along with [the men] to see them on their way. Then YHWH said […]"): rather than starting a new conversation while walking with the trio, who suddenly is referred to by the text as YHWH and addressed in the singular, Abraham has actually sent the men off and gone back to converse with Yahweh.

Sacks (2006, 3) convincingly argues that Abraham, in this reading, does not have his priorities inverted: he can easily assume that the *theophanic* God does not mind waiting, since it is the very same God that he is waiting upon in the "needy" strangers. We do not only welcome God in the mystic heights of prayer, but also in the seemingly banal encounters with the people we welcome in everyday life, which are equally important (and sometimes more pressing) manifestations of God´s presence. That is why, at the end of the passage, Abraham (unlike Noah in Gn 6-7) is not afraid of arguing with the *theophanic* God, seeking to spare the citizens of Sodom and Gomorrah: no matter how evil their deeds, there may still be a remnant of innocence in these cities in which Abraham can see God´s presence. The Bible highlights Abraham´s ability to recognise the divine presence in a multiplicity of ways, in personal YHWH theophanies as in the visit of human-angelic[327]

[327] Two members of the group of three who visited Abraham in Mamre (Gn 18:1-33) later visit Lot; the text refers to them at times as "messengers" or "angels" {mlʾḵ} (Gn 19:1.15), at times as "humans" {ʾnš} (Gn 19: 5.8.12.16).

travellers, in the itinerant God who walks with him and visits him regularly as a guest (e.g. Gn 18) as in the settler El Elyon who hosts the wandering Abraham at the shrine in Salem (Gn 14:18-20).

7.2.2.2 Welcoming Migrants today in Italy and Mexico

Many NGOs working with migrants follow the settler hospitality model, especially when faced with a high turnaround of people who do not always settle in the city or area where the organizations operate, and in their early years. For instance, in 1997, when I volunteered briefly at the *Centro Astalli* in Rome, run by the Italian Jesuit Refugee Service, the NGO focused on legal aid to asylum seekers, while distributing meals, offering temporary lodging in large dormitories and providing some basic health services. In recent years, *Centro Astalli*[328] has spread to seven other Italian cities, become involved in cultural initiatives and *seconda accoglienza* (second level of welcome) projects, but the first-level hospitality remains at the core of its activities.

Basic hospitality is also the predominant model adopted by the Mexican network of immigrant shelters, some of which I visited in summer 2012, starting from the border with Guatemala. In the first major city in the south of Mexico, Tapachula, I visited two shelters, one run by the Scalabrinian fathers[329], and one founded by a lay woman, Olga Sánchez-Martínez[330]. The first one was very well organized, clean, and professionally run. It bore the marks of an international franchise run by a religious congregation with a lot of experience and resources. The screening routines seeking to keep out people-smugglers, crime syndicates and their agents, and the strict separation of men and

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[328] Cf. http://www.centroastalli.it/ (visited on 2nd June, 2013).

[329] Cf. http://www.migrante.com.mx/Tapachula.htm (visited on 2nd June, 2013).

[330] Cf. http://www.alberguebuenpastor.org.mx (visited on 2nd June, 2013).

women seeking to avoid harassment, however, gave the place a feel of a Western-style government agency. The “guests” had little say in the running of the shelter, and the visible distance from the “service providers”, trained to maintain professional boundaries, seemed to engender negative behaviours in a few of the guests, which in turn give rise to more regulations and restrictions on the migrants´ agency. To be sure, giving the guests a sense of agency and reciprocity in an immigrant shelter is an extremely challenging ideal to put into practice. I have seen other extremes where shelters are practically run by the migrants themselves, with serious problems of hygiene, inept administration, discrimination against certain types of immigrants, and risks of criminal infiltration.

Olga Sánchez Martínez (“la Señora Olga”, as she is known) runs a different style of shelter which specialises in receiving mutilated immigrants, often pushed off the train by gangs or beaten with machetes for not surrendering their money (crime syndicates in Mexico prey on Central American immigrants who decide to travel to the US or to the factories in the North of Mexico without their costly “assistance”). Many years ago, this woman, who has struggled with crippling illnesses all her life, felt called by the Crucified Christ to dedicate her life to the service of these “little ones”, and started taking severely injured and disabled immigrants into her home. They were often left waiting and bleeding for hours in emergency rooms by nurses who argued (mainly on the basis of their Spanish accent) that they were “not entitled” to care, and then provided a simple bandage and sent them out into the streets (Sánchez Vázquez 2012a). Sra Olga soon started begging and pestering business owners and surgeons to finance artificial limbs and provide surgery, and wealthy money-lenders to allow her to take out huge loans to pay for the medical expenses of the immigrants. She eventually bought land, and built a shelter with the help of volunteers and immigrants: the building is not professionally designed (she sketched the plan herself in the soil), not professionally run, and

lacks the level of cleanliness one would expect in a place full of convalescing patients. The “guests” who are strong enough to participate in the running of the place, and support the shelter by baking, knitting, and doing handcrafts which the foundress sells in the city through her network of supporters. Ms Sánchez Martínez hopes to eventually build a clinic with a fully-equipped surgical ward and professional team; if she ever gets there, the shelter will probably end up looking very different. Today, much depends on her personal charismatic style. This means that though she has won prestigious prizes and international fame, she has no idea how to use the publicity to raise funds from big Mexican and international donors, and is not sure that she wants to pay professionals to do that for her. Rather, she continues to go out every morning to beg for money and help from her neighbours and from the *nouveau riche* of this bustling border city.

The above examples show us different types of settler hospitality towards immigrants. The tendency towards institutionalisation is very strong, even when one starts off welcoming immigrants in one´s own home, and showing the kind of hospitality privileged by authors like Pohl (1999). Yet, in today´s complex world, when thoughtfully set up, institutions can become true “houses of hospitality”, venues where people can sit together, listen to each other and share a meal, *in relative safely* (legal, physical, medical), and where volunteers and guests (and to some extent, professional staff) can all host each other simply and reciprocally. This becomes possible when such institutions become venues of itinerant hospitality, welcoming not only itinerant *guests*, but also itinerant *hosts*.

7.2.3 Itinerant Hospitality

7.2.3.1 Itinerant Hospitality in the Gospel

Abraham and Lot offered hospitality to strangers, being themselves strangers; as we have seen, the Old Testament repeatedly seeks to help its readers become aware of their otherness and their being *gerîm* of some sort, and uses this as a central argument to promote hospitality and defend the rights of strangers. Similarly, the New Testament depicts Jesus as a stranger in all kinds of ways — a wondering Galilean and a liminal Jew, raised in Egypt, who ultimately comes from a heavenly Father and is not welcome in the "world" (Senior 2008; Cervantes Gabarrón 2003, 273–275). As Christine Pohl (1999, 17) argues, the "intermingling of guest and host roles in the person of Jesus is part of what makes the story of hospitality so compelling for Christians, Jesus welcomes and needs welcome; Jesus requires that followers depend on and provide hospitality. The practice of Christian hospitality is always located within the larger picture of Jesus' sacrificial welcome to all who come to him".

Jesus did not have a "home" of his own (Lk 9:58). He nonetheless welcomed persons and hosted them on the wayside, in the houses of friends, and at the inns and taverns of first-century Palestine (the structures of "commodified hospitality" which existed at the time). The Last Supper is a central itinerant hospitality narrative in the New Testament (cf. Mt 26:17-30, Mk 14:12-26, Lk. 22:7-39 and Jn 13:1-17:26), as is the parable of the Good Samaritan (Lk 10:29-37) and the Emmaus narrative (Lk 24:13-35):

> *The story of Jesus' post-resurrection encounter with two disciples on the road to Emmaus reinforces the promise of Jesus' presence in shared meals (Luke 24:13-35). Jesus comes to them as a stranger (they do not recognize him), but they welcome him as a guest, and in breaking bread together, Jesus*

> *becomes their host. In this moment of table fellowship they recognize him as their risen Lord. Jesus is known to them in the breaking of the bread — an anticipation of the Eucharist and a foretaste of the final Kingdom banquet (Pohl 1999, 31).*

Yet another important example, found in all four Gospels, and in some cases repeated to underline its significance, is that of the multiplication of the loaves, or the feeding of the multitude (e.g. Jn 6:5-15): Jesus provides a banquet for thousands of people in a place which is not his "house", out of a lunch bag which was not his own, demonstrating that, in fact, all the world is his home.

When reading these stories, Christians come to realize that to be hospitable one does not need to have a spacious house or a well-stocked pantry, that true hospitality can be practised on the road or in a restaurant, that is, in a common or rented space with purchased or borrowed food. Furthermore, this model of hospitality insists that, to be hospitable, we may at times need to leave our home and become travellers ourselves. Indeed, many people who need our hospitality will never dare approach our neighbourhoods or knock on our doors. We can only welcome them by moving out of the spaces we control so as to meet them on ground which is "neutral" or somehow "foreign" to us.

Some authors, however, seem to dismiss or bracket too quickly this form of hospitality; Pohl (e.g. 1999, 7), for instance, tries to argue that in the last 300 years the practice of hospitality virtually disappeared from Christian life and faith. Though Pohl is right in arguing that we should rediscover and update some of the past practices of settler hospitality, one might also argue that in the past centuries, Christians have developed more "itinerant" forms of hospitality where persons are welcomed through church-based, private or public institutions, in wayside inns run by "others", and such forms of hospitality need not be "defective". Furthermore, some of the institutions — such as

the many schools, universities, hospitals, shelters and retirement homes founded by religious congregations, dioceses and lay Christians in the 19th and 20th centuries — seek to go beyond hospitality and try to help the needy stranger become a sister or brother on an equal footing with the former host, now no longer in urgent need of discommodious hospitality, but fully integrated in society and able to offer hospitality to others.

7.2.3.2 Itinerant Hospitality in Mexico

Let us give some contemporary examples of this form of hospitality. Another immigrant shelter I visited in southern Mexico is that founded in 2007 by Fr Alejandro Solalinde Guerra in Ixtepec City, Oaxaca. The institution seeks to provide food and shelter in a safe environment, especially for immigrants from Central America riding north on cargo trains, and also medical, psychological and legal services. The model, of course is basically one of "settler hospitality", yet, when I was visiting in summer 2012, Fr Solalinde was in hiding, after receiving serious death threats by criminal networks linked to the police and to local politicians, whom Solalinde was not afraid to confront and accuse publicly (Matías 2012). The shelter had become a space run by volunteers from all over Mexico, and from all over the world; I remember meeting groups of young people from the US and from Scandinavia. Of course, these volunteers were coordinated by a "permanent staff" of religious sisters, and given the visibility of the project, the authorities had decided to equip the shelter with armed guards. Thus, in a way, most of the people running the shelter came from the outside, and were at once guests and hosts practicing itinerant hospitality. Given that the shelter was only five years old, the buildings were half-finished, and the organization lacked a trained permanent staff that could function well in the absence of Fr Solalinde, the services provided were very basic, and the volun-

teers seemed lost in a leadership vacuum. This does not mean that itinerant hospitality doesn´t work; rather, it points to the fact that structure and leadership are very necessary when hosting others in a space which we don´t "own"[331].

Another form of itinerant hospitality is that practiced by "las Patronas", the ladies of "La Patrona", a village dedicated to Our Lady of Guadeloupe, the "patrona" of Mexico, which forms part of the municipality of Amatlán de los Reyes in Veracruz. Growing up on fertile farmland adjacent to a railway line, these farm girls slowly became accustomed to seeing immigrants passing by, hanging on cargo trains. Then, one day, 18 years ago, one of those immigrants, who typically spend hours trying not to faint or fall asleep (and risk falling off the train and being sucked and crushed under it), asked them for some food and water. They have since then been providing meals to the immigrants, throwing bottled water and neatly wrapped packets of rice and beans at them while the train slows down slightly to take a bend (Najar 2012). Norma Romero and her 13 companions work hard to prepare simple but tasty food, collect and sterilize plastic bottles with the help of schoolchildren, and solicit donations of food staples from their neighbours and from aid agencies. When they started, in the 1990s, there used to be maybe 10 migrants on each train, but in the mid-2000s before the economic crisis, some of the trains were carrying 500 people or more. The women struggled to slow down the trains and find ways of distributing food to this multitude without risking their life and without being accused of encroaching on railway property. Over the years, they have seen growing national and international support for their work, but some of their neighbours still fail to

[331] Solalinde returned to the shelter in late July 2012 (Mariscal 2012), but the local bishop immediately took over the institution and sought to move him to a regular parish (Gil Olmos 2012); instead Solalinde decided to take the road to Washington to support comprehensive immigration reform in the US.

understand why they are putting so much energy into helping strangers, and call them “crazy”. Some cannot believe that such a group of unsophisticated women could actually cook and distribute so many meals, and suspect they might be stashing away the food or the aid money for personal gain. Local church authorities have not always been supportive, at times giving the impression that they were more interested in taking over the project than in helping and empowering these women.

In other cases, the local church and its hierarchy can be truly supportive. Another example of itinerant hospitality is that organized by Fr David Hernández Tovilla in Coatzacoalcos, Veracruz. Here too, the work started with a group of women, who, with the help of Fr Uriel Medina Romero founded the association El *Comedor de María* in the early 2000s, to offer hospitality to immigrants who often stop and rest under a highway bridge over the railway line. Many inhabitants of the increasingly prosperous coastal city passed by the migrants huddled under the bridge, day and night, but did not “see” them (Carrasco 2012). The *Comedor* group, however, started to notice their presence and make them visible to others. Diana Hernández Magaña, who coordinates the group, says that they are “only a group of women who started doing this work out of love for Christ, for Jesus, seeking to see the face of Christ in that of our immigrant brothers” (Ramos Álvarez 2012).

The amount of immigrants passing by foot through Coatzacoalcos increased dramatically in summer 2012, given the collapse of railway bridges in several southern Mexican states due to flooding in the spring. When I arrived at the site, in early June, at around 1:00 pm, I could see only groups of migrants dozing under the bridge, and stalls set up by locals selling overpriced beverages and snacks to these “guests”. Then, at around 1:50pm, a group of pick-up trucks appeared, unloaded chairs

and tables, and within minutes set up a space for mass[332], a space for food distribution and a space for medical attention. The mass started at 2pm, and finished at 2:40 pm, at which time the medical staff arrived, accompanied by another fleet of vehicles loaded with freshly-prepared food. We were told that there was a rotation of 17 teams (of 2 to 20 persons) from different parishes in the city who prepared the food daily and delivered it to the site at the scheduled time (cf. Santiago Mendoza 2011; Sánchez Vázquez 2012b).

All of the above examples of hospitality, "settler" or "itinerant", help us to anchor the priority rules we have developed in previous chapters, regarding transiting migrants and sojourners, within the social practices that make the virtue of hospitality visible and allow both hosts and guests to reap its benefits.

7.2.4 Priority Rules based on the Virtue of Hospitality

Let us now present the priority rules sketched in previous chapters within the framework of the virtue of hospitality as outlined above. While generally following an inclusive approach, inspired by Catholic Social Teaching and cosmopolitan trends in contemporary Philosophy, the rules do place some limits on hospitality.

> *We have to recognise that there are limits to hospitality: not the limits dictated by the selfishness of those who have barricaded themselves in their own well-being and close their eyes and heart to the suffering other, but the limits imposed by a real ability to "make space" for others, objective limits, which could possibly be widened with serious commitment and a strong determination, but limits nonetheless (Bianchi 2009, 12–13).*

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[332] It was a feast day of obligation for the Mexican volunteers, most of whom were Catholic, and they wanted to celebrate mass with the immigrants, even though the latter were mostly Evangelical Christians from Honduras.

Bianchi argues that the criteria for refusing someone should not be inspired by ideology, and also refuses criteria based on religious affiliation or cultural "similarity"; he also quotes St. Ambrose, who claimed that "to choose from among guests is to demean and to empty hospitality". Yet, one cannot speak of limits and avoid choosing among guests in some way or other: simply establishing a quota of immigrants that a country can afford to "make space for" every year, and letting them in on a first-come-first-served basis is another form of choosing from among guests. Moreover, it is probably the most rudimentary one since a discerning host doesn´t "make space for" all kinds of guests in the same way. This is why, on the basis of the argumentation in the previous chapters, we will present the following priority rules which help us choose fairly among immigrants, while also treating the receiving community fairly, hence establishing "borders fair on all sides".

In this section we present the four priority rules based on the virtue of hospitality. The first rule (H1) has to do with a country´s *capacity* to receive travelers, sojourners, refugees and immigrants for an initial stay (which is different from the capacity to integrate political others on the long run – cf. rule K3 below). It is based on the idea that freedom of movement is not to be unduly restricted, and that asylum seekers should be allowed in to file an asylum claim. More prosperous, developed, thinly-populated countries in non-ecologically-sensitive territories have a greater duty to leave their borders as open as possible in times of peace, especially if they are liberal democracies explicitly committed to the promotion of human rights and personal freedoms. The second rule (H2) reiterates this, by specifying the conditions when modern liberal democracies can justifiably keep people out. The point here is that only grave moral reasons can be used to justify restrictive immigration policies in such countries: economic gain, political opportunism or vague references to cultural or racial hegemony, as such, are not valid reasons to restrict people´s freedom of movement and to

seriously endanger the lives of persons seeking asylum. The third rule (H3) brings the reflection on history-laden interdependence, which we made in Chapter 4, to bear on reception and entry of asylum seekers and immigrants.

All of these rules express the kind of hospitality one would expect from receiving countries, especially those who can offer it and who ostensibly uphold certain rights (e.g. of asylum, freedom of movement, freedom of opportunity) which have hospitality as their correlative duty. As we have stated above (7.1.3), they are "duties" in that they are not simply optional, but they are also virtues in the sense that people need to be habituated to fulfill such duties, and to accomplish them not grudgingly, but willingly and well, seeking a certain enjoyment and excellence in the practices that make hospitality a lived reality.

Of course, the distinction between entry and long-term residence is very important, as is the distinction between hospitality and kinship. Letting people in is one thing, letting them stay is another. We return to this point when we discuss kinship, below. We do not seek to provide substantial further argumentation for these rules at this point, but given our virtue-ethics approach, we will simply show their compatibility with, and their place within, Christian virtuous practices, some of which can be emulated by non-believers. We hope that this will help our political societies overcome the "ecology of fear", and eventually find legal and political means of adopting these rules as part of their policies.

(Rule H1) Recipient Country Selection Rule (cf. section 5.4)

A polity has a greater moral duty to open its borders to immigrants if it is (i) prosperous (high GDP) and highly developed (high HDI); (ii) not too densely populated; (iii) not situated on an ecologically-sensitive territory; (iv) a liberal democracy explicitly committed to the promotion of human rights by its constitution.

Note: This rule is linked to Rule K3 below (Integration Capacity Rule); the countries fitting the above description generally have a higher capacity to host and eventually integrate immigrants, though *integration* requires certain *cultural* assets (ritual, narrative and legal traditions) over and above those needed to temporarily host migrants.

Hospitable citizenship: (a) *Narrative*: This rule makes sense when situated in political narratives of gratitude, where a people learns to count its blessings: many countries like Malta, who have found prosperity in recent decades, often highlight the suffering and misery in their past. In liberal democracies, telling the story of how the Constitution and the current political structure came into being, is important to explain why the country attracts immigrants today. Told in all honesty, such narratives serve to debunk the myth that "we did it all by ourselves", and help citizens to realize that burdened polities need help to attain a comparable level of well-being. Note: such a narrative, in this section and in those below concerning the priority rule, should be told in a variety of ways to stimulate the moral imagination: history books, TV documentaries, feature films and short videos, song and drama are among the most relevant media. (b) *Ritual*: The celebration of Thanksgiving in the US is an important moment of civic gratitude; other countries often take time to count their

blessings on New Year´s Eve, but the deeper significance of this is lost in forms of revelry which have lost their significance.

Hospitable discipleship: (a) *Narrative*: The Bible and Christian tradition can provide many narratives which underscore the joy and beauty of sharing, which can be used to help us reflect on our attitudes towards immigrants and refugees. The whole of salvation history points to God´s desire to take us into God´s home, leading us into a better place, settling us in a "promised land"; this can help Christians explore the aspirations of migrants for a better life for themselves and their children, as well as their unflinching eschatological *hope* in the future which is better grounded than the facile progressivist *optimism* common in Western thought. (b) *Ritual*: Izuzquiza (2011) invites us to highlight the presentation of gifts during the Mass to recognise what we have received and to open our hearts and our hands towards immigrants. Water is a very important element in Christian liturgy; it can be used to remember the phenomena of desertification and the rise of the sea level elsewhere in the world, in ecologically-sensitive territories, and its impact on migration. The *Te Deum* celebration, at the end of the year, can be enriched and used to foster a greater sense of gratitude, and a desire to share one´s blessings. Finally, as more and more people embrace the practice and spirituality of pilgrimage, it is helpful to remember, in the context of such gatherings, that a pilgrimage entails going *somewhere*, and *yearning* for someplace. It is not simply wandering about. Similarly, migrants and refugees are not wanderers: they yearn to go someplace worth the trip. Seen in this context, policies which send them back home, or return them to "safe third countries" when they can really take them in, seem petty.

(Rule H2) Immigrant Entry and Sojourn Selection Rule (cf. section 5.4)

A modern liberal democracy which can afford to welcome migrants and asylum seekers should normally allow *legal entry and temporary sojourn*, except when this poses a *serious* and *credible* risk of (i) insecurity; (ii) disruption of public order; or (iii) severe dilution of its political culture and weakening of its political institutions, or else (iv) when certain restrictive policies can be shown to enhance liberty and equality on a cosmopolitan level in the long run.

Note: As mentioned above (section 5.4), this rule seeks to protect (α) the right to file an asylum claim, (β) the right to freedom of movement, (γ) the value of creating a deeper unity between peoples of recognising their interdependence; it also follows from (δ) the cosmopolitan duties which encumber territorial stewardship and from (ε) liberal and democratic arguments. We also mentioned that polities without a liberal or democratic constitution, may refuse arguments of type (ε), but should also adopt some version of this rule for the other reasons. Though this has to be carefully examined in each particular case, we assume that (i) to (iv) above do not usually obtain in prosperous Western countries in times of peace, and we will focus here on promoting (α) and (β) above, and countering xenophobia rationalized through arguments of type (i) to (iv) above.

Hospitable citizenship: (a) *Narrative*: It is healthy to underline that the great majority of immigrants do respect reasonable and morally-acceptable laws, and to place crime stories related to immigrants in the proper context, helping people to understand the effects of trauma and marginalisation. Promoting the right of people to enter to seek asylum entails providing these people with the opportunity to tell their story to the natives in the receiving countries — persons who often are completely unfamiliar with the experience of oppression or persecution — in ways which can evoke

empathy. Promoting the right of freedom of movement entails highlighting the richness which the other brings, the contagious sense of adventure and thirst for the unexplored that some migrants carry with them, experienced in real, challenging, long-term contacts with the other that bear no comparison with Western tourist trips. (b) *Ritual*: Sports rituals can embody and represent all of this in the freedom of movement of the players, the contact between cultures which occurs during sporting events, and the richness and strength of teams which bring the diverse and plural into one concerted action. Political rituals and sites which remember the horrors of genocide and the suffering of people refused asylum, such as the Jews in the 20th century, can be used to shine a red light on policies which seek to keep people from filing asylum claims in our countries today, and on demagogic politicians who depict all asylum seekers as "bogus". Walking together along symbolic trails, such as the Boston "Freedom Trail", in support of the rights of refugees and immigrants can be a powerful public ritual.

Hospitable discipleship: (a) *Narrative*: The Bible and Christian tradition abound with refugee stories which should stimulate us to keep our national borders as porous as possible. It is also important to remember the freedom of movement in the Roman Empire, and in Christendom, which helped Christians unite and spread, and made the Church truly "Catholic" (cf. Schreiter 2008). (b) *Ritual*: Pentecost, and the pneumatological element in liturgy, can serve as a good ritual basis for welcoming the other (cf. EM 89). The Eucharist itself speaks loudly and clearly of communion between all peoples in Christ Jesus. Nonetheless, certain settings make the relevance of the Eucharist to policy-making regarding immigrants and asylum seekers even more concrete. On example is the mass celebrated on certain occasions, on the border between the US and Mexico, where the congregation is divided by a militarized fence (D. G. Groody 2008). Furthermore, the hundreds of people who die

each year trying to cross deserts and seas to reach Fortress Europe, Fortress America, or Fortress Australia should not be forgotten on All Souls´ Day. Their silent and painful agony should be afforded the full voice of the religious symbols used in our commemoration of deceased relatives, especially in southern Europe countries which abound with such traditions.

(Rule H3) History-Laden Interdependence Rule: Immigrant Entry and Sojourn[333]

Other things being equal, receiving countries have a greater duty to grant entry and sojourn to citizens of countries which are politically, socially and culturally linked to them through close bonds of **history-laden interdependence**.

Hospitable citizenship: (a) *Narrative*: Independence struggles, decolonization, and processes that split up polities on ethnic or religious lines (India-Pakistan, Ethiopia-Eritrea, the Balkans, etc.) often leave many scars. Yet, the nationalist rhetoric does not abolish the very real bonds of interdependence among nations, and attempts to deny or sever those bonds often hurt both sides in the long run. This is why it is important to *tell the story* of one´s history in common with the other, to *tell it honestly together with the other*, to seek and remember primarily *what was built together and what was learnt from each other*, and to write the biographies of bridge-builders, not only of "conquerors" and "liberators". (b) *Ritual*: Healing past wounds involves a deep recognition of the other. Rituals of apology for colonial oppression may be useful, but providing more visas, and providing them more readily, can often have a greater impact than apologies and vague promises of "aid" or "reparation". Rather than celebrate past military victories in the colonies, we could celebrate the

[333] Cf. section 4.3.4.

positive moments of our common history, and recognise an unequal interdependence in the past which we would like to transform into a truly reciprocal interdependence in the present.

Hospitable discipleship: (a) *Narrative*: The early church was built by bringing together Jews and Gentiles, building bridges among nations, marrying together different cultures and "philosophies". For hundreds of years after the fall of the Roman Empire, in the Patristic era, Christianity saw mass movements of peoples in Europe, the Near East, and North Africa, and found ways of bringing these peoples together (Phan 2008). Retelling this story is important, especially through hagiographical accounts of the Early Middle Ages, and critical reappraisals of modern missionary hagiography. Telling the story of the *Galilean* — read "mestizo" — Jesus in our parishes today is also crucial (Elizondo 2000; Éla 2008). (b) *Ritual*: Celebrations of diversity in our religious spaces should be welcome, even though they often become overly "folkloristic". Reciprocally adapting and adopting religious traditions from the cultures of the hosts and the guests can be more telling of our interdependence. For example, the *Posadas* tradition, adapted to an American setting and celebrated in common between Mexican Americans and Americans of other origins, can be a very powerful way to challenge one another ritually regarding our tendency to deny hospitality to one another. Finally, we should not forget the Trinitarian aspect embedded in most Christian rituals, starting from the most simple "sign of the cross", calling us to emulate the hospitality *ad intra* and *ad extra* which characterizes our triune and constitutively relational God (Baggio 2008).

7.2.5 The Limits of Hospitality

7.2.5.1 Being Hospitable Together

Hospitality is a central virtue to promote in our societies. It can be challenging to be *constantly* engaged in practices of discommodious hospitality, especially should this become a regular "duty", given a concentration of marginalised people in the neighbourhood where we live. To be sure, middle-class people may find occasional and voluntary acts of hospitality — settler or itinerant — not too hard to bear, and eventually even enjoyable once they overcome their prejudices and misconceptions of poor people. They tend to live in neighbourhoods where marginalised persons, poor immigrants and refugees often work, but do not live, and where they tend to become invisible. Yet, the urban poor often find themselves locked into neighbourhoods where the needs are great and radical hospitably is in demand constantly and visibly. Those who actually engage in hospitable practices often become targets of violence and xenophobia themselves, especially in core cities or poor satellite cities where social resources are few and inadequate, and all "others", especially asylum seekers and immigrants, are seen as competitors. "Lot's story demonstrates that when hospitality is contrary to the intentions of the larger group, it can be dangerous — an act of defiance, a challenge to the unity and expectations of the community" (Pohl 1999, 25).

Susanna Snyder (2007) notes the dangers of presenting hospitality mainly as a "duty", especially since it is burdened communities which are then expected to "do their duty" towards the immigrant and refugee population residing in their midst. Ritual and narrative help us go beyond the language of moral "law" and duty, as we have said above, and think in terms of necessary political virtues. Yet all this points to the need of an approach which not only transcends the language of

duty, but also transcends the model of *hospitality*, especially in the way we deal with *de facto* residents, or long term immigrants. A more adequate model to envision the relationship in this case is that of civic kinship, which challenges not only the relationship of citizens with long-term immigrants, but also the relationship between the suburbanites who mostly benefit from immigrant labour, and core city dwellers who ultimately bear most of the financial and social costs of integrating the "other".

7.2.5.2 "Merely Guests" or "Here to Stay"? Hospitality and Self-Deception

In many European countries, today, reframing the relationship with poor immigrants and asylum seekers who enter the country irregularly in terms of civic kinship is especially problematic, especially when dealing with Muslims and people from Sub-Saharan Africa. While some migrants can travel to Europe and obtain visas with relative ease, the "desirable undesirable immigrants" who wish to work and settle in Europe, and whose services are welcome (especially in times of plenty), are forced to enter Europe irregularly, pass through the asylum procedure, and spend years waiting for what will probably be a denial of refugee status. The system thus creates the impression that most of these persons are "bogus asylum seekers" who will eventually be removed and returned to their country, and so that it makes no sense trying to integrate them or treat them as civic kin. If it were so, hospitality would be the right way to treat these persons, but in fact, sticking to the model of hospitality when we know, deep down, that these persons are not merely "guests", is ultimately a form of self-deception.

Of course, the narrative that these people are simply "guests" is quite seductive. We might easily catch ourselves believing that, *when the immigrants´ countries of origin actually solve their prob-*

lems and develop, then they will deserve to be treated with reciprocity; or that *when the flow of immigrants dries up* and the current "emergency" is over, then we may actually start giving them more entry visas and work permits, and some day in the very distant future, we might also start thinking about treating them as civic kin. Such a story is morally unacceptable and its short-sightedness is socially disastrous. A parallel illusion is often conjured up with regards to core-city dwellers. Many wealthy citizens convince themselves that, if these people *really wanted*, they could climb the social ladder, and end up living in wealthy neighbourhoods; thus their old burdened neighbourhoods would gentrify and the problem would disappear. Of course, such myths are convenient forms of avoiding reality. Sensible people don´t solve social problems by making them vanish into thin air through a narrative which relieves the people who can actually do something from all responsibility. We solve social problems by dealing with them *together*, each contributing according to their capacities and according to the benefit they derive from situations of injustice and inequality.

7.2.5.3 Thinking in Terms of Civic Kinship

It is saddening to see Europe (and other countries) not facing the reality that many of these people will stay, for many years or for the rest of their lives. History shows us that when the economy gets better, the political will to "remove" them will fade, and that even if they are actually shipped back to their home countries or to "safe third countries" in times of plenty, others will replace them (especially given Europe´s dependence on their labour) and that such a turnover has a huge human and social cost. While not wanting to draw false parallelisms with Canada and the United States, I will simply note here that in these countries, people generally accept that most asylum seekers and

immigrants are there to stay (whether they personally like it or not), and this makes the shift to models of civic kinship more *intuitive*. Nonetheless, especially in the US in recent years, there is an "eclipse of the public" (cf. Hollenbach 2002, chap. 1) and a great resistance to forms of civic kinship which go beyond one´s immediate neighbourhood, close family, and peers, and to any moral claims such larger social bonds may entail. This could partially explain the greater openness towards the idea of receiving immigrants permanently: the assumption is that somehow and somewhere "integration happens", but this doesn´t really concern me unless I want it to. In this context, civic kinship is hard sell, not only in relationship with immigrants, but in all its forms.

Thinking in terms of kinship is akin to thinking in terms of reforming evil or unjust structures, an approach often underlined in liberationist approaches to social ethics. Yet I avoid this language because both hospitality and kinship can be "structural" as well as "personal". Justice means treating a guest as a guest and creating structures of hospitality not only in our houses and churches and universities, but also in civil law and through political institutions. Yet, treating someone who is not merely a guest as though she were only a guest is not just. Some immigrants may be passing through, and we should treat them as such, but others stay for years. Some stay because they really cannot go back to a place where their safety and subsistence is at risk. Others stay because when we need their labour, we provide them with jobs, accept their services, allow them to become *de facto* residents, and give them the hope that will eventually treat them as civic kin (even though we might still hold on to legal contraptions that impede their full integration as legal residents and citizens, just in case we want to get rid of them when times are hard). After some time, it is not too hard to distinguish between immigrants who are passing through, and immigrants who are there to stay, if we are honest with ourselves. By not creating the structures that permit and facilitate the

full integration of those who have a right to stay, or those whom we tacitly allow to stay, according to the priority rules discussed below, we actually contribute to structural injustice.

The resistances to and difficulties of thinking in terms of kinship are real, and they are hard to deal with politically, but this does not mean we should give up and pretend that certain immigrants are only "passing through", so that all that is needed is hospitality. Indeed, as Ogletree argues:

> *Under conditions of structural inequality, hospitality alone is an insufficient moral response to social oppression. In the stance of hospitality, the host continues to be "at home," which means he retains control. At most he only welcomes those who are socially estranged into his own world, and largely on the terms of that world. He cannot develop a reciprocal relation with the victims of oppression, for they have no world over which he does not already in some respects preside. He discovers that condescension and paternalism corrupt his hospitable intentions despite his conscious desire to avoid them (Ogletree 2003, 6).*

At some point we have to accept that our polities are also the "home" of long-term and permanent immigrants, that they have the right to move the furniture around and put their stuff in the refrigerator, even if that may make *us* feel *we* are not quite "at home" as *we* were before, that *we* are no longer fully in control, however that "we" (which excludes these new kin) is construed to be. To go beyond a hospitality approach in policy-making, we need to start by treating long-term immigrants as our civic and religious kin in simple ways, in everyday life. Christians here have an important role to play in this transition by styling the relationship of their parishes and institutions with immigrants not uniquely on the model of hospitality, but also creating spaces, structures and practices which are truly fraternal, which honour the agency of the other, which allow them to integrate themselves and become true sisters and brothers in a reciprocal relationship with the "natives".

7.3 Kinship-Fraternity

7.3.1 Kinship in Political Societies

7.3.1.1 Who is My Brother? Am I my Brother´s Keeper?

> "Home," he mocked gently.
> "Yes, what else but home?
> It all depends on what you mean by home.
> Of course he's nothing to us, any more
> Than was the hound that came a stranger to us
> Out of the woods, worn out upon the trail."
> "Home is the place where, when you have to go there,
> They have to take you in."
> "I should have called it
> Something you somehow haven't to deserve."
>
> (Frost 1917, 20)

In Robert Frost´s poem, *The Death of the Hired Man*, Mary and Warren argue about whether they should take in Silas, an elderly farm hand who regularly sought their hospitality in winter but disappeared at haying time when his help was needed. Warren sees Silas as a poor, useless, stranger who likes to take but gives back nothing in return; he does not wish to extend hospitality to Silas any longer. Mary, on the other hand, sees Silas as part of the family. To her, he is no stranger to her and their house is his home, a place where one does not have to be deserving to step inside and belong. For Mary, welcoming Silas is no longer a question of hospitality. It has become a matter of kinship.

Mary´s conception of the family, here, clearly transcends the biological. Her attitude towards Silas showcases the classical notion of "fraternity". As noted above, we often use the term "kinship" as a more gender-neutral rendering of "fraternity", even though the political (non-biological, non-exclusively-communitarian) usage of term "kinship" is still relatively new in the English language. We at times use the adjective "fraternal" or the adverb "fraternally" for clarity and the term "fraternalism" for certain political ideologies based on kinship. Etymologically, the term *fraternity* is more inclusive than it sounds and this partly explains its long political heritage; it hearkens back not only to the Latin "frater", but also to the Greek "phrátēr", which designates not so much a consanguine male sibling ("adelphós"), but as a co-member of a "social/political" (in Jacques Maritain´s sense of "non-biological", "voluntarily constituted") clan of adopted "brothers" and close friends (cf. 5.1.2). A similar notion is conveyed by the terms "camaraderie/comradeship" (etymologically, the bond between people *regularly* sharing a room), "companionship" (etymologically, the bond between people *regularly* breaking bread together, as in the French "copain"), or "fellowship" (etymologically, the bond between partners in a joint lucrative undertaking): all evoke images of military or university life.

In the Christian tradition, *fraternitas*, in Latin, is also the translation of *adelphótēs* in 1 Pt 2:17, a Christian 1st-century neologism designating the Church (cf. Dujarier 2013). Many associations within the church — such as trades guilds, and groups promoting certain devotions and charitable activities — were referred to as "fraternities", especially in medieval and early modern times. Fraternity thus came to designate the *bonding* uniting such groups (descriptive aspect), and the *virtue* that maintains such bonds and promotes "fraternal" behaviour (prescriptive aspect). As we have seen above, both aspects of fraternity became important political concepts during the French Revolu-

tion, which early on secularized the notion of universal Christian brotherhood as "universal fraternity" of all human persons (a concept which undergirds the French Revolutionary Human Rights declarations of 1789 and 1793), but eventually restricted the notion to national "civic kinship".

In Chapter 5 (section 5.1) we criticized the use of false analogies in politics, where political belonging is related to family or ethnic ties, or to membership in clubs and universities. Many authors today dismiss the concept of "civic kinship" for this reason, but the above discussion shows that the idea of "fraternity", properly understood, manages to achieve what most other analogies in political discourse fail to do: it speaks at once of a belonging which is chosen and not chosen, of purely voluntary membership and the demands of biological ties, of a descriptive fact and a moral virtue, of the deep bond which incorporates the other into a larger "self" while never negating the enduring otherness of the other. On the one hand, this complexity makes the notion of civic kinship a very rich political concept today, especially when speaking of the integration of immigrants or solidarity towards core-city dwellers: it show us to how to treat the other person as part of the political self, and offer solidarity to her not as a "pure" stranger, but *as though she were* one´s own kith and kin, one´s close neighbour. On the other hand, the complexity of the traditional notion of fraternity makes it hard to handle in political discourse, or place at the service of simplistic ideologies or utopias: it is a bridging concept, hard to define, which could be used in many ways. Its´ "standard" content is not readily monopolized by one school, party or movement.

7.3.1.2 How Can Kinship Be a Useful Concept in Contemporary Political Discourse?

Historians and political philosophers in the French-speaking world have long reflected on the problems raised by the complexity written into the notion of fraternity. As part of the French Republican

triptych, fraternity can be understood in three different ways. (a) Kinship could be projected as *the highest point of a crescendo*, starting with freedom from bondage, developing into formal equality of all in spite of social distinctions, and finally flourishing into the sisterhood and brotherhood of all (*hyper-egalitarian fraternalism*). (b) It can also be seen as a *value mediating between liberty and equality*, seeking to transcend radical economic egalitarianism in favour of a political and legal "civic" egalitarianism which protects liberty while recasting social classes as fraternally "equal" and fraternally "free" partners (*mediating fraternalism*). Finally (c), it can be understood as *the heart of the triptych* which creates a well-bonded national "family" through citizenship, on the basis of which the notions of freedom and equality obtain their meaning and their legitimate limitation (*nationalistic fraternalism*) (cf. Ozouf 1998, 79). Civic kinship also challenges modern political philosophy in a number of ways: it *undergirds* rights, but *underlines* duties; it justifies laws *equally applicable to all*, but points to a spectrum of *bonds of varying intensity;* it blurs the boundary between *contract* and *covenant*; it recognises fratricidal *conflict* while not losing hope that social *harmony* can somehow be achieved; it highlights the *social and communal* element of political life, respecting individuality but denouncing *individualism*.

Given this complexity, many political scientists and philosophers choose to understand the concept in a very limited way, and often end up discounting it. As Andreas Esheté (1981, 34) notes, fraternity, *as a civic ideal*, "is often summarily dismissed as utopian either in the backward-looking sense of a regression to simpler stages of social life or in the forward-looking sense of a yearning for forms of social life that are stripped of the recalcitrant complexities of society". To show that fraternity can be a civic virtue, Esheté provides an analysis of nationalist/patriotic bonds of loyalty. To be sure, nationalism and patriotism are the most tangible and visible exemplars of "fraternalist" ideo-

logies in our modern societies. Traditionally, however, nationalism and patriotism are obsessed with identity markers and proofs of belonging, often with the desire to *exclude*; furthermore, they are invoked not only *against* hostile or distant political others, but also *against* immigrants who already reside with, and who wish to become integrated in the same polity as, the nationalists/patriots.

The concept of civic kinship or fraternity we will espouse here, while recognising the need of strong bonds to unite those with different levels of belonging to the polity, seeks to overcome the false dilemma between "certified brother" and "potential enemy". Through this distinction, often construed by nationalist ideologies, pedigree (in the form of native birth, ethnic belonging or citizenship papers) becomes the *sine qua non* condition for being treated fraternally. In the classification noted above, we will generally reject *nationalistic fraternalism*, and overly onerous or intimate understandings of kindred bonds (cf. 7.3.3 below), such as those implied in *hyper-egalitarian fraternalism*. We will tend towards an understanding of civic kinship which seeks to *mediate between the values of liberty and equality*, and which does not deny the modern claim that *justice is the first virtue of social institutions* (Munoz Dardé 1999, 81ff; cf. Rawls 2005b, 3).

We of course do not attempt here to construct a political theory linking civil kinship to political justice, liberty and equality. Rather we point to a critical notion of civic kinship which seeks to include immigrants and resident "others" gradually into the bond of loyalty between citizens, such that the official citizenship papers (when they are granted) come to express a reality which is *already there in some form, and to some extent*. Here, civic kinship is built up *from within* civil society, with the active participation of individual believers and faith-based organizations, among others. In Chapter

5, we have given examples of forms of civic participation, including local governance (e.g. in the EU) which do not require national citizenship; this shows that we can no longer conceive the *political* bonds between residents of a particular political space in terms of an all-or-nothing membership regime, and that nationalist and patriotic bonds are not the *only* (and may no longer be the *most relevant*) forms of strong political bonding today.

7.3.1.3 Civic Kinship and Familismo

It is often tempting to compare civic kinship with other forms of kin-based social bonding in societies where the extended family is still very present and influential. Some recent liberationist and *mujerista* approaches to ethics have highlighted the *familismo* culture, especially in Latin American countries, noting its strong points and weaknesses. As Heyer (2012, 81) points out, *familismo* can become a form of individualism which excludes those outside the "family". We have seen this in the general attitude of the Maltese towards immigrants (4.4.2.2), summarized in the expression "dawn m´humiex ta´ġewwa" (they are not our kin/ they don't belong in our house). *Familismo* can also be used to oppress women and vulnerable members of the "family", stifling their agency. This is why we resist attempts to make easy comparisons between fraternity and *familismo*. Even so, a reflection on civic kinship stands to learn from certain aspects of the *familismo* mentality:

> *Familismo or familism typically refers to a strong value placed on family relationships and obligation, the value of children and community, and the importance of intergenerational kinship networks. Family serves as the primary organizing structure in most Latin American migrants' lives, for their social identity is relational rather than individual. The traditional cultural value of familismo intensifies the connection of familial relationships to women's identity with motherhood constituting an integral part of the female gender role. Women play a central role in familismo, serving as the backbone that binds this unique cultural, economic, social, and often religious network of familial relationships. Migrant women are frequently accompanied by children or family members, whether at church, socializing, or even on the job if they can work it out. As the symbolic center of la familia, women's primary identity is*

> *formed and understood in relation to their web of kinship relationships. The inclusion of extended family and community within familismo contrasts with the dominant focus on the nuclear family in the United States (Heyer 2012, 81).*

Forms of familismo, though weakened, still exist in many migrant receiving countries, especially in southern Europe, and in many of the new countries of immigration (such as South Africa, Egypt, Mexico, Brazil, the Middle East). It can function in ways that exclude immigrants, but it can also highlight cultural similarities that can be used to build bridges and strengthen social bonds with the other. In "northern" and strongly "westernized" spaces, such as in the big cities in the US, "*familismo* can perhaps broaden a dominant US Christian notion of kinship restricted by idealized nuclear family assumptions and underscore the ways in which solidarities can both connect and conceal, suggesting the importance of autonomy and interdependence alike" (Heyer 2012, 84) .

7.3.2 Christian Contributions to the Understanding of Civic Kinship

Though it is important to distinguish modern civic kinship from experiences of biological or small-community of kindred links, part of the political usefulness of the notion of fraternity comes from the analogies it permits, which, when properly used, also contain antidotes to the ideological simplifications and misrepresentations of the concept. Étienne Grieu argues that the biblical tradition helps us to question idealized forms of fraternity, pretending to create perfect equality between kin: in politics, as in human families, such an understanding of kinship can become a façade hiding violence, injustice and tension, especially when we choose to ignore or punish difference and human "otherness" (realities which are not completely erased by kinship):

> *From the first pages of the Genesis narrative, the relationship with one´s brother is presented as the trickiest aspect of life in common: the characters of Cain and Abel, Ishmael and Isaac, Jacob and Esau, and Joseph and his brothers force us to recognise that brotherhood is also associated with violence and*

> *suffering, not the direct and brutal clash of the relation with an enemy coming from afar, but the complexity of tangled, poisoned ties, ones burdened by painful memories (Grieu 2012, 61).*

Grieu believes that Christian theology can make an important contribution to the secular understanding of fraternity by insisting that kinship is not just something we build or *create*, but also something we *receive*. Firstly, nobody can build kinship alone; it exists in the measure in which it is reciprocated. Secondly, the political societies we live in and their bonds of kinship precede us; previous generations of citizens and residents have bequeathed them to us as they welcomed us into a long history of civic kinship. Thirdly, we all came into the world naked, and have experienced moments of want where we were not in a position to immediately reciprocate acts of kindred recognition. Finally, especially for believers, kinship is often experienced as a "gift from above" or a "gift from beyond", as we recognise a silent Presence within us and within our world which allow us to overcome fear and fratricidal hate, and build a communion of trust. From a Christian viewpoint, true civic kinship is a manifestation of God´s Grace in the world.

This approach, Grieu (2012, 62) argues recognises our creatureliness and the existence of someone, a "Creator", who bestowed kinship on us as a gift. It helps us overcome ideological constructs of kindred bonds which encapsulate particular understandings of kinship, and leave it bending over itself in a closed, stifling space. Kinship as a gift is something we are invited to **receive** and **respond** to; kinship as a virtue is precisely that receptiveness and that response. For believers, it is a matter of receiving the love of God and of our neighbour, and of responding to that love, thus obeying God´s commandment to love one another. "Here are my mother and my brothers! Whoever does the will of God is my brother and sister and mother" (Mk 3:34-35).

7.3.3 Misconstruing Kinship: The Dangers of Assimilationism

As we have seen in the previous sections, the complexity inherent in the notion of civic kinship also means that it can be misconstrued. At one extreme, *"kinship-lite"*, we may **pay lip service to civic kinship while denying that strong bonds between consociates in modern polities are possible or desirable.** Other citizens and residents are simply "there"; they should be tolerated and their negative rights should be respected, but there is where our responsibility ends. As we have seen, this position, common today, while not dismissing the existence of social interdependence and *de facto* solidarity, avoids reflection on the common good and on the duties of civic kinship. Individualism and rationalized fear of the other lead to to make light of civic bonds; in this process even people who share our same language and culture, and who live next door, could become totally other (Bianchi 2009, 89). This position is often taken for granted or poorly argued; most authors simply point to the other extreme, caricaturizing thus the notion of civic kinship so as to summarily dismiss it. Let us however take a look at the dangers of that other extreme and learn from them. Indeed, a positive and politically viable notion of civic kinship is possible if we learn to avoid these extreme positions.

The other extreme, *"fusional kinship"*, is to **consider fraternity as an excessively onerous, intense and intimate form of civic bond**. In this vein, Kinship may be construed as "fusional bonding", where one seeks to remove the boundaries, and negate the otherness of the other. Using French psychoanalytic symbolism (e.g. Jacques Lacan), we may say that there is a risk of social incest implicit in certain idealisations of fraternity, such as those proposed by Corporatist ideologues in the

early 20th century[334]. Even in a biological family, being "kin" does not mean having one body, and healthy political bonding can never be umbilical. Authors like Lévinas, who have seen the devastations caused by such ideologies, sternly remind us to shun totalising (and Totalitarian) visions which seek to abolish the irreducible distance between the self and the other and recast the other as a clone of the self. Such an understanding of kinship also leads us to exclude people who share our same language and culture, and who might live next door, not by making the bond too light, but by making it too heavy and then excluding those who exhibit any form of difference or resistance, both seen as threatening to such an intense bond. In chapter 6, we have seen this happen between returnees from the Exile and the "people of the land". This position also determines the integration processes in post-exilic and rabbinic Judaism, which, as noted in that chapter, the Bible does not dwell upon.

7.3.4 Centro Pueblos Unidos: Helping People to Integrate

After mentioning the possible pitfalls of the concept, let us now turn to a positive example of civic kinship. For a year between 2007 and 2008, while living in the north of Madrid, I volunteered in a faith-based organization run by the Jesuits, called *Pueblos Unidos*[335]. Though eminently local and not too large in size (in 2011 it offered its services to around 5,000 immigrants), *Pueblos Unidos* seeks to accompany, serve and defend the rights of immigrants in the north of Madrid, and to help them integrate themselves holistically into the life of the city. On the one hand, it is actively involved in advocacy and awareness-raising in the Spanish capital. Its director, Fr Daniel Izuzquiza SJ,

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[334] Luchino Visconti´s allegory of Nazism as a mixture of fratricide and incest in the film *The Damned* (1969) comes to mind here.

[335] Cf. http://www.pueblosunidos.org (visited on 2nd June, 2013).

is the author of many books and pamphlets on the ethics of migration, and regularly collaborates with a network of immigrant rights groups to set up conferences, organize formation evenings, issue press releases, start online campaigns (e.g. on www.avaaz.org), and so forth. On the other hand, *Pueblos Unidos* works within the neighbourhood of La Ventilla (officially called Almenara), in the borough of Tetuán, providing job training, legal aid, psychological help, information about access to public health and education, and community contacts for employment and housing to migrants (mostly of Ecuadoran or Moroccan origin). It also offers formal and non-formal after-school education to their immigrant children and adolescents, with the support of a considerable network of people in the local community and in more affluent Madrid neighbourhoods where Jesuits are also present (via parishes, high schools, university campuses), as well as local businesses and large corporations like IBM and BBVA. Given the weakness of civil society and the weak social tissue in the area, *Pueblos Unidos* also seeks to empower residents — especially immigrant women — to form neighbourhood associations of their own, and provides them with the necessary support.

In the past, La Ventilla-Almenara was a shanty town in the North end of the city[336], where generation after generation of immigrants (first rural Spaniards, then foreign-born workers) have passed as they moved up the social ladder. Housing in the neighbourhood has improved considerably since the 1970s, and in recent years (at least until the Great Recession), government services increased and improved steadily; it is a slowly gentrifying neighbourhood. Following St José Maria Rubio´s pioneering outreach to the poor neighbourhoods of Madrid, Jesuits have been present in the area for

[336] Vicente Blasco Ibáñez´s novel *La Horda* (1905), set in this neighbourhood, describes very well the marginalisation and lack of fraternity with Madrid´s poor in that era.

many decades, patiently nudging Spaniards of different social classes and ethnic origins to build links of kinship with each other, against the backdrop of a long history of fratricidal divisions in the Iberian Peninsula culminating in the Spanish Civil war and the Franco dictatorship. *Pueblos Unidos* is linked to a state-funded Jesuit High school in the area, which provides quality education to the local residents; to a Jesuit Parish where immigrants of Ecuadoran origins venerate and celebrate their national patron saint, *La Virgen del Quinche* (also known locally as "*La Virgen de los Sin-Papeles*", or Our Lady of the Undocumented); and to a number of Jesuit insertion-formation communities in the area, one of which is a mixed community where immigrants and Jesuits live together.

Pueblos Unidos' "civic kinship" approach to immigration, though promoted and put into practice by committed Christians, is not "uniquely Christian", even though the ecclesiology of Izuzquiza himself (e.g. 2009) is manifestly inspired by John Milbank and John H. Yoder. For many years, as the Spanish economy boomed and immigrant labour became "necessary", secular and religious voices concurred on the need of building up a strong Spanish civil society which fully included immigrants and offered them concrete means of integration. Thus, *Pueblos Unidos´* kinship approach resonated with a certain openness in Spanish politics towards immigrants, even irregular immigrants. It also was in harmony with the general anti-xenophobia and anti-nationalist tendency of the mainstream political parties, which seek to distance themselves both from the horrors of the Franco dictatorship and from the identity politics of the separatist movements in the Basque Country and in Catalonia.

In this context, past Spanish governments have developed a firewall between the national immigration authorities and municipal service providers through the *Padrón muncipal* (Municipal Residency

Register) system, so as to ensure that the rights of all, including irregular immigrants, will be respected (cf. Abogacía General del Estado 2010). Though not without its flaws, the *Padrón* system offers a "certification of residency" independent of entry visas, which irregular immigrants could use to send their children to public or state-funded schools, have access to public healthcare and make use of certain public services. In recent decades, Spain has periodically regularised the immigration status of large cohorts of irregular immigrants, even introducing a "settlement" system in the 2000s where undocumented migrants could earn the right to reside legally and eventually be naturalised through a *permanent* legal channel (Sabater and Domingo 2012).

The grave economic crisis in recent years has taken its toll on this generous and inclusive system. While many immigrants left Spain on their own, given the exorbitant rates of unemployment, recent governments have beefed up and extended the minimal detention and expulsion measures present in past laws, supposedly to conform the *Ley de Extranjería* to the European "Returns Directive", but more probably to provide the public someone to blame and punish for Spain´s economic woes (Europa Press 2013). Royal Decree-Law 16/2012 of the 20th April, 2012, seeking to making the National Health System financially sustainable, has barred access to all foreigners not registered for social security (Buades Fuster, Díe Olmos, and Melero Valdés 2012)[337]. In many ways, these measures are not only (or not primarily) the simple economic effect of austerity policies imposed on countries like Spain (which, until the Sub-Prime crisis in 2008, had been more fiscally con-

[337] The decree lumps together long-term irregular immigrants, non-EU tourists, and tourists possessing the European Health Insurance Card (hailing from countries which offer access to public healthcare to Spanish tourists bearing such a card). This provision has not been applied by all the Spanish regions, given reservations on its impact on human rights and its conformity to EU law, highlighted by NGOs and church organizations.

servative than Germany). Rather, they are the legal embodiment of a prevalent anger against Germany´s perceived (and partly real) lack of kinship with politically and economically weaker European polities. If "big sister" Germany (often equated with Angela Merkel) doesn´t want to help "small sister" Spain, and doesn´t live up to the demands of kinship with the EU, then why should "big brother" Spanish government, which officially represents citizens, offer any help to irregular immigrants and other "foreigners"? It is precisely when civic kinship is in crisis that faith-based organizations like *Pueblos Unidos* can be truly "radical" — literally, rooted in Christ, as Izuzquiza (2009) loves to argue — by insisting that wise and inclusive policies, discerned consensually in moments of political calm and hopefulness, not be rashly abandoned in times of trouble.

7.3.5 Priority Rules Based on the Virtue of Kinship

Let us now present the priority rules sketched in previous chapters within the framework of the virtue of kinship as outlined above. The rules cover mainly the transition from temporary sojourn to long-term residence and the granting of citizenship status. To some extent, they assume the rules above regarding first entry, transit and sojourn, and they assume that people are already present within the national territory, even though some people may be allowed in *on the basis of such rules*, in view of permanent residence and full integration.

The basic rationale behind these rules is the following. Most human persons seek some form of stability and political belonging; some people are very mobile often because they have found other forms of stability and belonging which anchor their lives (e.g. corporate executives, journalists, sportspersons). People **fleeing persecution and grave need** stay on in other countries, even if discriminated against and treated as third-class residents, mainly because they have a greater hope

that stability and political belonging can be achieved in the receiving country than in their homeland. People **seeking better economic opportunities** often stay on in the countries they enter in search of a more lucrative job because, if their work is consistently needed and welcomed, this is a clear signal that the receiving country does have the capacity to integrate them, and eventually offer them or their children a deeper form of stability and political belonging than their motherland could offer at present. If nobody were to offer them a job, or the economic, political and cultural milieu had no real capacity to integrate them, these latter migrants would move on, or return to their home countries.

Rule K1 helps us distinguish between these two types of immigrants. Rule K2 reflects on the issue of identity which is crucial to integrate people and make them civic kin: a national narrative which the other can reasonably buy into is necessary here. Rule K3 helps us distinguish between the capacity of **letting people in for short stays** (cf. H1 and H2), which many relatively prosperous nations have, and that of **integrating them fully**, which certain countries may not yet possess (given certain stressors, or the fact that certain practices and narratives needed to integrate the "different" other have not been sufficiently developed). It also reflects the capacity of the migrants themselves to be integrated. Rule K4 reminds us of past bonds of interdependence between countries and their due impact on immigration policy.

(Rule K1) Immigrant Residency and Naturalisation Selection Rule (cf. section 5.4)

a. Immigrants whose security and subsistence rights cannot be adequately guaranteed in their home country have a clear *prima facie* right to enter and stay in countries which can afford to

provide them such rights while not endangering the security and subsistence of their current population.

b. Other immigrants do not have such a right and may be removed humanely, ensuring the legal protections afforded to citizen defendants in civil law cases, unless a long time has passed (more or less, 5 to 25 years) and unless they have shown themselves to be quite well "integrated" into the political culture of the receiving polity.

c. Persons who are explicitly or tacitly allowed to stay beyond a sojourn period of a few months should be considered as long-term residents and potential candidates for naturalisation. The *basic rights* of such residents should be respected and guaranteed as far as is affordable for the country, including some access to *welfare services* in case of destitution, and a flexible (not overly regulated) access to the *labour market* which reflects the real need of the economy while offering other workers some protection against wage competition and depression.

Note: We have already mentioned above (section 5.4) that this rule seeks to protect (α) the right of refugees to protection, (β) the socio-economic rights of *all* residents, (γ) the value of integrating persons whose contribution to the welfare of the polity (at least in time of economic prosperity) is tacitly or explicitly recognised, and who therefore enjoy some sort of "belonging" to the recipient political society; it also follows from (δ) the cosmopolitan duties which encumber territorial stewardship and from (ε) liberal and democratic arguments. Furthermore, the reasoning above may be adapted to the cases of irregular immigrants, and also to polities without a liberal or democratic constitution.

Kindred citizenship: (a) *Narrative*: To understand the security and subsistence rights of others, and why some persons have a right to immigrate into the "country of others", philosophical arguments and sociological data may be useful, but telling personal stories of misery and persecution is often the most powerful way of explaining why these people should be allowed to stay, why sending them back is not an option. In this context, retelling the economic history of now-prosperous nations, their past experiences of oppression and misery, and the flows of people in and out of the country which accompanied those experiences is crucial. (b) *Ritual*: Most countries have had experiences of immigration and emigration, but few care to celebrate them publicly and to let these rituals bear on immigration policy today. Celebrating human mobility, while soberly remembering the grave causes that usually provoke it, is an important task that could help us build practices of anamnestic solidarity in our polities.

Kindred discipleship: (a) *Narrative*: Ellacuría´s metaphor of the crucified people helps us retell the Passion narrative and make it speak to us today in the lives of the poor, marginalised and persecuted people of our times (Campese 2008; D. G. Groody 2009). Various CST documents, e.g. CHM 8 and EM 3, highlight the link between immigration and the Paschal Mystery. (b) *Ritual*: A public blessing of immigrants — regular or irregular — for instance during a Sunday Mass, after a stay of five years, can help symbolize that, if we have allowed them to stay for so long, and have benefited from their contribution to our society, they deserve to stay and belong. Furthermore, whether morally justified or not, removal and deportation is a reality in most of our countries. It is often tragic and traumatic, and we should develop religious rites to support people about to be deported from our polities, just as sending rites have been developed in sending countries. Religious pres-

ence in centres which concentrate people for deportation could also help expose abuse and make their staff more accountable.

(Rule K2) National Narrative Rule (cf. section 6.6)

Receiving societies have a greater duty to integrate immigrants who demonstrate a willingness to buy into the National Narrative, assuming that such a narrative is ethically acceptable, inclusive, revisable, and (reasonably) adoptable by newcomers.

Kindred citizenship: (a) *Narrative*: All of the narrative proposals discussed in previous priority rules could find their place here. Rather than repeat the above, we simply underline the importance of building a national narrative that immigrants can reasonably adopt and buy into. An important part of the recipe is to highlight, rather than gloss over, the diversity and plurality present in one´s history and culture. (b) *Ritual*: Naturalisation rituals are very important; they should be celebrated with dignity, and their rubrics, texts and symbols should be very wisely chosen. Giving recently-naturalised immigrants a prominent place in national ceremonies is another way of showcasing the desirability of integration.

Kindred discipleship: (a) *Narrative*: Religious traditions can help purify and strengthen national narratives in many ways. They can, for instance, link positive "national" values to the Gospel and to Christian tradition. They could use the Old Testament to show how the search for a national identity which strengthens the bonds of civic kinship among all residents can, under certain conditions, be legitimate and essential. (b) *Ritual*: Besides showing due respect towards legitimate national symbols within Christian liturgies and other activities, Christians can develop their own ways of honouring their polity and foreign polities, as in John Paul II´s custom of kissing the ground upon

landing in a foreign land. All this expresses our belief that, in spite of the evil present in all political structures, and in all human history, God is at work in every nation and people, and all lands are sacred in that they bear the mark of God´s presence.

(Rule K3) Integration Capacity Rule (cf. section 6.6)

a. Stressed nations with limited integration capacity and with underdeveloped conceptual tools (narratives, laws, rites) to integrate strangers may have a lesser duty to receive and integrate immigrants (depending on the stressors), while they develop such conceptual tools.

b. Stressed migrants (especially "forced security migrants" who were violently pushed out of their land), though they may have a greater *a priori* right to be granted residence (and eventually citizenship) in a safe receiving nation on the basis of need, often need more help to integrate well (and deal with trauma, conflicting identities, becoming kin of those they perceive as "strangers").

c. Regional and international coordination and specialization are desirable in dealing with stressed immigrants. Polities whose public culture is relatively similar to that of the migrants in question are usually better suited to take them in and integrate them, and their integration capacity should be expanded with the help of the international community if needed. Other polities may opt to limit more strictly the stay of stressed immigrants, and "specialize" in the reception and integration of certain groups of stressed immigrants, provided that they (i) provide adequate help to the polities more suited to integrate them, and (ii) offer to integrate other stressed migrants with an adequate investment of resources.

Kindred citizenship: Narratives and rituals are important ways of increasing the integration capacity of both receiving nations and of immigrants, as we have mentioned above (section 7.1.3.5) and in Chapter 6 (section 6.3.3).

Kindred discipleship: Read in a faith perspective, the "immigration crisis" — in places where it actually exists on the ground, in those where it is invented through unjust or simply irrational policies and bureaucratic procedures, and in those where it is mostly a fiction of the mind (with some very real consequences) — can become a *kairos*, a moment of opportunity which transforms the Church and society at large (Orobator 2005). Mass human mobility may be a stressing and distressing "sign of our times" (M2006). Faith-based narratives and rituals help us cope with the stress that we and our neighbours face in an age of mass migration, especially when we let ourselves become engulfed in an "ecology of fear". They can also help us deal with the stress experienced by the immigrants, especially those showing symptoms of PTSD.

(Rule K4) History-Laden Interdependence Rule: Immigrant Residency and Naturalisation[338]

Other things being equal, receiving countries have a greater duty to grant residency and naturalisation to citizens of countries which are politically, socially and culturally linked to them through close bonds of history-laden interdependence.

We have discussed the history-laden interdependence rule above, in the framework of hospitality (7.2.4/H3); what has been said there can be adapted, *mutatis mutandis*, to a kinship setting.

[338] Cf. section 4.3.4.

7.3.6 A Solidary Procedural Rule

(Rule P1) Procedural Rule (cf. section 5.4)

This last rule, linked to the kinship approach, is a procedural one: it helps us understand how to apply the above rules. We cannot go directly from priority rules based on moral considerations to the formulation of policy, which has to be discerned and adapted to concrete situations, and in a democratic system must meet the consent of the governed. Except in cases of grave violation of human rights, moral laws and policies cannot be imposed "paternalistically" from above against the will of the majority who is supposed to abide by them. Yet, we can make the democratic processes through which these policies are formulated fairer and more representative, not only of citizens, but of all the "governed", that is, all touched in a significant way by those laws. This helps us reach a deeper and richer form of democratic rule than merely one based on power games between majorities and minorities who refuse to listen to each other.

Here is the rule:

The local fine-tuning and concretisation of the above rules requires fair democratic processes where those most impacted by boundary laws are adequately represented.

Kindred Citizenship: The debate regarding whether and how to represent non-citizens in democratic decisions which concern them is a complex one; *narratively* and *ritually*, however, it is important to underline that democracy is not simply majoritarianism, that modern political history is one of the emancipation and political empowerment of groups of people who, in the past were deemed incapable or not entitled to participate in political decision-making.

Kindred Discipleship: Christian communities have an important role to play by being the voice of the voiceless, and not doing this paternalistically, but rather helping immigrants develop their own voice and agency within civil society. We can start by giving migrants a real voice within our Christian communities. (a) *Narrative*: Migrants have important things to say to us; M1989 reminds us that migrants can be missionaries today, in a secularized Europe, as they were in the past in other parts of the globe. Stories of pioneering work by immigrants in the history of the Church should not be forgotten. (b) *Ritual*: Popular piety is one way which migrants use to express their faith; though we might find some aspects of this problematic, we should not rush to silence and impose our ways of praying on them. Furthermore, we should seek to live more deeply the central act of Christian worship — the "Mass" — especially in its aspect of *missa*, or sending forth "in peace". The fullness of *shalom* which we seek to establish as we go out together into the world, in one procession that includes all, cannot be authentic if it leaves some of our sisters and brothers "voiceless" in the world outside (Izuzquiza 2011, 28ff).

7.4 Conclusion

In this chapter, we have completed the pastoral or hermeneutic cycle of this dissertation, bringing the previous moments of "seeing" and "judging" to bear on our action as citizens and disciples of Christ, by adopting a virtue ethics approach. We highlight below the main points discussed above:

1. **Solidarity is a central concept**, which helps us to understand our relationship with the immigrant and the refugee. Ethics however helps us to move beyond *de facto* solidarity, and unequal relationship of interdependence, to a moral understanding of solidarity as a virtue, which not only provides assistance to needy others, but helps them to become counterparts in a more

equal and reciprocal relationship. Yet, solidarity is often ill defined, and in most discussions today it is mostly used as a rhetorical device, rather than a solid ethical concept which allows rigorous debate and fruitful dialogue. This is why we seek to clarify the concept by reference to secular sources in the first part of this chapter, and by distinguishing two modes of solidarity relevant to our present discussion: hospitable and kindred solidarity.

2. **Hospitality is a very important cross-cultural social virtue**, which certainly exists in our modern societies in both settler and itinerant modes, but hospitable practices are not labelled as such. Traditional Christian practices of hospitality, as well as those developed more recently by faith-based organizations (often stemming from simple initiatives of poor women), can be very useful today to challenge xenophobia and help our societies and neighbourhoods move from an "ecology of fear" to an "ecology of trust/faith". **Hospitality, however, has its limits and we should shift to the kinship mode of solidarity in our relationship with people who are *de facto* residents**, and who wish to be fully integrated into our polities rather than be treated as permanent "guests" or "sojourners".
3. **Civic kinship or fraternity is a difficult virtue to put into practice in modern polities**, given many misunderstandings and resistances. Framing the relation with long-term and permanent immigrants within this virtue obviously challenges patriotic, nationalist, and — in some countries — *familista* understandings of strong social bonding. Furthermore we recognised that establishing deep social bonds among political consociates or residents of a territory at a given point in time is hard work, and it is very challenging to pry open that communion again and again as new potential members arrive and ask to be admitted. It is obviously much easier to treat newcomers as guests and hope that they will eventually leave. We have nonetheless ar-

gued, anchored in Christian hope and in a certain cosmopolitan humanist optimism, that such resistances *should*, and somehow *can,* be overcome, that certain realisations of civic kinship *are possible* in our modern societies. In that vein, **we have proposed some valuable examples of how kinship with immigrants can be lived out**, and have placed a number of priority rules within the framework of this virtue. To be sure, civic kinship will not magically solve all the problems of marginalisation in our societies; as the Gospel insists, "you always have the poor with you" (Mk 14:7), and discommodious hospitality, or at least some form of "charity", will remain necessary. Similarly, we will always have sojourners with us, people who do not wish to stay longer, or whom we cannot allow to stay permanently among us, and the appropriate way of treating such persons is that offered by the framework of hospitable solidarity.

4. In the light of the above-mentioned difficulties and resistances to the practice of these virtues, both in political societies at large and in our Christian communities, we have **linked the priority rules to hospitable and kindred citizenship and discipleship**, underlining the value of narrative, ritual and law in the habituation of people to the virtues which undergird the proposed priority rules.

CHAPTER 8: GENERAL CONCLUSION

I do not provide, in the following pages, an overview or summary of the dissertation, chapter by chapter. I have done this already at the beginning of the General Introduction and at the end of each chapter. I rather limit myself to highlighting what I believe to be the major achievements of this dissertation, and its original contribution to Moral Theology as applied to the phenomenon of human mobility.

8.1 The Argument

The argument of the dissertation can be summarized in four steps. In the first step (Chapter 2), we noted a tension in CST between the right of certain persons to immigrate, and the right of polities to control their borders. Given that the basic tenets of CST on immigration were formulated between 1950 and 1980, we proposed two possible ways of solving this tension. (a) We could argue that the reality of international migration has changed drastically in recent decades, in ways that require a new *ethical* appraisal of the phenomenon. On that basis we could claim that, with the exception of convention refugees, people today no longer have a right to immigrate unless this right is explicitly granted to them by positive law in the receiving country. In this case, countries would have an absolute right to control their borders, and the tension would disappear. (b) We could also resolve the tension by claiming that these two rights are not "absolute" rights, and must be *kept in tension*: which one of them trumps the other in concrete situations is determined partly by a set of (moral) priority rules, and partly through political discernment via fair democratic processes (which are always necessary to formulate concrete policies which require the consent of the governed).

Here the tension remains, but we have ways of resolving it in policymaking and moral criteria to guide advocacy.

The second step sought to deconstruct the first option (a). Though we noted various changes in the phenomenon of international migration in recent years (in Chapter 3), in the context of "globalisation", we argued that these do not really allow us to alter past ethical appraisals of what is at stake when people move. Neither can they support the claim that people in emerging countries have less reason to emigrate today than in the past, or that receiving countries have significantly less capacity *per capita* to receive immigrants today than in the 1890s or the 1950s. When, in the middle of the 20th century, the Catholic church embraced human rights and many aspects of the cosmopolitan moral worldview that modern political thought has invoked to support certain freedoms — such as the freedom of movement, freedom from want, freedom of opportunity, freedom from persecution and oppression — it did not espouse a vision that could become obsolete in a few decades when certain social realities change. Catholics believe that human rights, and the freedoms they suppose, though they should not be understood as "absolute", are true of all persons and for all ages, being anchored not only in human reason, but also in Revelation and in Christian tradition. In recognising the right to *immigrate*, and not only the right to *emigrate*, the Church has taken the logic of human rights beyond what most liberal and liberal egalitarian thinkers would dare to propose when drafting documents such as the Universal Declaration of Human Rights, which ultimately have to be approved by representatives of "sovereign" polities. Chapter 4 helped us to confirm, through a case study, that the tension between the right to immigrate and the right to control one´s borders is not resolved by claiming that the situation has changed and thereby denying the first right.

The third step was the investigation of the second way (b) of solving the tension. Here, the two rights are not contradictory and can be kept together so long as they are not considered absolute. This entails that "sovereign" polities do not always have the right to close their borders to immigrants, and choose whom to let in, and whom to integrate politically. For this claim to make sense, we needed to critique the Westphalian understanding of sovereignty, and propose a different way of understanding political societies, especially in today´s "globalised" world. The first part of Chapter 5 allowed us to do precisely this. In the second part we transitioned to the more constructive movement of our dissertation and proposed a reasonable way of holding these two rights together. We did this by proposing a series of "priority rules" that helped us determine which of the two rights trumps the other, and in what circumstances. Most of the priority rules were proposed in Chapter 5, though others were proposed in Chapters 4 and 6.

The final step in our argument sought to answer the sceptic's question "so what?" As proposed, the priority rules may seem like lofty ideals which could never be taken into account by "real" policymakers. In Chapter 7, we took a virtue-ethics approach to indicate how hospitality and kinship can be fostered in Christian communities and in civil society, and thus make citizens and policymakers receptive to the moral propositions we make in this dissertation.

8.2 The Priority Rules

The priority rules we have proposed (listed in Annex B) are, I believe, the most significant contribution made by this dissertation to the field of "ethics of borders and immigration". The rules clarify the notion of "porous borders", and of just "immigration management", by helping us solve some of the major tensions between two sets of rights claims: those related with the right to immigrate,

and those related with the right to control borders. I sum up the two sets of rules and the rationale behind them in the next few pages. I start with the "hospitality" rules which pertain primarily to entry and short-term stays, and then move to the "kinship" rules that are relevant to integration, permanent residency and naturalisation.

8.2.1 The Hospitality Rules

The rationale guiding the priority rules concerning entry and sojourn is that freedom of movement should not be impaired in times of peace, except for grave reasons. Some people have a right to enter a country to file an asylum claim and should be allowed entry. Other people may want to visit family, possibly look for a temporary job, or seek solace from serious want and poverty in their homeland. In such cases, most countries grant visas easily to visitors from certain countries, but not to others. Though there may be good reasons to facilitate exchanges with certain countries and not with others, *I believe that the current system is discriminatory, ineffective and unreasonably lethal*. "Desirable undesired immigrants" continue to reach Europe from Sub-Saharan Africa, the US from Central America, Australia from the poorer and more populous nations of Asia. They continue to come because wealthy countries can, and in fact do, take them in for the long haul, in spite of the rhetoric that "the boat is full", and the visa regimes which force thousands of people to risk their lives to reach these countries through irregular channels. I believe there are means of ensuring that certain "visitors", who have no right to stay on, actually leave when their visa expires, and this is where a polity´s sovereignty with regards to immigration is rightly exercised, not at the moment of entry. Effective employer sanctions and humane removal may be required at times to manage the flow, prevent wage competition with local workers, and allow more effective integration. We discuss this below, but our point here is that spending billions of Euros building fortresses and funding

patrols to keep people out is not a good way of dealing with immigration. It is a wasteful exercise which causes thousands of unnecessary deaths, forces smugglers to join international criminal networks, keeps legitimate refugees from filing an asylum claim, separates families, and does not solve the real problem.

The first hospitality rule (H1) is the **Recipient Country Selection Rule**. It states that polities which can afford to should keep their borders as open as possible. The capacity we refer to here is not primarily that of integrating long-term immigrants but rather the ability to welcome visitors, sojourners, seasonal workers and asylum seekers. As such, letting these people in does not mean that they should be allowed to stay indefinitely. Four criteria are proposed to identify countries with a more pressing duty to adopt this rule. Polities that are (i) prosperous, (ii) have a high level of human development, (iii) are situated on an ecologically-resilient territory which can take a higher population density, and (iv) are committed to liberal rights (such as the freedom of movement) through a liberal democratic constitution are those most concerned by this rule.

The second hospitality rule (H2) is the **Immigrant Entry and Sojourn Selection Rule**. It builds on the above rule, stating that modern liberal democracies, *in particular*, should normally allow legal entry and temporary sojourn. Such polities, in general, should lead the way in the promotion of human rights, and being well-equipped politically to deal with a plurality of ethnic groups, cultures and religions, have less reason to keep people out. Valid reasons to close one´s borders to visitors are given in this rule. If opening one´s borders poses a serious and credible risk of (i) insecurity, (ii) disruption of public order, or (iii) dilution of the polity´s political culture and weakening of its political institutions, then measures which restrict entry may be justified. Similarly, (iv) if certain restrictive

policies can be shown to enhance liberty and equality on a cosmopolitan level in the long run, they might legitimately be taken into consideration.

It is important to note *what is not mentioned* in (i) to (iv) above. Cultural, racial, ethnic, and religious differences between the immigrants and the majority population are not, *by themselves*, valid reasons to *keep people out* (though, as we shall see, allowing immigrants to stay on as permanent residents and citizens requires some "cultural" adaptation on their part, namely, the adoption of the polity´s "national narrative"). Such differences can be invoked only to keep certain individuals out if it can be shown that such individuals embrace dangerous or fundamentalist beliefs linked to cultural, religious or ethnic identity, and thus constitute potential security risks. In general, the limitations to open borders mentioned in this rule serve mainly to *manage volumes*, rather than to *distinguish between individuals or groups of migrants*. A sudden huge inflow of poor sojourners or asylum seekers into a tiny medium-income country with a small police force, with thousands of people roaming about the streets without a place to stay or a job, may lead to a disruption of public order. In such a crisis situation (which is obviously not the case in Malta, let alone in the US), a country may legitimately close its borders. The international community and neighbouring countries with a higher reception capacity should, of course, step in to provide help and shelter to these persons.

The **History-Laden Interdependence Rule** (applied to immigrant entry and sojourn) is our third and final hospitality rule (H3). It offers a valid reason to distinguish between immigrants on the basis of their country of origin. Here again, the criterion is not culture, ethnicity or religion *as such*; France and Algeria, Italy and Libya, Britain and India, Spain and Morocco are not very similar on the basis of ethno-cultural criteria. Rather, what is seen as linking countries and peoples is a common history: a

bond of "history-laden" interdependence. The rule claims that, other things being equal, receiving countries have a greater duty to grant entry and sojourn to citizens of countries which are politically, socially and culturally linked to them through close bonds of history-laden interdependence. The main rationale, here, is that the world of human migration is not a homogenous mass, and cannot be compared directly with the world of the migration of investments. If the risk is reasonable and the return is good, investors usually do not bother whether they know the country they are investing in or not. Most migrants, however, do not move to the place where they can earn most money or get the most benefits; they move within a network of interdependent countries usually bonded by a common history. This means that certain countries tend to receive more migrants from a certain network of countries, than from other networks. This allows them to specialize in offering hospitality to, and eventually integrating, *certain kinds* of immigrants. Such a setup is not discriminatory, unless certain countries are *completely left out of these networks*, and provided that this rule does not become the *only criterion* deciding entry. It is actually reasonable and desirable.

8.2.2 The Kinship Rules

The "hospitality" rules above set up a regime of porous borders. We can envisage a world where more and more people from poorer countries can get a tourist visa, or temporary work visa, and travel safely to wealthier nations than is the case today. This would mean less money spent ineffectively on "securing borders", less people dying at sea or in the barren deserts that separate countries, less women raped, or men mutilated by traffickers. Locals providing services to these visitors would earn more money, and the steady supply of temporary workers would, most probably, cover labour shortages. All this seems too good to be true. So why do most people and most politicians

consider an open borders regime unacceptable? The fear is that massive amounts of people will pour in, take the jobs of the natives and push wages and work conditions down, and that after some time, many of these foreigners would want to stay on permanently, even when there are not enough jobs to go round.

The position taken in this dissertation is that, in general, *keeping people out* is not the morally-appropriate way of dealing with such problems. Rather, we should not allow certain sojourners to become *de facto* residents, if the country cannot afford to, or (for legitimate reasons) does not wish to, integrate them, and if they have no real moral right to remain in the country. If there are no jobs available for immigrants, or if employers are not allowed to hire people irregularly, and property owners are not allowed to rent housing for "long lets" to people without a legal status, then the "sojourners" whose safety and subsistence can be reasonably ensured in their home countries will return, and will not be replaced by similar potential immigrants as soon as they leave. Refugees and people whose subsistence is threatened in their home country will not return, but will ask for basic social security and the possibility of legal employment. They will have a moral right to "immigrate", that is, stay on as permanent residents, subject to certain conditions, which polities should respect.

This "automatic selection" method helps us mediate effectively between the right to immigrate and the right to control one´s borders. It works in theory, but is rarely put into practice. The problem is that such a system places the burden of honesty, consistency and respect for the rule of law mainly *on the receiving polity and on its citizens*, not on the migrants. When the economy is prosperous, employers hire people without a legal status, authorities stop enforcing border laws, and trade unions do not bother to protest as long as their members have jobs and are being promoted as man-

agers over immigrant workers. Few people are interested in giving irregular migrant workers a work visa and residence permit, or to replace them by other migrant workers who have a more pressing claim to be allowed to work legally and reside permanently in the country. The vulnerability of irregular migrant workers is convenient to most of the people they ever get in contact with: employers, unionized supervisors, landlords and so forth. All of this reveals the hypocrisy and callousness of the people in receiving countries, who *de facto* integrate immigrants socially (though not legally and politically) without raising serious objections in times of plenty, and then suddenly start to claim that the immigrants "do not belong here" when a recession strikes. To be sure, some southern states in the US (such as Arizona and Alabama) did espouse a migration management philosophy similar to that proposed above (focussing on keeping sojourners from getting jobs or long-term housing), but they did so in the middle of a recession, in a legally-flawed manner, without providing social security and legal status to refugees and migrants who cannot be expected to return to a situation of great poverty. Most of these states stopped enforcing the new "show me your papers" laws as soon as the economy got better (or employers complained about labour shortages), targeted the immigrants rather than citizens (who also didn´t have their lease or job contract papers in order), focussed on creating fear rather than promoting rights, and engaged in racial profiling. If it is true that the problem is wage competition and a lack of capacity to integrate more than a certain number of immigrants per year, and not baseless xenophobia and political opportunism, then the laws should be honest enough to provide adequate legal channels for seasonal labour and permanent residency to the immigrants that the country can afford to take in, while consistently keeping unentitled sojourners from becoming permanent residents.

The first “kinship” rule (K1) is the **Immigrant Residency and Naturalisation Selection Rule**. It underlines the right of refugees (“forced security migrants”) and people escaping serious economic need (“forced subsistence migrants”) to stay on (after first entry) and to be integrated (if they so wish). I believe that wealthy nations should accept and integrate as many of these immigrants as they can. Poorer nations often have to deal with the vast majority of these people, and when wealthy nations claim they cannot cope with the trickle of forced migrants which actually reaches them, they sound very cynical.

As regards other sojourners (who have their basic rights met in their home countries), this rule says that they may be removed humanely unless a long time has passed, and they have become *de facto* residents. I have indicated roughly what I mean by “long time” and by the satisfaction of “basic rights” in Chapter 5. The point here is that I am not *a priori* against laws which distinguish these latter immigrants from the ones mentioned above, and in a fair and timely manner do not allow them to overstay their visas, or remain in the country without a regular status. There is a sense in which political sovereignty should be recognised and respected. However, noted above, the way these laws are designed and enforced is a clear litmus test of a polity´s honesty and consistency in its immigration policies, and of a polity´s respect for human rights and personal freedoms.

The second rule (K2) concerns the **National Narrative**. As noted above, culture, ethnicity and religion are not, *by themselves*, valid criteria *to keep visitors out*. Yet, when those visitors wish to integrate themselves and become permanent residents and citizens, it is legitimate to ask for a certain level of cultural integration, which I believe should be limited mainly to a demonstrable willingness to buy into the National Narrative. I assume, here, that such a narrative is ethically acceptable, in-

clusive, revisable, and (reasonably) adoptable by newcomers. In other words, people wanting to reside permanently in a country such as Malta, and raise their children as Maltese citizens, should have a sense of what it is to be "Maltese", and should want to be Maltese as much as possible (without necessarily abandoning the culture, religion and language of their parents). However, Maltese people should reflect on what being "Maltese" entails in a pluralistic society, and distinguish the character of the Maltese polity from the ethnic, religious and cultural traits of the historical Maltese "nation". Some of the historical symbols, traditions and civic rituals should, of course, remain, but they may need to be reinterpreted so that the newcomers can recognise themselves in these stories and rituals. For instance, naturalised immigrants could see certain summer *festas* rooted in Christian tradition as an expression of their Maltese national identity, and feel comfortable participating in such events, in spite of being Buddhist. A person adopted as a child by a Maltese family may commemorate the lifting of the 1565 "Great Siege", even though their biological ancestors may have been among those Turks who laid siege to Malta in that occasion.

The third kinship rule (K3) is the **Integration Capacity Rule**. It addresses both the ability of receiving polities to integrate immigrants, and the ability of immigrants to be integrated in a particular polity. This is more than just the ability of opening borders to sojourners, or the ability to sojourn in another country. Certain polities and immigrants may be stressed and thus incapable of properly and fully integrating immigrants, or being integrated. We should, of course, not exaggerate this point, and not allow it to be used as a general excuse to avoid integrating immigrants. Rather, countries should reflect on their capacity to integrate immigrants and increase it. For instance, a small country in the Caribbean may *receive* thousands of wealthy *tourists* from Muslim-majority countries every year without any problem, but may find it hard to *integrate* Muslims properly as *immigrants* in

significant numbers. Before starting to give permanent residency permits to (poorer) Muslim immigrants, it may have to wait until its citizens overcome hostile Islamophobia, until its labour laws have been adjusted to allow practising Muslims to observe Ramadan, until the Muslim community becomes large and strong enough, and integrated enough, to be able to welcome newcomers, help them avoid marginalisation and fight discrimination, and so forth. A prosperous Muslim-majority country may be better equipped to receive and integrate such immigrants. Cultural and religious considerations of this kind, hence, are much more relevant to integration than to entry and sojourn; they point to a specialisation in the types of migrants one choses to integrate, and not necessarily a quantitative restriction. Furthermore, there are certain kinds of immigrants which require certain resources to be properly integrated, and not all countries should be expected to allow such immigrants to reside permanently in their territory. Not all countries are equipped to integrate disabled immigrants, for instance, or traumatised former child-soldiers. All this points to the need of regional and international coordination and specialisation to deal with stressed immigrants, and help "new" receiving countries increase their integration capacity.

The fourth rule (K4) is the **history-laden interdependence** rule applied to integration, and is linked to the rule above. We have argued that countries are joined together in networks of interdependence given their histories. This entails a greater *capacity* to integrate certain types of immigrants, and an ability to specialise. Lebanon and Jordan have a greater capacity to integrate Syrians and Palestinians than, say, wealthier Estonia, and the history and interdependence of neighbouring countries the Middle East explains much of this difference in capacity.

The final rule (P1) is a procedural one. It claims that the local fine-tuning and concretisation of the above rules requires fair democratic processes where those most impacted by boundary laws are adequately represented. Of course this assumes we are speaking of liberal democratic polities, as we have usually done in this dissertation. It does not necessarily mean giving the right to vote and be elected to every person who happens to be in the country. Even so, democracy means that the people who are most impacted by laws should have a say in their formulation. Proposing priority rules such as these can take us only so far in formulating concrete policies which are adequate to local situations. The details of immigration laws, and the setup of institutions which deal with immigrants, usually cannot (and should not) be imposed as moral duties from above. They should result from complex political debates and compromises. Such political bargaining is acceptable and even desirable, as long as the policymakers truly listen to those most affected by the laws they write and seek to represent them, and also listen to moral arguments and propositions such as those contained in the above rules and take them into account.

8.2.3 The Application of the Rules

The observations above explain why, in this dissertation, I choose not to apply these rules to a particular situation, say that in Malta, and propose *concrete* policy recommendations. I do not believe that it is the task of Moral Theology and Moral Philosophy to propose concrete policies, as though these could be determined *a priori* and deductively from moral principles and rules. Rather, the priority rules are offered as guidelines that should inspire activists and politicians as they negotiate compromises, and as they discern the fine print of policies, with the help of experts better versed in

the framing of laws and institutions, and better informed of sociological, economic and geopolitical realities, than moral theologians and philosophers.

8.3 Other Contributions Worth Noting

Besides the priority rules proposed above, I believe that this dissertation makes a number of other contributions to various debates in theological Ethics, which could be further developed in the future. In our introductory chapter, we proposed a methodology for theological Social Ethics which rethinks the traditional "see-judge-act" method in the light of the epistemological debates of the 20th century. Our case study in Chapter 4 is, of course, one of the most "original" pieces. To be sure, it speaks of immigration in Malta, a reality which is probably unfamiliar to the reader. However, it does more than that. It uses Malta to challenge certain assumptions made both by respected international scholars (whose reflection on contemporary immigration is often limited by gross historical and geographical generalisations, which miss the details that a microcosm like Malta can provide), and likewise by many Maltese nationals (who are fixated on the current "crisis" and cannot see the bigger picture). Indeed, most Maltese readers would probably be quite surprised and challenged by some of the information I provide, and the claims I make, in this chapter.

Chapter 6 is "original" in its own way. Firstly, as regards method, its shows how the Old Testament texts, and how information from a diachronic analysis of the Bible, can be used rigorously and profitably in theological Ethics. It indicates *a* way, surely one among many, to break out of the tendency of "proof texting", and to use a classic text from a particular religious tradition in a moral argument addressed also to non-believers. There are, of course, other legitimate ways of using Scripture in Ethics, but this approach seems to me the most fruitful for the purposes of our dissertation. Sec-

ondly, as regards content, many biblical concepts are brought to bear on the ethics of migration, and not only the concept of *ger* in the biblical law codes, as has become commonplace in this kind of work. Furthermore, by insisting on the polysemy and the evolution of the term *ger*, I argue that a reflection on contemporary migration seeking to make rigorous use of the Bible should, in fact, not start from, or focus on, the "ger" laws in Leviticus.

Our effort, in Chapter 7, to better understand and define "solidarity" is, I believe, another valuable contribution to the field of theological Social Ethics. The reflection on the virtues of hospitality and kinship, and on how they can be lived and fostered not only within Christian communities, but also in civil society as political virtues, further enriches this final chapter.

ANNEX A: CATHOLIC SOCIAL TEACHING ON MIGRATION

Table A1: The Causes of Migration, according to CST

Push factors – mainly linked to conditions of life and working conditions in sending areas/countries, which are objectively bad or perceived as such. In general, the following are mentioned in Church documents:

1) *Violence and Injustice*
   a) Conflicts, rebellions, wars, persecution of minorities by oppressive regimes or majority groups (ES-RDS; ES-PM I:1:2:c; IT-UCD 7). These are often fuelled by excessive nationalism, and by the violent exclusion of ethnic or religious minorities (EM 1);
   b) Oppressive regimes and oligarchies, seeking to holding on to power by severely limiting the fair freedoms that enable citizens in sending countries to live with dignity (PT 105; EA 7), and severely limiting the exercise (or directly violating) human rights (EA 7; ES-PM I:1:2:c);
   c) Violence related to gangs, drug trafficking, etc. (EM 10).
2) *International Structures*
   a) International Trade
      i) Economic globalisation (which opens markets, not borders; allows free circulation of information and capital, but not people (EM 1, 4; M2000 3-4; USMX-SNL 57));
      ii) Trade agreements and historical events and decisions, which have increased the inequality between the global north and south (EM 4; IT-UCD 7), and in particular protectionist barriers in international trade which "do not allow emerging nations to sell their products on competitive terms in the markets of western countries" (EM 4);
   b) Demographic imbalances between developed countries and emerging countries (EM 1, 4; IT-UCD 7; ES-IEI 2);
   c) External interference, which provokes or prolongs civil wars and conflicts, used by foreign governments and multinational companies seeking to advance their political and economic interests and to create demand for the arms industry (SRS 24; RDPS).
3) *Poverty, Economic Mismanagement*
   a) Underdevelopment (PP 67.69; ES-PM I:1:2:c);
   b) Lack of capital and skills for investment in agriculture, low market prices for agricultural produce and lack of transport infrastructure (cf. MM 124);
   c) Unfair competition on international markets and price fixing by multinationals hampering growth in poorly-diversified economies;
   d) Difficulty in creating enough jobs for a rapidly-expanding population (ES-PM I:1:2:c);
   e) Lack of economic initiative (SRS 15);

f) Adverse economic effects resulting from onerous interest payments on national debt, past defaults, structural adjustment programmes, etc. (ES-PM I:1:2:c);
g) Corruption, kleptocracy, incompetence in government (ES-PM I:1:2:c).

4) *Ecology and Geo-specific Factors*
   a) Natural disasters and hostile climates (OA 17; ES-PM I:1:2:c);
   b) Desertification, fish-stock depletion, flooding and droughts due to global warming, pollution, over-exploitation of natural resources.
5) *National Policies that Favour Emigration* (which, through the education system, often accustom young people to think that their future lies abroad):
   a) Policies that promote exit migration to support development of the sending country through remittances, which are also a major source of foreign currency needed to pay debt burdens (IT-UCD 7; Caritas Europa et al. (2006a));
   b) Policies that promote exit migration to relieve demographic pressure and unemployment (which depress wages) or social discontent (which creates instability and scares foreign investment) – (IT-UCD 7; Caritas Europa et al. (2006a)).

Pull factors – mainly linked to better living and work conditions in receiving countries, real or perceived, generally as regards economic opportunities and personal freedoms:

1) *Receiving countries are perceived as havens of personal freedom and economic prosperity*, being portrayed so especially by the media, popular TV shows and dramas, and by returning/visiting regular migrants (or irregular migrants who managed to regularise their situation); this stimulates the personal desire to migrate – (IT-UCD 7; ES-IE 37; FR-QEF A:2).

Subjective Motives

In general, people migrate to seek better living conditions and better employment (OA 17; LE 23). But the subjective decision to migrate often is due to a mix of desires and motives (MM 124; EM 1.10) namely:

1) Positive motives: broader horizons, better quality of life and personal freedom allowing better self-realisation, the promise of a better future for one´s family (education, healthcare, job opportunities), cultural preferences;
2) Indifferent or possibly not-so-positive motives: desire for novelty, adventure, comfort, quick enrichment, etc.;
3) Negative motives: illusions and idealisation of life in urban centres and foreign cities.

Facilitating factors

1) Globalisation and links
   a) Transportation costs to reach receiving countries deemed affordable or worth the investment/risk (IT-UCD 7; ES-PM I.1:2:c);

b) Language and cultural barriers deemed surmountable, due to globalisation and past relationships between sending and receiving countries (M2000 1.3-4);
c) Internet and mobile phones (and innovative forms of banking and money transfer) allow migrants and their families in receiving and sending countries to remain in contact, offer psychological support and send remittances, while networks of migrants provide useful tips, support in times of crisis, housing and job opportunities (cf. Caritas Europa et al. 2006a).

2) Networks
   a) Transnational networks have spurred the development of pendular movements making mobility a way of life for some workers (FR-QEF A:2)

Table A2: The Effects of Migration on the Migrants themselves, according to CST[339]

Positive Effects:

CST does not speak at length of the positive effects of migration on the migrants themselves.

1) CST assumes that if people migrate, it is because they hope they will live a better life in the new country[340] (more freedom, better living conditions, a better future for one´s family). Though this hope may not be realized immediately and may even prove to be chimeric for some migrants, most migratory movements are sustained by the news and evidence of the wealth, freedom and other benefits obtained by emigrant friends and relatives.
2) Migrants are also enriched by the culture they meet in the receiving countries, especially long-term migrants and students (M2008).
3) Travelling "brings to mind the sense of life as a journey and therefore the final goal of this earthly pilgrimage, whose outcome will be the return to God, in participation in the Lord's Pass-over" (CHM 12).

Negative Effects:

1) *Economic and work-related:*
   a) Difficulty in making social demands and have one´s rights recognised and protected (OA 17; VPRF 6; EM 5.6);
   b) Seasonal, dangerous, unattractive work, or work in the informal economy (L1984 2); with long working hours and often without health care or social security provisions (EM 6);
   c) Being used as "reservoirs of cheap manual labour [and], should there be a recession, they are the first victims" CHMa I:1 (cf. ES-JLE).
2) *Social:*
   a) Loss of cultural identity (PP 68; OA 17; FC 77; ES-CP 91; ES-PM L2:2:b);
   b) Risk of becoming victims of intolerance, marginalisation and abuse (ES-PM I:2:2:b) due to racism and xenophobia (L1983; ES-RDS) and due to attitudes of cultural superiority (USMX-SNL 40);
   c) Marginalisation and poverty (especially in wealthy and secularised environments) may entice immigrants to

[339] A similar, but simpler summary of CST on this issue may be found in Departamento de Pensamiento Social Cristiano de la U. P. Comillas (2006, 183f).

[340] For instance, RN 47 states "No one would exchange his country for a foreign land if his own afforded him the means of living a decent and happy life".

   i) Engage in criminal activities (PP 67; L1984 2; ES-PM 1:2:2:b)
   ii) Subscribe to subversive and fanatical doctrines (PP 67);
d) In turn, their marginalisation becomes worse when they are being portrayed as "criminals", "fanatics" or "terrorists" due to highly publicized acts of a small minority of immigrants, especially in recent years when the threat of international terrorism has become a source of great concern (EM 4, USMX-SNL 100).

3) *Personal and family-related:*
   a) Deception by traffickers and fictitious employment agencies (L1984 2);
   b) Human trafficking, sexual exploitation and enslavement, especially of women and children (EM 5.29; M1995 3; M2008);
   c) Physical, verbal and sexual abuse (EM 6);
   d) Traumatic and life-threatening experiences to enter, travel through and live in other countries in irregular ways (M2007);
   e) Separation of family members and break-down of family life (FC 77; ES-PM 1:2:2:b; M1986 2; Caritas Europa *et al.* (2003));
   f) Precarious housing conditions in dangerous neighbourhoods (M1986 2);
   g) Insecurity (GS 66; OA 17; ES-PM I:2:2:b);
   h) Difficulties, especially for children and young migrants, to juggle multiple identities (M2008);
   i) Loneliness, isolation and depression (PP 67, CHM 6);
   j) Difficulty of raising and educate children (M2008; M2010); difficulties faced by migrant children often deprived of a parental figure and forced to live with relatives who may not be able to provide adequate parenting or within institutions which can never properly replace a health upbringing in one´s family (IT-UCD 35-36); cultural tensions between parents and children (M1986 2);
   k) Difficulty in living up to the high expectations of "striking it rich" of families in sending countries and of the immigrants themselves (when they compare their situation to very wealthy people in the receiving country) (PP 67);

4) *Legal:*
   a) Rights are not legally recognised, adequately enshrined in law or adequately enforced, leading to discrimination (EM 5, 6);
   b) Irregular migrants easily become victims of crime or injustice since they risk deportation if they report offenders or seek protection from the law (EM 5);
   c) This means that they are often discriminated against in law and fact (ES-PM I:2:2:b) in what concerns:
      i) Salaries (GS 66; ES-PM I:2:2:b);
      ii) Working conditions (GS 66);
      iii) Housing and living conditions (GS 66);

d) Dependence on state bureaucracy which is often slow, excessive and not flexible enough to cater to foreign languages and cultures, and to deal with complex cases (cf. CA 48). Institutions are often understaffed and officials are poorly trained and supervised in their dealings with vulnerable persons who are not fully aware of their rights and not acquainted with the procedures (USMX-SNL 79-99);

e) Irregular migrants (even asylum seekers) risk detention and incarceration in very poor conditions in border raids or when booked for minor offences, both in transit and in receiving countries. Lack of access to these facilities (siting and bureaucracy often make it extremely difficult if not impossible for pastors, human rights organizations, pro-bono lawyers or journalists to visit) often means that serious human rights violations occur and go unreported (cf. USMX-SNL 42, 94) and that asylum seekers are, in practice, not given the real possibility to apply for asylum (USMX-SNL 95-99). In some cases, deportation does not respect the principle of *non-refoulement*.

5) *Religious and Moral:*

a) Precarious living and working conditions and mobility may have a negative effect on the immigrant´s participation in the life of a religious community in which they may deepen their faith (PP 68; OA 17; FC 77; ES-CP 91; ES-PM II:1:2:b); cf. CHMa II:4 (religious and moral crises).

Table A3: Effects of Migration on Sending Communities, according to CST

Positive Effects

CST does not often dwell on the positive effects of migration on sending communities.

1) CST mentions remittances (EM 5; USMX-SNL 72 [boxed insert]). One document, signed by the Working group on Migration of the Commission of the Bishops' Conferences of the European Community, as well as various Christian Churches and NGOs, provides an insightful analysis of the links between remittances and development (Caritas Europa et al. 2006a). Remittances:
   a) have a positive impact on development;
   b) often contribute more to the development of a country than development aid; and,
   c) in the long term, sustain development which makes it less likely for people to feel the need to migrate seeking to ensure a decent quality of life for themselves and their families.
2) The Spanish Bishops also mention studies which claim that migration reduces the social burden on developing countries with high unemployment and rapidly expanding populations, hence promoting development (ES-PM I:2:1:a-b).

Negative Effects

1) *Family-related*: women and children left behind have to build a family in the absence of a father-figure, and often need to "submit to a great pressure of work in order to provide for the family's daily sustenance" (M1995 1).
2) *Social*: whole villages may be depopulated of their young people (USMX-SNL 47).

Table A4: Effects of Migration on Receiving Countries and Communities, According to CST

Positive Effects

Church documents sometimes mention the "many benefits", economic, social and cultural, that migration brings to receiving countries (e.g. UK-MCM 1; Caritas Europa *et al*. (2004a n.1)) without mentioning specifically what these benefits are[341]. Some hints may however be gleaned from the minor documents.

1) *Economic growth*: Immigrants increase the economic output and allow accumulation of capital in receiving countries by providing the labour market with a flexible pool of additional workers who are young, adaptable and ready to work long hours for lower salaries, while generally requiring less investment in housing and social security (Cf. EM 5).
2) *Stabilization of the social order* (cf. Departamento de Pensamiento Social Cristiano de la U. P. Comillas 2006, 180):
   a) Immigrants participate in social burdens that they contribute to and rarely enjoy (e.g. retirement pension schemes, unemployment benefit schemes, health insurance and social security in general);
   b) they help contain inflation (absorbing money that could otherwise be used for consumption in order to send remittances);
   c) they put pressure on global and national labour markets in such a way as to prevent rapid hikes in wages (with losses in competitiveness), allow and spur the indigenous working class to move on to better-paying jobs requiring higher skills;
   d) they often assume the role of scapegoats, allowing the cohesion of the working class in a country, which sees them as different and inferior.

Negative Effects

1) *Rise in Xenophobia and Hostility Towards Migrants* (cf. ES-RDS)*:* Some documents of the local magisterium attempt to list the motives behind the rising hostility towards migrants and the shift in public opinion towards ever-more restrictive and oppressive migration laws and border policies. The following reasons are mentioned in the documents:

[341] However, one report by the Commission of the Bishops' Conferences of the European Community´s Working group on Migration (Caritas Europa et al. 2006a) refers to a study commissioned by the UK House of Commons (2004) that concludes that the benefits of migration amply exceed the costs.

a) fear of loss of identity (ES-PM I:1:2:b);
b) ignorance and lack of knowledge of the other, sometimes feeding into the xenophobic ideas and tendencies of certain groups and politicians (M1983; ES-PM I:1:2:b);
c) resurgence of a nationalistic liberalism, opposed to the promotion of social and economic human rights, yet also opposed to full economic liberalisation when this requires the free flow of labour (ES-PM I:1:2:b; EM 4);
d) fear of the erosion of social welfare programmes (ES-PM I:1:2:b);
e) fear of acts of terrorism committed by immigrants (EM 4);

2) *Problems related to irregular migration (that generally accompanies regular migration) and the spaces of illegality it creates:* exploitation, criminal activities, prostitution, drug trafficking (M1995 3);
3) *Wage competition (real or perceived) with unskilled citizens, and the fear that migrant labour (often not unionized and in the informal economy) might harm other low-income groups by* depressing wages, increasing unemployment, reducing the bargaining power of trade unions and worsening labour conditions for all workers (cf. IT-UCD 14).

Table A5: Rights Concerning Migration and Borders, as Defended by CST

A	**BASIC FREEDOMS AND POLITICAL RIGHTS OF PERSONS**	
A1	***Right to Nationality***	
	Right	Right (of individuals) to have a homeland.
	Duty	Duty (of states) not to deprive individuals and ethnic groups of citizenship and to provide paths to citizenship to stateless persons.
	Reason/s	The human person has a social nature and so has a right to be a full member of human society. Statelessness does not allow persons to claim their fundamental human rights.
	CST	DPMC 6; CHM 17; RCS 9; M1992 2; M2001 3
A2	***Right to Asylum for Refugees and Forced Migrants***	
	Right	Right (of refugees and forced migrants) to asylum; Right (of poor receiving countries) to receive help from the international community to provide decent living conditions to refugees and asylum seekers
	Duty	Duty of countries to process asylum claims promptly and fairly and to offer decent living conditions to refugees and asylum seekers. Duty of the international community to help poor countries meet these obligations. Duty of *non-refoulement* when people may be seriously risking their lives if obliged to return to their homeland, even in cases unforeseen by international conventions.
	Reason/s	The right of asylum is a “strict right”, grounded in human dignity.
	CST	L1979; PFD 3; M1996 4; RCS 14
A3	***Right to Emigrate***	
	Right	Right (of individuals, and their families) to emigrate, when, in one´s own country • one cannot use the material and spiritual goods which allow ready access to one´s fulfilment, and/or • one cannot provide for one’s family,

	due to: • poverty and overpopulation, and/or • conditions imposed by the state which offend human dignity.	
Duty	Duty (of states) not to block or impede *emigration* "except where grave requirements of the common good, considered objectively, demand it."	
Reason/s	*Flourishing*: Right to use the material and spiritual goods which allow ready access to one´s fulfilment.	GS 26; DPMC 7; CHM 17; LE 23; M2001 3.
	Universal Destination of Created Things: The Creator of the universe made all good things primarily for the good of all.	EF (§102 in Baggio and Pettenà); GS 69; PP 22; M2003 3.
	Freedom of Movement, Unity of the Human Family: The fact of being a citizen of a particular state does not deprive persons of membership in the human family, nor of citizenship in the world-wide fellowship of human persons.	PT 25.
	Parental Duties: Parents may need to emigrate to secure "the healthy liberty [they] need in order to fulfil the duties assigned [them] by the Creator regarding the physical, spiritual and religious welfare of the family."	MM 45.
A4	***Right to Immigrate***	
Right	Right (of emigrants and their families, in the cases mentions in no. 3, above) to enter and select a new home in foreign lands.	
Duty	Duty (of states) not to block or impede *immigration* "except where grave requirements of the common good, considered objectively, demand it."	
Reason/s	As above, in right no. A3. (Most documents in Latin speak in general of the right to migrate – *ius migrandi* – which are often translated incorrectly as the "right to emigrate"; cf. GS 65; OA 17.)	
CST	DPMC 7; PT 25, 106; GS 65; CHM 17; CCC 2241; M2001 3	
A5	***Right to Basic Freedoms in one´s Homeland***	
Right	Right (of citizens) to dwell freely in one´s own country.	
Duty	Duty (of states, communities) to protect and guarantee basic freedoms;	

		Duty of citizens to be "instruments of their own liberation" (M1992 4).
	Reason/s	Basic freedoms are inalienable human rights, based on human dignity.
	CST	PT 14-24; CHM 17; M2001 3.
B	**SOCIO-ECONOMIC RIGHTS OF PERSONS**	
B1	***Right to Employment in one´s Homeland***	
	Right	Right of citizens to find jobs in their own countries and regions (as far as possible).
	Duty	Duty (of states, local authorities) to create job opportunities.
		Duty of the international community and of states to diminish and eventually help overcome enormous inequalities in economic and social development between countries, and between regions and communities within the same country.
		Duty of citizens in these countries to be proactive and to contribute to the development of their countries.
	Reason/s	One should avoid uprooting people; migration should ideally be the result of free choice, not compulsion.
	CST	DPMC 9; GS 63, 66; PT 101-2; M1992 4.
B2	***Right to be Helped to Integrate in a New Country***	
	Right	Right of immigrants and their families to receive help to integrate themselves and live a dignified life in the host country.
	Duty	Duty of governments in receiving countries to offer help to immigrants when needed, especially through the provision of housing, education, social security. This includes a duty to set up welcoming structures to help migrant families "break out of their isolation and ignorance of the juridical, social, educational and social security norms of the host country" (M1986 3).
		Duty of the international community (through agencies, NGOs, etc.) to help poorer nations (especially those having to deal with significant influxes of refugees and migrants) provide for the various needs of the people residing there.
	Reason/s	*Equality*: Immigrants should not be treated as inferiors given that they have the same dignity and often pay the same taxes as citizens and other residents.
		Human dignity: Migrants should be treated as persons, not merely as instru-

		ments of production, offering an opportunity to work is not enough.
		Healthy families: Need to ensure a decent family life and standard of living (this is also beneficial to the receiving community and its future citizenry if the migrants´ descendants are naturalised).
	CST	AA 14; GS 84; L1982 (Baggio and Pettenà 2009, 314); PFD 2; M1986 3, M1992 2; Caritas Europa *et al.* (2004b).
B3	***Right to Receive Equal Pay for Equal Work***	
	Right	Right of migrants to receive pay equal to that received by natives for equal work. Special care should be given to migrant women who are particularly vulnerable to exploitation.
	Duty	Duty of government to enact and enforce just labour legislation, and of employers to pay fair wages.
	Reason/s	*Fairness:* One should avoid discrimination and wage competition with native workers.
	CST	LE 23; M1992 2; M2005; ES-JLE
C	**RIGHTS OF FAMILIES AND GROUPS AFFECTED BY MIGRATION**	
C1	***Right to Family Reunification***	
	Right	Right (of immigrants) to live together with their families.
	Duty	Duty (of states) to allow (affordable and reasonably rapid) family reunification.
	Reason/s	This right follows from the dignity of the family.
		It is important to have united, functioning and healthy families for the future of any society.
		Marriage is not simply a contract, but is a sacred union; “man should not separate what God has united”.
	CST	AA 11; CHM 17; M1986 3; M1993 1; M1995 1; M1996 4; M2001 3; Caritas Europa *et al.* (2003; 2004a n.5).
C2	***Right to Live in a Cohesive and Well-Ordered Society***	
	Right	Right of host communities to a serious effort, on the part of immigrants, to integrate themselves and thus show respect to the host culture (and the laws of the land).
	Duty	Duty of immigrants to integrate themselves in the host community, learn the

language, adapt to the new culture, respect just laws (preferably without compulsion, and without placing excessive demands on those who suffered serious traumas).

Reason/s Great esteem is due to the patrimony and language of another people when one encounters that people and resides among them.

CST DPMC 10; PT 97; AG 26; CHMa III.2; CCC 2241; M2005

C3 Right to Keep one´s Native Identity

Right Right of migrants to keep their native tongue and spiritual heritage (customs, tradition, religion).

Duty Duty of receiving communities not to hinder this, but rather to help them do so.

Reason/s *Value of Identity*: These goods are part of their identity; they are products of another culture and people which should be valued.

Dangers of Assimilation: Integration should not be understood as assimilation, which can have harmful effects on everyone (cf. M2005 1).

CST DPMC 11; GS 29. 59; PT 95-96; CHM 17; CHMa I.5, III.2; L1981; M2001 3

C4 Right to Public Profession of Religion

Right Right of migrants to publicly profess their religion.

Duty Duty of public authorities to permit the exercise of that right (with due respect to public order).

Reason/s This follows from the basic human right to religious freedom, as understood in CST.

CST PT 14; DPMC 11; M2001 3

C5 Right to Full Membership in the Local Church

Right Right of (Catholic) migrants (even undocumented persons) to be considered full-fledged members of local (Catholic) churches in receiving countries.

Duty Duty of local (Catholic) churches to consider migrants as full members, and to offer them assistance and services, especially in spiritual matters, normally through the parish system.

Duty of local authorities not to impede this, and not to penalize Churches and Christian NGOs for providing spiritual and humanitarian assistance to migrants.

D	RIGHTS OF POLITIES AFFECTED BY MIGRATION
D1	***Right to Limit "Brain drain"[342] and Capital Flight***
Right	Right (of poor communities, nations) to native human resources (of their people, citizens) and native investment of material goods.
Duty	Duty (of persons possessing material wealth or useful skills and knowledge) to contribute to the development of one´s community and country of origin.
Reason/s	Duty to serve the common good, giving due importance to the local common good and to the good of poorer communities.
CST	DPMC 8; GS 65
D2	***Right to Sovereignty, Limited by Ethical Imperatives[343]***
Right	Right of civilized and ordered communities, within the limits of the shared international ethical standards, • to protect their own territory, • to take proper measures to safeguard their legitimate national interests, • to take measures against the circulation of fugitive criminals, subverters of public order and traffickers of arms and drugs.
Duty	Duty (of states and individuals) to respect the sovereignty of foreign countries and to obey their laws when just and where applicable. Duty (of states, especially) to compensate for unjustified past violations of the sovereignty of other countries.[344]

[342] "Brain drain" should not be understood in the classic sense of skilled workers leaving poorer countries, since many poor countries actually benefit from the migration of skilled workers, and some actually train citizens to work abroad and support the sending country through remittances. Rather, what is mostly intended here is "brain drain which is overall harmful for the sending countries". One report by the Commission of the Bishops' Conferences of the European Community´s Working group on Migration (Caritas Europa et al. 2006a) helps us to make that distinction. Pistone and Hoeffner (2007) offer a compelling treatment of the subject of how to interpret CST on brain drain in our contemporary world.

[343] Catholic tradition has always fought against absolutist notions of state sovereignty, insisting that positive law is subject to shared morality (making reference to the "natural law" and to human rights); cf. RH 17. EF §102 (Baggio and Pettenà edition) insists that sovereignty not be used as excuse to limit immigration: "The sovereignty of the state (*dominium singularum civitatum* —lit. "the [right of] dominion of particular polities"), although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, provided of course, that the public wealth (*utilitas publica*), considered very carefully, does not forbid this".

Reason/s	Not clearly stated[345]. Border controls are assumed to be part of sovereignty. More recent documents assume that the right to control borders implies a right to systematically restrict immigration.
CST	EF §102 (Baggio and Pettenà edition); L1984 2; CCC 2241; M1995 2; EM 4, 21, 29.
Reason/s	Catholicity implies that in the Church there are no strangers. "Through baptism, the Christian is a full-fledged member of the Christian community in the area in which he or she is living" M1990, 9.
CST	M1990 9-10; M1996 5.

Though there may be other rights mentioned in CST[346], I consider this list exhaustive enough for the purposes of the present work.

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[344] Though not specifically discussed in CST, this follows from classic Church teaching on restitution and *jus post bellum*. It would imply taking some responsibility for economic underachievement and political instability of weak states in the international system if one´s political, economic, military or ecological behaviour in the present and recent past (or that of multinationals operating in one´s territory) is/has affected those countries´ sovereignty and is one of the causes of their underachievement/instability.

[345] EM 21 (and other documents, e.g. ES-PM II:2:2) refers to GS 87; however, this text does not speak about the regulation of cross-border migration (as some translations would have it) but rather of the *transitum ruricolarum ad urbes* (movement of country-dwellers to the cities) within the borders of the same country. CCC 2241 claims that restriction is allowed for the "common good" while M1995 2 mentions that restriction may be allowed for reasons "which affect the migrants' own interests".

[346] The documents also mention the right of the individual "to be able to achieve his rights and satisfy his legitimate demands in his own country" (EM 29), or "to find opportunities in [one´s] homeland" (USMX-SNL 34) which can be inferred from the rights 6 and 7 stated above. This is sometimes referred to, using a terminology which is rhetorically compelling but not very rigorous, as "the right not to [have to] emigrate" (cf. M2004 3). As we know, people are sometimes forced to migrate due to causes that are predominantly natural (e.g. earthquakes, climatic cycles, etc.) or causes where we cannot impute human responsibility in a simple manner (e.g. cities/regions which have sunk under sea level due to human activity considered harmless at the time, cities/regions that grew rapidly due to a resource or industry that is no longer in demand and are now experiencing depression) or where solutions other than migration are not easily available (e.g. island nations which underwent a demographic explosion due to the introduction of modern medicine with little or no education in family planning). In these cases, people have no real "right" not to be affected by such causes, no real "right" to be provided with easy or magical solutions that make emigration unnecessary. Some parts of the earth at times can support high human densities, and at other times cannot; to think that we can manipulate the biosphere to maintain human densities always and everywhere at the present level (such that nobody would ever be obliged to migrate) would imply a Promethean view of human abilities and a belief in the power of technology that would clearly contradict other aspects of Catholic Social Teaching.

Table A6: CST: General Right-Order Principles Applied to Migration

G1. *Principle of the Universal Destination of Created Goods*: "God intended the earth and all it contains for the use of all human beings and peoples. Thus, under the leadership of justice and in the company of charity, created goods should flow fairly to all" (GS 69, as translated in the official translation of PP 22[347]; cf. EM 8; M2011). According to PP 22, "all other rights […] are to be subordinated to this principle". CST often reminds us of the words of Leviticus 25:23: "The land is mine; for you are strangers and sojourners with me".

G2. *Principle of Solidarity, Local and International, to ensure freedom from want*:

a) Solidarity, according to CST, is "not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far [but rather] is a firm and persevering determination to commit oneself to the common good" (SRS 38). Solidarity should be practiced actively by individuals, communities and states, and should be concerned with the good of persons both near and far.

b) "In view of the increasingly close ties of mutual dependence today between all the inhabitants and peoples of the earth, the apt pursuit and efficacious attainment of the universal

[347] The Latin text of the second phrase is as follows*: ita ut bona creata aequa ratione ad omnes affluere debeant, iustitia duce, caritate comite*. One official translation of GS 69 (cf. O'Brien and Shannon 2010, 223) renders this as follows: "thus, as all men follow justice and unite in charity, created goods should abound for them on a reasonable basis". This translation seems to force a Smithian liberal reading of *affluo* and imply that in a fair economic system (a free market economy, perhaps), wealth should *abound* for all, automatically, with no real need of regulation or redistribution, so long as we do not expect a full-fledged equality (since this would be "unreasonable"). Such a translation is not truly warranted by the Latin: the primary meaning of *affluere* is *to flow to*, especially when used with *ad*; the flow should be the active result of just leadership accompanied by charity (it is not the result of some inevitable natural or economic process by which "all men" end up following justice and uniting in charity); and finally *aequa ratione* implies fairness in distribution, not "being reasonable". The translation is even less warranted when we consider its context. It is therefore not surprising that the translators of the citation of this same text in PP 22 felt they should revise the official translation of GS 69. We have here an example of how one of the most explosive statements of an Ecumenical Council can be cleverly de-fused by a translator. When we consider the huge impact of the English translation on the universal reception of such texts, we realize that most readers of this text may end up thinking that the Council is actually endorsing liberal capitalism here, rather than critiquing its very foundations. Note that the translation on the Vatican Website is somewhat better, but still tries to dampen the impact of the text on a liberal reader: "Thus, under the leadership of justice and in the company of charity, created goods should be in abundance for all in like manner," (Vatican Council II 1965).

common good now require of the community of nations that it organize itself in a manner suited to its present responsibilities, especially toward the many parts of the world which are still suffering from unbearable want" (GS 84; cf. IT-UCD 23-24). This means that wealthy nations have a three-fold obligation:

i) **"mutual solidarity** – the aid that the richer nations must give to developing nations;

ii) **social justice** – the rectification of trade relations between strong and weak nations;

iii) **universal charity** – the effort to build a more humane world community, where all can give and receive, and where the progress of some is not bought at the expense of others" (PP 44).

G3. *Principle of Subsidiarity* – One should not "transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies" (QA 79; cf. MM 65; CA 48).

a) *In line with this principle, CST underlines the importance of churches, associations, movements and trade unions* which help the integration of migrants, promote their participation in the local church or religious association, help them preserve their culture, and defend the rights of migrants and migrant workers (cf. L1982 - §1004 in Baggio and Pettenà 2009; Caritas Europa *et al*. (2004b n.12 and conclusion)).

b) *Families* too have a role to play; for instance, they should offer foster care to child immigrants, rather than let them grow in orphanages and other institutions (IT-UCD 36). Similarly, *schools and educational institutions*, both private and public, are crucial to the welcoming of migrant children and their families, and to their effective integration into civil society (IT-UCD 37). *The mass media can play a very important role*; they should be faithful to the truth, uncover hidden acts of injustice or human rights abuses, and help citizens understand migrants better and overcome xenophobia and prejudice, rather than stoking fears, provoking hostility and rejection, and misinforming the public about the reality of human migration (cf. M1998 1; ES-PM II:2; IT-UCD 38).

c) *Migrants should be active in civil society. Participation in the social life of the receiving nation, and, to some extent, in its political life, is a very important part of the integration process* (PFD 6; IT-EF28). Ideally, one should maintain one´s original identity (through solidarity

with persons of the same culture) while moving towards becoming an active citizen of the receiving country (through solidarity with the whole of the receiving nation and active membership in its diverse local communities).

d) Subsidiarity does not mean that the role of the state should be reduced to penning just laws, maintaining public order and defending the country from foreign aggression. *The state too has an important role to play* to ensure that the families of refugees and migrants live in dignity (with their human rights to housing, education, basic health care, etc. adequately provided for – cf. AA 14; GS 84; L1982; IT-UCD 40). However, *one must also make sure that the welfare state does not create dependency* (CA 48). A number of services to migrants can, at times, be more adequately provided by communities, associations, churches, and other actors in civil society which are often more creative, more flexible, more efficient and less bureaucratic than state agencies; the state should help these agents provide such services (e.g. by financing their projects and offering tax rebates to those who provide funding to these organizations) (ibid.).

G4. *Principle of Priority of Labour:* Capital should be at the service of labour, not labour at the service of capital (LE 23; L1982 – cf. Baggio and Pettenà 2009, 312; PFD 6). This means that:

a) Rather than exploit migrant workers to build up the wealth and resources of a nation, the material and intellectual resources of a wealthy receiving country should be placed at the service of the persons being integrated into its labour market and their families. This can be done, in part, through the provision of adequate social services to migrants (cf. AA 14, GS 24).

b) Circulation of goods, capital and labour are needed to redress imbalances among nations, and between rural and urban areas. However, as far as possible, capital, rather than labour, should be forced to move for the development of peoples (PT 101-2).

G5. *Principle of Just Legislation:* True and enforceable legislation should conform to (at least minimal) shared notions of justice. As regards migration, just legislation is one that ensures that the rights and duties of all parties are respected (LE 23; M1986 3; EM 87; ES-JLE), in sending countries, transit countries and receiving countries.

a) Legislation should be kept up to date, especially since the phenomenon of migration gives rise to constantly changing realities on the ground, and laws which may have been fair when enacted may become unjust and discriminatory when contexts change (cf. OA 23; ES-JLE; ES-IE 51).

b) The conformity of national law with widely accepted international conventions is one way of evaluating the fairness of national law (cf. EM 6), as are the rights and duties listed above and principles establishing the right order of relations in the public sphere.

c) There are certain rights which cannot be denied, or restricted indefinitely or for unreasonable amounts of time by positive law. One example of this is the right to live with one's own family. It is not acceptable to issue administrative regulations that deny or restrict such rights indefinitely, such that people may be forced into illegal situations by such regulations (M1996 4).

d) Representatives of civil society should be consulted when drafting laws, and the Christian faithful have a right and duty to propose and promote migration laws and policies in conformity with CST (ES-PM II:3:2:c).

G6. *Principle of "Cosmopolitan Patriotism"*:

a) "The Christian faithful gathered together out of all nations into the Church are not marked off from the rest of men by their government, nor by their language, nor by their political institutions, and so they should live for God and Christ in a respectable way of their own national life. As good citizens, they should be true and effective patriots, all together avoiding racial prejudice and hypernationalism, and should foster a universal love for man" (AG 15; cf. EM 8). *In a globalising world, non-Christians too are invited to be "cosmopolitan patriots"*[348].

b) *One should maintain an appropriate dialogic tension between diversity and universality.* Diversity brings richness as cultures meet, but also creates conflict, mistrust, misunderstanding and fear of the other when encounters are forceful, unprepared, and ill-timed, and peo-

[348] Philosophical positions similar to the one in this principle can be found in Appiah (2002; 2007) and Nussbaum (2002).

ple are not willing to make room for the other and engage in a sincere and cordial dialogue. Universality allows different peoples to understand one another and build a society together in spite of their differences; it fosters the cosmopolitan dream of unifying the human family. When different people come together, they discover shared values, based in a common humanity. Unity and universality, however, is not something created politically or socially to suppress diversity but must coexist with diversity (Cf. M1991 3). Together, they allow a fruitful intercultural dialogue that is essential to world peace (M2003 5).

G7. *Principle of Inseparability of Faith and Justice, and the Option for the Poor*: "The truth about God, who is the source of every gift, cannot be separated from the manifestation of his love and preference for the poor and humble" (RM 37, cited in M1988 5; cf. OA 51, JW (intro.)). Applied to migration, this entails that:

a) *Christians and Christian institutions cannot claim to profess or proclaim a true and justifying faith in the God of Jesus Christ without living a praxis which promotes justice for migrants*. In the Catholic tradition, faith is not merely a pure mental operation of assent to verbal propositions but a lifelong action involving the whole human person —mind and body— understood as a relational being;

b) *Social justice, rather than being based on simple arithmetical notions of equal desert, should find inspiration in traditions of religious faith to deepen humankind´s understanding of justice.* The *option for the poor* and the *election of the lesser,* key notions in the Jewish and Christian Scriptures, have inspired secular thought on social justice (e.g. John Rawls´ difference principle). Such notions are crucial when reflecting on what is truly due, in justice, to immigrants and refugees, and are key to understanding the rationale behind certain claims made by CST[349]. For instance, when John Paul II insists that there should be an international regulation of migration, he says that this is necessary "to prevent unilateral decisions that are harmful to the weakest" (M2001 3; cf. also OA 23; ES-JLE). The option for the poor is a

[349] Donal Dorr (1983, 1–10) argues that the main thread which unifies CST is, in fact, the "Option for the Poor".

major ordering principle in CST which allows us to prioritise and adjudicate between conflicting rights claims (cf. Hollenbach 1979, 203–207).

G8. *Principle of the Acknowledgment of and Resistance to Structural Evil or "Structures of Sin"* (cf. SRS 36, cited in M1988 5)[350].

a) War is an evil; it causes people to migrate and seek asylum. There are political and economic structures in the world which promote various types of wars: wars undertaken for no clear just cause; proxy wars fuelled by economic powers, multinational company interests and the arms trade; unending cycles of civil wars between different power brokers, nationalistic groups and tribes (cf. ES-RDS; SRS 24).

b) Overly restrictive and calculating legislation on immigration is an evil "machine", as Pius XII argues in his 1952 Christmas address (AAS 45 (1953) 41-42). Similarly, the widening gap between developed and emerging countries (SRS 14) is an evil; the lack of development in certain countries and regions is an evil, and when such poverty and underdevelopment oblige people to migrate, this is an evil, albeit "necessary" at times (LE 23). It is a structural evil, since international political and economic structures make it necessary for moral subjects to migrate and suffer the evils of uprooting, possible abuse, discrimination, etc. An evil structure typically makes itself "necessary" to people with reduced agency, and forces its victims to reinforce the structure, causing more suffering to themselves and others.

c) There are positive aspects to the phenomenon of migration, but we should not forget that some aspects of this phenomenon, with the suffering it causes to the migrants and the inconveniences it causes to citizens in receiving countries, are evil. This evil is bigger and more

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[350] John Paul II seemed to avoid using the term "structural sin". Some have speculated that he wanted to reserve the word "sin" to relationships of individual human persons with God involving human agency and responsibility, which structural evil often diminishes considerably; however, such a rigorous use of the word "sin" would render the term "original sin" equally unacceptable. Some authors also seem to use structural evil and social evil interchangeably, but while an act of lynching of an innocent person is "social" and "evil", as is the distribution of child pornography on the internet, these are not the kinds of evils we are referring to when we speak of "structural evil". Structural evils are systemic evils, multiplied by big structures (e.g. the labour market, the global currency market) which, though invented and operated by human persons, have acquired a certain autonomy of their own, and often "blackmail" their victims to collaborate with and reinforce the oppressive structure itself.

complex than the acts of individuals (e.g. disrespect of just laws, xenophobia, discrimination, etc.) or of governments (persecution, mismanagement of the economy, unfair border or integration policies, etc.). Though it may be difficult to understand the causes and indicate who is ultimately responsible for the international structures which oppress people, we still have agency and responsibility: we should resist such structures and seek to change them. In fact, *the more freedom and agency we possess vis-à-vis such structures, the more responsibility we have to resist and change them*.

Table A7: CST: Derived and Specific Right-Order Principles Concerning Migration

S1. *Principle of the Priority of Justice over Relief*: "Rulers of States, the heads of agencies, and all upright and cooperative men [should] consider and resolve the very serious problems of refugees and migrants […] harmonizing the requirements of justice with needs of charity. Relief alone can remedy, to a certain extent, many unjust social conditions. But we know that this is not sufficient. In the first place, there must be justice, which should prevail and be put into practice" (EF §97 in Baggio and Pettenà 2009).

S2. *Principle of Regulation of Migration and Asylum:*

a) *Migration and Asylum need to be regulated, and this should be preferably done on the international level:* "There would be very great benefits from international regulations in favour of emigration and immigration" (§111 in Baggio and Pettenà 2009); and "it is necessary to have international norms that are capable of regulating everyone´s rights, so as to prevent unilateral decisions that are harmful to the weakest" countries and persons (M2001 3). The problems posed by international migration today cannot be resolved by single countries acting alone, and purely restrictive policies could backfire, while usually causing more problems than they solve (EM 7). When reasonably good international legislation exists that is not morally objectionable, states should ratify and implement it (cf. EM 6, M2007, USMX-SNL 77 and Caritas Europa *et al*. (2006b) on the ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families*). Trying to deal with the migratory phenomenon on a purely national level, today, is ineffective and creates even more negative effects (EM 7).

b) *Bilateral harmonization of legislative provisions, especially between sending and receiving countries, should be encouraged* (M1996 4)*;* this should be done with the aim of safeguarding "the needs and rights of the emigrants and their families, and, likewise, those of the societies receiving them" (EM 8).

c) *Regulation should be done with the view of serving the needs of the most vulnerable (cf. "Option for the Poor") both among the migrants and within the communities receiving them:*

"Justice and equity likewise require that the mobility, which is necessary in a developing economy, be regulated in such a way as to keep the life of individuals and their families from becoming insecure and precarious" (GS 66, cf. M1995 2). This should ensure that there should not be wage discrimination against migrants, that family reunification is facilitated, and that migrant workers are incorporated into the social life of the country or region that receives them (GS 66; cf. ES-JLE, Caritas Europa *et al.* (2003)).

d) *Immigration laws should not be dictated by narrow-minded nationalism, but should seek the universal common good*: Laws in receiving countries should recognise that migrants "have a right to migrate, favour their integration, facilitate their professional advancement and give them access to decent housing" (OA 17). However, the exercise of the right to enter another country to seek better conditions of life "is to be regulated, because practicing it indiscriminately may do harm and be detrimental to the common good of the community that receives the migrant" (M2001 3).

e) *Laws, conventions and past legal definitions could become a hindrance to just treatment of migrants and refugees if taken too literally* and not adapted to changing situations by legislators and extended hermeneutically by legal scholars to deal with new cases. For instance, there may be cases of forced migration not contemplated by international conventions, but which warrant the granting of asylum (cf. M1996 4); in such cases, *refoulement* cannot be justified by referring to the letter of the law (cf. RCS 4, 14).

S3. *Principle of Voluntary Repatriation and Non-Refoulement of Asylum Seekers*: "No person must be sent back to a country where he or she fears discriminatory action or life-threatening situations. In cases where the competent government authorities decide not to accept asylum seekers, arguing that they are not true refugees, these authorities are duty-bound to make sure that such people will be guaranteed a secure and free existence elsewhere" (RCS 14). This principle should be respected scrupulously and is a non-negotiable basis for the treatment of refugees (ibid.).

S4. *Principle of Due Respect towards National Sovereignty, deemed important, but not sacred*: CST often recognises the rights of sovereign states in passing, while emphasising the limits that justice places on such rights:

a) *Sharing of one´s own abundant land with others:* "Since land every-where offers the possibility of supporting a large number of people, the sovereignty of the state, although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, provided of course, that the public wealth (*utilitas publica*), considered very carefully, does not forbid this", EF (§102 in Baggio and Pettenà 2009), citing Pius XII´s 1948 letter to Archbishop John T. McNicholas and the National Catholic Welfare Conference (AAS 41 (1949): 69-70)[351].

b) *Responsibility to protect:* The international community should do its utmost to protect populations from grave violations of human rights when national governments fail to do so, or are committing such violations so as to minimize forced migration (RCS 21; ES-RDS). To avoid undue violations of national sovereignty, this is best done following international procedural rules referred to under the notion of "Responsibility to Protect" (cf. Benedict XVI´s 2008 address to UN General Assembly – AAS 100 (2008), 333), keeping in mind that undue military interventions could cause more harm than good and create even more forced migrants.

S5. *Principle of Historical Accountability and Recognition of Shared Historical Realities.* Some of the reasons behind forced migration are closely linked to past or present policies of receiving countries, and this fact must be taken into account when seeking just relations between peoples.

a) *Colonization or past territorial contiguity* creates cultural, social, political and economic links between countries which cannot be simply interrupted or ignored by present legislation or policy (cf. ES-PM II:1:1; ES-IE 76; FR-QEF A:1).

b) *The effects of Cold War politics (and of more recent policies adopted by richer nations towards resource-rich conflict-prone countries) on migration patterns should be acknowledged*. Such policies have often entailed erecting legal and political barriers that limit economic aid and hamper development plans in poorer countries, while plentiful capital to buy weapons was (as is still being) made available to these countries by the developed world (cf. SRS 24). Instead of helping these countries to develop, wealthy countries use money sup-

[351] For more on this topic, see Carlson and Owens (2003), especially Kelsay (2003).

posedly destined to aid "developing countries" to instead prop up their native arms industry and increase their political spheres of influence, while fuelling strife and increasing debt burdens of poorer countries. Such past and present policies inevitably create exit migration today (cf. FR-QEF A:1).

S6. *Principle of Fair and Realistic Integration Policies:*

a) *A path to naturalisation should be offered at some point to those who have settled in a receiving country, having "become native" in the true sense of the word* (Cf. EFN §100 in Baggio and Pettenà 2009). People who have lived in a new country for a number of years, committing themselves to the economic and social development of this country and having decided not to return to their native land should be allowed to integrate themselves completely and swiftly; for CST, this is a matter of justice (M1992 2).

b) *Integration*, at least for the first and second generation of migrants, should ideally allow persons to keep their cultures and mother language, while learning and adopting the local culture and language. Biculturalism, and holding together multiple identities may be demanding, but is enriching (M2008); even within the Church "bi-culturalism must be properly exploited in every activity which concerns pastoral care" (CHMa III:5).

S7. *Principle of Fair and Realistic Policies in Dealing with Undocumented Migration.* CST asks legislators and governments to keep the following points in mind when drafting policies concerning undocumented migrants:

a) "The work by which the undocumented aliens participate in the common effort of economic development is a *de facto* form of membership in a society" (M1992 3). If the receiving country needs the labour of these persons and is making use of it to drive its economy, then it should give "legitimacy, scope and dignity to this membership through the adoption of appropriate measures" (ibid.)[352].

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[352] This point echoes Article 69 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990):

"1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

b) There are also undocumented migrants who do not find jobs, or do not integrate well in the receiving countries, and there are times and places when receiving countries are not able to assimilate undocumented migrants, or not able to do so beyond a certain rate of entry. In such cases (and here we are not referring to convention refugees, asylum seekers and legal migrants), a country may refuse hospitality (cf. M1992 3; M1995 2; M1996 2).

c) "The criterion for determining the level [of immigrants] that can be supported cannot be based solely on protecting [the receiving country's] own prosperity, while failing to take into consideration the needs of persons who are tragically forced to ask for hospitality" (M1992 3). To be sure, it is important to distinguish between persons who fit the classical definition of a "refugee" and who enter a country in an irregular way, and undocumented "environmental" or "economic" migrants; nonetheless, the present situation "tends to blur the distinction between the concepts of 'refugee' and 'migrant' to the point that these two categories are merged under the common denomination of 'necessity'" (ibid.).

d) "In the categories of the International [Refugee] Convention are not included the victims of armed conflicts, erroneous economic policy or natural disasters. For humanitarian reasons, there is today a growing tendency to recognise such people as "de facto" refugees, given the involuntary nature of their migration" (RCS 4).

e) After a long stay in a receiving country, some people may become "so deeply rooted in the local society that returning to their country of origin would be tantamount to a form of reverse emigration, with serious consequences particularly for children" (M1996 3; cf. ES-JLE) and it is unjustifiable to force "into an illegal situation people whose right to live with their family cannot be denied by any law" (M1996 4; cf. Caritas Europa *et al.* (2003)).

S8. *Principle of Reciprocity*: Reciprocity is needed to build a society between diverse people through dialogue and mutual recognition. It requires that relationships be "based on mutual respect and

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2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation."

on justice in juridical and religious matters"; it also entails "an attitude of heart and spirit that enables us to live together everywhere with equal rights and duties" (EM 64).

a) When such reciprocity exists within a society, members of religious or national communities which compose the majority of the population will feel compelled to become "advocates" for the rights of minorities within their communities (ibid.).

b) Immigrants too, when immersed in this dynamic, come to reciprocate the welcome and opportunities offered to them by receiving communities, recognising the values of their society and adapting to the shared norms of that polity to build a cohesive yet plural and dynamic civil society together with the natives (IT-UCD 25).

c) Huge and rapid influxes of immigrants from different cultures may make it very hard for both parties to construct reciprocal relationships; this may at times justify policies that seek to restrict certain types of immigration (ibid.).

S9. *Principle of Resistance to all forms of Racism and Xenophobia*. These attitudes and ideologies have no place in body of Christ, and lead to behaviour that goes against human dignity which is inacceptable from a moral standpoint shared with other believers and non-believers (cf. CR 17-23; L1983). It is not enough to fight xenophobia; the Church needs to build fraternity in a positive way (Baggio and Pettenà 2009, 1015–7, 1022).

S10. *Principle of Seeking Comprehensive Solutions to Localized Poverty and Marginalisation:* The problems of the poor neighbourhoods where migrants tend to concentrate and where refugees are resettled should be adequately addressed.

a) "The environmental and social rehabilitation of [these] decaying neighbourhoods" is a matter of great importance (M1992 2) to ensure that migrants and refugees live in dignity and are not discriminated against. All social actors should be proactive in dealing with the problems of these spaces. In many cases Catholic NGOs are present and active, and parishes are often reference-points in such neighbourhoods, offering "a sign of hope and brotherhood" (M1999 7).

b) We should also acknowledge the "widespread fear or feeling of insecurity in people", especially in receiving communities and in such neighbourhoods, and their desire for guarantees of "due respect for legality [and of safeguarding the] integrity of the host community" (EM

40ff). Simply appealing to virtues such as hospitality does not solve the day-to-day problems which stoke such fears, but education, moral formation, correct information, and just laws and institutions are needed to deal courageously and equitably with such problems and thus empower communities to become more welcoming of strangers.

S11. *Principle of Subsidiarity and Solidarity Applied to Local Churches:* Churches have an important role to play in helping immigrants to integrate, besides preparing them for the experience in the sending countries (AG 38; cf. EF part I, DPMC; CHM 21). In the words of EM 21, "welcoming the stranger is [...] intrinsic to the nature of the Church itself and bears witness to its fidelity to the gospel". John Paul II, in his *Message for World Migrants´ Day 1987,* speaks of the "mission" of both receiving communities and immigrants as part of the mission of the Church and lists a number of ways to which lay persons should commit themselves so as to humanise the phenomenon of migration and transmit the faith which supports such a commitment. Other documents mention the following points:

a) *Reception as brothers and sisters within the community:* "Immigrants [should] not be received as 'mere tools of production' but as brothers endowed with human dignity and builders of a new and broader human community" (DPMC 57). This also applies to undocumented migrants, and Christians may be required to practice solidarity with such migrants even when they are in trouble (M1996 5).

b) *Parishes as places of sharing, fellowship and mutual recognition:* Local Christian communities should be a sign of hope and brotherhood to people threatened by precariousness and absence of reference points, opening up spaces of trust where people learn to overcome their fears in a world haunted by insecurity (M1999 7).

c) *Christian advocacy on behalf of migrants*: "Since other questions are connected with the migrant people such as housing, work, social insurance, and the problems which arise from difference of race, language and culture, let [the Christian faithful] work to see that these are solved according to love and justice and equity, lest, as economies and the mobility of peoples grow, 'the life of individuals and their families [become] insecure and precarious'", (ibid.). Christians should advocate that such rights, especially those pertaining to the unity of

the family, be defended in civil legislation and fight against all discrimination (cf. EM 87; ES-PM II:3:2:c).

d) *Cosmopolitan education in the receiving communities*: Christian leaders should be committed to "educational and pastoral systems that form people in a ´global dimension´, that is, a new vision of the world community, considered as a family of peoples, for whom the goods of the earth are ultimately destined" (EM 8).

ANNEX B: THE PRIORITY RULES

The Hospitality Rules

H1 RECIPIENT COUNTRY SELECTION RULE

A polity has a greater moral duty to open its borders to immigrants if it is (i) prosperous (high GDP) and highly developed (high HDI); (ii) not too densely populated; (iii) not situated on an ecologically-sensitive territory; (iv) a liberal democracy explicitly committed to the promotion of human rights by its constitution.

H2 IMMIGRANT ENTRY AND SOJOURN SELECTION RULE

A modern liberal democracy which can afford to welcome migrants and asylum seekers should normally allow *legal entry and temporary sojourn*, except when this poses a *serious* and *credible* risk of (i) insecurity; (ii) disruption of public order; or (iii) severe dilution of its political culture and weakening of its political institutions, or else (iv) when certain restrictive policies can be shown to enhance liberty and equality on a cosmopolitan level in the long run.

H3 HISTORY-LADEN INTERDEPENDENCE RULE APPLIED TO IMMIGRANT ENTRY AND SOJOURN

Other things being equal, receiving countries have a greater duty to grant entry and sojourn to citizens of countries which are politically, socially and culturally linked to them through close bonds of **history-laden interdependence**.

The Kinship Rules

K1 IMMIGRANT RESIDENCY AND NATURALISATION SELECTION RULE

a. Immigrants whose security and subsistence rights cannot be adequately guaranteed in their home country have a clear *prima facie* right to enter and stay in countries which can afford to provide them such rights while not endangering the security and subsistence of their current population.

b. Other immigrants do not have such a right and may be removed humanely, ensuring the legal protections afforded to citizen defendants in civil law cases, unless a long time has passed (more or less, 5 to 25 years) and unless they have shown themselves to be quite well "integrated" into the political culture of the receiving polity.

c. Persons who are explicitly or tacitly allowed to stay beyond a sojourn period of a few months should be considered as long-term residents and potential candidates for naturalisation. The *basic rights* of such residents should be respected and guaranteed as far as is affordable for the country, including some access to *welfare services* in case of destitution, and a flexible (not

overly regulated) access to the *labour market* which reflects the real need of the economy while offering other workers some protection against wage competition and depression.

K2 National Narrative Rule

Receiving societies have a greater duty to integrate immigrants who demonstrate a willingness to buy into the National Narrative, assuming that such a narrative is ethically acceptable, inclusive, revisable, and (reasonably) adoptable by newcomers.

K3 Integration Capacity Rule

a. Stressed nations with limited integration capacity and with underdeveloped conceptual tools (narratives, laws, rites) to integrate strangers may have a lesser duty to receive and integrate immigrants (depending on the stressors), while they develop such conceptual tools.

b. Stressed migrants (especially "forced security migrants" who were violently pushed out of their land), though they may have a greater *a priori* right to be granted residence (and eventually citizenship) in a safe receiving nation on the basis of need, often need more help to integrate well (and deal with trauma, conflicting identities, becoming kin of those they perceive as "strangers").

c. Regional and international coordination and specialization are desirable in dealing with stressed immigrants. Polities whose public culture is relatively similar to that of the migrants in question are usually better suited to take them in and integrate them, and their integration capacity should be expanded with the help of the international community if needed. Other polities may opt to limit more strictly the stay of stressed immigrants, and "specialize" in the reception and integration of certain groups of stressed immigrants, provided that they (i) provide adequate help to the polities more suited to integrate them, and (ii) offer to integrate other stressed migrants with an adequate investment of resources.

K4 History-Laden Interdependence Rule applied to Immigrant Residency and Naturalisation

Other things being equal, receiving countries have a greater duty to grant residency and naturalisation to citizens of countries which are politically, socially and culturally linked to them through close bonds of history-laden interdependence.

P Procedural Rule

The local fine-tuning and concretisation of the above rules requires fair democratic processes where those most impacted by boundary laws are adequately represented.

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