

International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility

Antoine Pécoud and Paul de Guchteneire*

***Abstract:** This article discusses the arguments in favor of and against a right to mobility. It argues that contemporary migration and border policies are largely restrictive but still fail to meet their proclaimed objectives which call for alternative approaches to international human flows. From a human rights perspective, tight border controls are accompanied by major challenges; including trafficking, the asylum crisis, and the death and vulnerability of irregular migrants; which ultimately threaten the moral foundations of liberal democracies. In this context, a right to mobility may constitute a relevant answer and the article examines the implications of such a right in terms of world justice, social cohesion, economic wealth, security, and border/migration governance.*

Introduction

Is it possible to envisage a right to mobility? According to the Universal Declaration of Human Rights (Article 13-2), “Everyone has the right to leave any country, including his own, and to return to his country.” But if the right to emigrate is acknowledged, what about the corresponding right to immigrate? This question is of particular relevance because contemporary migration policies are increasingly characterized by a restrictive spirit that makes international mobility problematic. While skilled workers circulate quite easily, those who do not belong to this elite have little access to migration opportunities, at least within a legal framework. In the meantime, globalization has increased the mobility of capital, information, goods and even services, thus making the non-liberalization of human mobility the exception rather than the rule.

These diverging patterns in international mobility take place in a context characterized by the contestation of this order by irregular migration flows and by receiving states’ attempts to stop them. This article argues that this dynamic leads to important human rights challenges that are yet to be fully acknowledged. It suggests that a possible rights-based answer to the challenges of migration lies in the elaboration of a right to mobility, and it examines some of the implications of this approach, including its relationship to issues such as world justice, social cohesion, economic wealth, security, and migration governance.

*Pécoud is Program Specialist with the International Migrations and Multicultural Policies Section in the Division of Social Sciences, Research and Policy at UNESCO in Paris, France. De Guchteneire is Chief of Section of the International Migrations and Multicultural Policies Section in the Division of Social Sciences, Research and Policy at UNESCO in Paris, France.

Trends in Contemporary Border Controls

International migration has become one of the central issues of our time. In 2005, the number of migrants worldwide was estimated at 185 to 192 million (IOM 2005), representing approximately 3 percent of the world population; this figure has more than doubled since 1975. In what Castles and Miller (2003) call the “age of migration,” people flows have become global and affect nearly all countries on earth, whether as sending, receiving or transit countries, or as a combination of these. Developed countries are far from being the most affected: approximately 46 percent of the world’s migrants and 81 percent of its refugees live in developing countries (IOM 2005, 396-399). As a consequence, international migration is now high on the agenda of the international community and of many countries. During the 1990s, over 100 countries enacted legislation or signed agreements related to migration; responding to a UN survey, 44 governments—including 30 in less-developed regions—indicated that levels of immigration in their country were too high, and 78 governments—including 57 in less-developed regions—had policies meant to reduce immigration levels (United Nations 2002, 17-18). This represents a sharp contrast with the 1970s when migration was hardly a topic of concern, and it illustrates the globalization of migration not only in Europe and North America but also in Africa, Asia Pacific, and Latin America.

A largely shared feature of contemporary migration policies is their restrictive nature. Migration is commonly understood, in security terms, as a “problem” and many countries feel the need to protect against this “threat.” In recent years, terrorism-related concerns have further fueled this trend and put borders in the spotlight. In this context, irregular migration is perceived as a central phenomenon reflecting the porosity of borders and calling for greater surveillance. Controlling immigration has consequently become an important field of policy in which several evolutions have taken place in recent years.

The borders between Western countries and their less-rich neighbors have become fortified, partly through the use of sophisticated methods of control. The most documented case is the U.S.-Mexico border, along which segments of walls have been constructed and where a growing number of patrol agents rely on technologically advanced equipment including high-intensity lighting, high steel fencing, body heat- and motion-detecting sensors, and video surveillance (Nevins 2002). The same trend can be observed in some European regions, notably around Gibraltar and the border between Spain and Morocco. New actors are involved in controlling migration such as airline carriers that are required to check their passengers’ right to travel to their country of destination (Guiraudon and Joppke 2001).

External controls at the border are accompanied by internal controls meant to identify undocumented migrants after entry. Workplace controls are often envisaged and sometimes practiced, but yield little results as they displease employers and have high economic and political costs that require huge efforts to be significantly implemented. Migrants’ access to welfare and social services is also used to check their legal status (Cohen, Humphries, and Mynott 2002). As Cohen (2005, 17) notes, this goes along with a broad range of surveillance measures (including cameras in public spaces, identity checks, body searches, or the use of biometric data) that apply to all citizens and have led to “a historically unprecedented intrusion into the private lives of citizens.” Once undocumented migrants have been identified, they may be subject to detention and expulsion, and it is worth recalling that although these practices have long been

exceptional responses to very specific circumstances, such as wars, they are becoming increasingly common (Schuster 2004).

Another way of controlling migration lies in co-operation between countries. Sending states frequently resent the way in which their illegally migrating citizens are treated by destination countries, but they are nevertheless incited (and financially supported) to contribute to migration controls by stopping their outflow of undocumented migrants or reaccepting those who have been expelled. Transit countries are also asked to better control their borders, and countries such as Mexico or Morocco become buffer zones to contain migration from Latin America or Sub-Saharan Africa (Andreas and Biersteker 2003). In this process, controls are delocalized, taking place far away from the geographical location of borders. In recent years, security concerns have further reinforced the need felt to control borders, as porous borders are believed to facilitate terrorist activities. In North America, even the long-neglected U.S.-Canada border has become a source of concern. This has prompted the introduction of new biometric technologies on both sides of the Atlantic (Thomas 2005). Still, although security concerns exacerbate the pressure to control borders, it is important to keep in mind that immigration controls pre-existed them and cannot therefore be given the main role in the tightening of immigration policies.

Controlling migration is costly. According to an International Organization for Migration (IOM) report, the twenty-five richest countries spend 25 to 30 billion dollars per year on the enforcement of immigration laws (Martin 2003). These costs stem not only from controlling borders, but also from issuing visas and residence permits, prosecuting, detaining and removing undocumented migrants, carrying out labor inspections and implementing sanctions on employers, treating asylum-seekers' claims, resettling refugees, and searching for undocumented migrants. These investments in migration controls contrast with their cost-effectiveness: although it is difficult to measure their deterrence effect on potential migrants, the persistence of undocumented migration illustrates how even sophisticated forms of controls do not really stop people. Of course, some migrants are caught crossing the border while others are expelled, but motivated migrants manage to escape controls by taking more risks, crossing in new border areas, and relying to a greater extent on professional people-smugglers. Tougher migration-control measures do not seem to reach their proclaimed goal, and major debates have taken place on the ability of states to control migration (Cornelius et al. 2004; Freeman 1994; Joppke 1998).

States experience difficulties in controlling migration for multiple reasons. Migration is now structurally embedded in the economies and societies of most countries whether in the form of remittances, cheap labor, or domestic services. This creates very strong incentives for migration to continue and makes efforts to stop it extremely difficult. States face a further dilemma because, in an era of globalization, borders must be business friendly and open to international trade or tourism (Andreas and Snyder 2000). Moreover, migratory movements, once started, become self-sustaining. Through migration, countries are connected via networks that span the globe and facilitate more migration (Castles 2004). Lobby groups, such as employers, can also impose domestic constraints on governments to allow migration for labor-market reasons. Controlling immigration is particularly difficult for liberal democracies, which are characterized by the preponderant role of the market and respect for people's fundamental rights (Hollifield 1992). Market forces constantly strive for expansion and challenge states' logic of control (Entzinger, Mariniello, and Wihtol de Wenden 2004),

while respect for rights gives even undocumented migrants a minimal degree of legal protection. In accordance with the philosophy of human rights, individuals are protected on the basis of personhood, not nationality or citizenship, thereby constraining governments' autonomy (Jacobson 1996; Sassen 1996). In practice, this means that civil society, human rights groups, and NGOs (non-governmental organizations) can contest government measures and sometimes have them opposed by courts.

Historically, however, full control has never been the norm. It is sometimes argued that open borders were a reality in the nineteenth century, but the picture of a *laissez-faire* era in migration policies is probably exaggerated as states have only progressively acquired the ability and legitimacy to control individuals' movements, a prerogative that used to be shared with other social actors such as churches or private enterprises (Torpey 2000). From this perspective, states are now more able to control migration than before and their apparent loss of control relies on the myth of a once-perfect sovereignty that never was (Joppke 1998). Moreover, officially declared policies may be different from actual intentions. For example, it is often observed that a benign neglect toward undocumented migration may fit into the interests of states or employers wishing to have access to an unorganized and irregular workforce (Freeman 1994).

Border Controls and Human Rights

Whether or not states have the ability to truly control migration, it remains that contemporary border policies are accompanied by several challenges to human rights. Three will be outlined here. The first concerns asylum. The measures meant to stop irregular migration have direct consequences on the asylum principle, according to which all human beings are entitled to seek protection from persecution. The lack of legal migration channels incites some economic migrants to present themselves as asylum-seekers, which, in a self-nurturing process, then casts doubts on all refugees and leads to even more restrictive measures. The confusion between asylum-seekers and economic migrants leads not only to endless and unmanageable procedures to "prove" the existence of persecution, but also to human rights abuses and suffering for both "genuine" and "fake" refugees. Moreover, attempts to control migration flows before they reach destination countries affect the ability of refugees to seek asylum. In Europe, for example, states increasingly discuss the possibility of prompting refugees to stay in countries near their region of origin rather than considering their case on European soil (Schuster 2005). These trends have been interpreted as reflecting a new asylum paradigm (Crisp 2003). In other words, even if Castles (2004) argues that a policy of "open borders" would threaten the right to asylum by diluting its specifically humanitarian nature into a broader system of free movement, closed borders make the very fact of leaving one's country to seek protection problematic.

The second human rights challenge involves trafficking and human smuggling. Cross-border human mobility is now a business and various kinds of more-or-less criminal activities prosper based on the impossibility of many to migrate legally. Although the hidden nature of this phenomenon makes it difficult to investigate and, despite the uncertainties and controversies surrounding its definition, evidence exists that it is increasing (Kyle and Koslowski 2001). Typically, tight border controls are thought to contribute to the fight against trafficking. It is also clear that the more difficult it is to enter a country, the more necessary the reliance on smugglers and the more profitable the business. We are therefore again faced with a self-perpetuating process that simul-

taneously fuels human rights violations and strict border control policies: border controls encourage smuggling that, in turn, leads to calls for more control (Andreas 2000).

The third challenge relates to the human cost of migration controls for the migrants themselves. The most tragic and obvious illustration of this cost lies in the number of people who die on their way to receiving countries. It is estimated that at least one migrant dies every day at the U.S.-Mexico border; mostly due to hypothermia, dehydration, sunstroke, or drowning (Cornelius 2001; Martin 2003). In Europe, Eschbach et al. (1999) estimate that at least 920 migrants died while trying to reach Europe between 1993 and 1997. According to a 2002 statement presented to the UN Secretary General,¹ over 3,000 migrants died between 1997 and 2000, most of them while attempting to cross the Straits of Gibraltar. These tragic outcomes of undocumented migration are not specific to Western countries however; the same UN document mentions casualties off the coasts of Australia, at the border between Mexico and Guatemala, and across the Sahara. The figures are probably underestimated as no one knows how many bodies lie undiscovered. More generally, the extreme vulnerability of undocumented migrants and their exposure to abuse and exploitation largely stems from policies that unsuccessfully attempt to prevent irregular migration, thereby leaving many migrants in legal loopholes.

Borders have thus become the site of major ethical challenges, and four observations can be made about them. First, a tension between security and human rights preoccupations pervades the response to these phenomena. Since the end of the cold war, migration has increasingly been understood as a security threat, with the growth of irregular migration and the asylum crisis of the 1990s being perceived as a source of potential destabilization for states (Doomernik 2004). This leaves little space for human rights. Indeed, the most frequent concern seems to be the difficulty of conciliating the trade-based openness of borders with their security-based closure (Flynn 2000), a debate in which people's rights and dignity hardly play a role. Moreover, the very notion of "security" is ambiguous. Although a comprehensive understanding of security should encompass both national and human security and therefore incorporate human rights, dominant approaches focus overwhelmingly on national security to the detriment of the well-being of people, particularly non-nationals. States' reluctance to address migration from a rights-based perspective is obvious in their attitude toward the UN Convention on Migrant Workers' Rights: this comprehensive treaty, adopted in 1990, provides a wide set of human-rights answers to the challenges of migration, but fewer than forty states have ratified it and no Western immigration country has done so at this date (Pécoud and de Guchteneire 2004).

Second, these different phenomena attract various levels of attention and are treated in a differentiated and isolated manner. Human trafficking has been clearly acknowledged as a human rights' violation and combating it has become a priority for many governments. There is widespread agreement on the need for a multilateral response as indicated by the adoption of the 2000 UN Convention against Transnational Organised Crime, which has a "Protocol to Prevent, Suppress, and Punish Trafficking in Persons." This has prompted a research boom largely supported and funded by governments and international organizations and meant to prepare the ground for policy interventions (Laczko 2005). Asylum also draws substantial attention but is treated in a largely national manner; even the European Union (EU), which apparently has the most developed supranational approach to the question, finds it difficult to display coherence (van Selm 2005). Most importantly, asylum is usually considered separately

from immigration policies and trafficking even if the connections between these are obvious. By contrast, “deaths at the border” are largely ignored; even though they regularly make headlines in the media and draw the attention of a few NGOs, official sources of information are scarce and virtually nothing is done to improve the situation.

The connections between restrictive asylum policies, human smuggling, and migrants’ vulnerability are not recognized. Indeed, there seems to be no coherent and comprehensive understanding, among Western receiving countries notably, of the interconnectedness of these trends and of the serious human rights issues raised by the current approach to migration. Even when human rights violations are acknowledged (such as in the case of trafficking), they are understood as a problem per se and not related to the broader picture of border and migration policies. At most there is a call for barely defined “humane” border policies, which regret the consequences of migration controls but accept their necessity and legitimacy (Neveins 2003). Apart from its moral dimension, this approach is unlikely to be successful; the efforts made toward reducing refugee flows may jeopardize those who aim at combating smuggling for example.

Third, addressing the relationships between border controls, migration policies, and human rights is difficult because of the moral complexity at stake and the ambiguous set of causalities between governments, policies, and human agency (Meneses 2003). Who, for example, is responsible for the death of migrants? Human smugglers are usually blamed for cynically and inhumanly exploiting irregular migrants’ distress, but, in a context of tight asylum policies, some smugglers actually enable people to flee persecution while others merely provide help to would-be migrants who are then genuinely grateful (Koser 2001). Migrants themselves could be criticized for risking their lives, but many of them are misinformed or depend upon migration to survive. And although tight policies can be held responsible for leaving migrants no other option than migrating at their own risk, since the governments of receiving countries do not in principle pursue the goal of killing migrants this is only an indirect relationship. Sending and transit countries could be blamed for not caring for the well-being of their citizens, for not providing accurate information, and for letting migrants leave in dangerous conditions. However, the right to leave a country is a human right and the line between discouraging and forbidding people to leave is thin. The responsibilities for the human rights violations surrounding migration control are therefore difficult to establish.

Fourth, the question is not simply what is happening at borders. Current migration and border policies may ultimately represent a threat, not only for migrants, but also for the human rights and democratic principles that lie at the core of Western states. “The morality of frontiers, where human rights are at their lowest, is threatening the interiors of the countries” (Hayter 2000, 150). Tough border control measures may not be compatible with the harmonious functioning of democracies. The values that guide societies cannot stop at their borders; they must also inspire attitudes toward outsiders. The way in which a society handles the fate of foreigners ultimately reflects the values upon which it is based, and the evolution of migration controls toward greater harshness may eventually backfire and threaten the principles and freedoms that lie at the core of democratic societies.

Toward a Right to Mobility

Current approaches to migration display several shortcomings. With governments unable to match their proclaimed ambition of controlling their borders, restrictive policies are not credible. Policies appear incoherent and unsuccessful especially in the eyes of the public. As a decrease in the number of people on the move is unlikely, they offer no sustainable and convincing perspective on how to face migration challenges in the long term. As Nett (1971) writes, “Building walls is a peculiarly lonely job and an admission of the inadequacy of the system” (224). This is acknowledged in the 2005 report of the Global Commission on International Migration (GCIM), which notes that “the international community has failed to... meet the challenges associated with international migration” (2) and that “states and other stakeholders must pursue more realistic and flexible approaches to international migration” (79). These policy failures are accompanied by human rights issues, which once again call for a rethinking of migration policies.

This article argues that the notion of a right to mobility may usefully reinforce an ethical and rights-based approach to migration and border controls. As mentioned, emigration is recognized as a human right but immigration is not. Leaving one’s country has not always been straightforward (Dowty 1987), but it is now largely common practice, which exacerbates the contradiction between emigration and immigration. This can be interpreted in two opposite ways. One can argue that ‘immigration and emigration are morally asymmetrical’ (Walzer 1983, 40) and that, while the right to emigration gives people the fundamental exit option in their relation to governments, this does not imply that other states must unlimitedly welcome foreigners. In short, states must let their residents leave but do not have to let others in. By contrast, one can argue that having the right to leave one’s country is meaningless as long as one cannot enter another country. From a practical perspective, an individual authorized to leave his country but not accepted by any other country would see his right to emigration violated (Dummett 1992). Thus, emigration and immigration inextricably complement each other and the Universal Declaration of Human Rights has somehow stopped half-way in its recognition of a right to move.

A right to mobility would counterbalance the uneven access to mobility among peoples and nations. Mobility is a privilege that is unevenly distributed among human beings; citizens from developed countries may travel and settle down almost anywhere in the world, while their fellow human beings from less-developed countries depend upon the uncertain issuance of visas and residence permits to migrate. Citizenship is thus a birthright privilege that is difficult to justify (Carens 1992). A different kind of inequality pertains to qualification. Today, trained workers are sought and enjoy a greater level of mobility than their unskilled compatriots. At other times, unskilled workers were privileged, illustrating skills-based differences of treatment toward migrants. Other factors play a role too: “In the transnational economy, spaces of circulation and mobility rights are structured by aspects of age, race, gender and class” (Teschfahuney 1998, 501). States thus exercise their right to select “useful” migrants to the detriment of “undesirable” migrants. Certain types of mobility are thereby authorized while others are discouraged, forbidden, or even criminalized. The right of states to treat people in such differentiated ways is hardly contested, even if preferences sometimes approach discrimination (Weiner 1996). In other words, restrictions on mobility are difficult to

reconcile with the liberal egalitarian perspective according to which people should have equal opportunities.

The issue of mobility opportunities is particularly relevant in an era of globalization, at the heart of which lies issues of circulation and international border crossing. Globalization has made mobility, in the words of Zygmunt Bauman (1998, 9), "the most powerful and most coveted stratifying factor." Indeed, mobility is increasingly the norm not only for Westerners and highly qualified workers, but also for capital, goods, information, and services. In a world of flows, having access to mobility becomes crucial to seize opportunities and to achieve both geographic and social mobility. As Kalm (2005) shows, discourses on globalization are characterized by two contradictory but coexisting facets that legitimize different policies: a "globalist," or cosmopolitan, argument justifies the weakening of national borders, while a nationalist and roots-oriented discourse stresses national cohesion and homogeneity and the necessary closure to outsiders.

Elaborating a right to mobility is not about adding one more right to a long list of rights; rather, it is about fostering respect for existing human rights. Nevins (2003) convincingly argues, for example, that in a world of economic globalization and gross socioeconomic inequalities, the human right to free choice of employment (Article 23 of the Universal Declaration of Human Rights) and to an adequate standard of living (Article 25) are hard to achieve in the absence of migration opportunities. A right to mobility would also fit into other human rights principles such as the fight against all forms of discrimination and persecutions (Nett 1971). The connection between mobility and the enjoyment of basic human rights is empirically illustrated by undocumented migrants who contest this uneven distribution of mobility rights by claiming their right to migrate to wealthier countries in order to have access to decent living conditions.

A right to mobility, like any measure moving toward a liberalization of migration policies, is likely to face the counterargument that it would lead to enormous and unmanageable flows of people. Borders, it is constantly stressed, protect receiving states from less-developed countries' migrants who want access to their wealth. Because these policies restrict people's mobility, it seems fair to assume that putting an end to such policies would enable more people to move. Although it is honest to acknowledge our ignorance of what would happen if borders were open, one can nevertheless try to qualify these fears. As the United Nations High Commissioner for Refugees (UNHCR) states, "It may be assumed that, unless he seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some compelling reason."² In the European Union (EU), free movement has not resulted in increased migration; each step of its enlargement (to Spain, Portugal, and Greece in the 1980s and to Eastern Europe in 2004) was accompanied by fears of massive migration flows that turned out to be ungrounded. Moreover, migration flows and the legal conditions of migration are not strictly related. As mentioned, restrictive policies do not keep people from trying to migrate illegally. More liberal policies would have little impact on those who leave their country, whether it is authorized or not; it would only reduce the dangers they are exposed to. Restrictions on mobility also limit migrants' freedom to circulate, thus leading to a higher rate of permanent settlement and discouraging migrants from returning, temporarily or not, to their country. Mexican migration to the United States illustrates these points: migrants keep trying to cross the border until they succeed and, given the difficulty of doing so, tend to remain on a more permanent basis in the country (Cornelius 2001).

World Justice

According to another (and stronger) counterargument to a right to mobility, free migration may appear as a generous idea but would actually lead to chaos and an increase in unfair situations. Critics of neo-liberalism argue that if people flows were deregulated and exclusively market driven, the absence of state intervention would not lead to more equality but to the exact opposite. Whatever their shortcomings, states remain essential for guaranteeing the well-being of their citizens and ensuring equality and justice among them. Thus, the well-being of the world implies that each state care for its own citizens rather than letting people move wherever they want in a way that would ultimately destroy the foundations of the relationship and responsibilities of states toward their people. This argument often stresses alternative ways to achieve world justice; particularly development. Mahnig (1998) thus argues that, even if it appears unjustifiable to keep poor people away from rich countries, it is actually a necessity and that the only fair policy in this respect is development aid. Other alternative solutions are sometimes mentioned, including foreign investment and trade (Lucas 1999).

The problem is that these alternatives are far from successful. So far, they have not proved able to reduce the gap between rich and poor countries and, therefore, it may be time to try something else. In particular, developed states have limited influence on foreign investments and politically may be more opposed to free trade in some sectors (agriculture, for example) or to increased development expenses than to migration. Indeed, migration might not only be the most efficient way of reducing inequalities between countries but also, and contrary to widespread perceptions, the most acceptable solution. The stress on development, while unquestionably justified and necessary, may also be misleading. Massively increased development aid might well reduce poverty more efficiently than it has done to date but, as Massey et al. (1998) argue, development also encourages migration rather than substitutes for it. The development process leads to economic restructuring, which forces people to find new jobs and creates incentives to move, from rural to urban regions or abroad. Promoting development without accepting the outflow of migrants this generates may then be inefficient.

Social Cohesion

Migration is often described as a threat to social cohesion. The arrival of newcomers destabilizes receiving societies and jeopardizes the sense of belonging and common identity that lies at the core of community life. From a communitarian perspective, this is not only a matter of identity but also a moral imperative: values stem from involvement in a given community and controlling outsiders' access to the community is necessary to enable their development (Walzer 1983). Although one can object that the "threat" posed by foreigners to national cohesion is largely ideologically defined, often exaggerated, and that migrants may just as well have a positive input on values (Carens 1987), these are strong arguments that provide an ethical justification to closed borders if followed. They should therefore be discussed with a particular focus on the institutions and mechanisms that ground social cohesion (welfare states, citizenship, and democracy) as well as on the possible inter-group tensions that may threaten it.

Mobility is a major challenge to the welfare state. Its logics are contradictory: a right to mobility is about openness and circulation, whereas welfare systems are based

on closure—people make a long-term commitment to a community and enjoy its protection. Free movement may therefore jeopardize the shared identity and solidarity that motivates people to participate in welfare systems, thus implying their privatization and consequently closed borders would be necessary to welfare states. This is a serious problem not only because welfare states are desirable in themselves, but also because incorporating migrants would require efficient welfare mechanisms to ensure that the arrival of newcomers in receiving societies does not create situations of social vulnerability. It should be noted, however, that the correlation between increased migration and the deterioration of welfare schemes is not straightforward. For example, it is often heard that migration would counterbalance the aging of Western populations (United Nations 2000), and welfare-based arguments may then militate for *more* migration. Moreover, far from being the main challenge to welfare states, migration is only one factor among many—labor-market situation, demographic trends or political decisions—that play a much greater role (Geddes 2003).

Along with welfare, citizenship, and democratic participation constitute key features of social cohesion. In principle, access to citizenship rights depends upon nationality, thereby excluding migrants. In practice, however, non-nationals enjoy certain rights. Migrants sometimes participate in unions, in the educational system, and in welfare schemes. They have rights protecting their situation in the labor market and occasionally even vote in local elections, which illustrate how, in a human rights logic, personhood and residency—not only nationality—determine access to rights (Soysal 1994). By enabling people to move freely from one country to another, a right to mobility would exacerbate this question and create situations in which nations are home to large numbers of non-nationals on the move. Although it makes sense to confer basic rights to all people residing in a given country (not least to avoid a downward pressure on the well-being of the whole population), this would nevertheless challenge the traditional distribution of rights.

A solution to these issues is to unpack citizenship and distribute its different components (political, civil, social, family and cultural rights, notably) in a differentiated way. Migrants would initially receive a first set of rights (civil rights and fundamental social rights), and only later would they receive, in a step-by-step manner, full welfare entitlements or political rights. By avoiding the binary logic of inclusion/exclusion, this approach ensures that migrants are not “rightless” (as undocumented migrants tend to be) while enabling high mobility and addressing the reluctance of nationals and long-term residents to share their privileges with newcomers. Of course, the risk is of transforming this system of “differentiated inclusion” into “differentiated exclusion,” but “too much mobility is simply incompatible with a sustainable framework of rights [and] thresholds are needed to ensure durable rights” (Engelen 2003, 510).

From a cultural perspective, migrants are often believed to integrate imperfectly, thus threatening the socio-cultural foundations of destination countries, creating tensions with the native population, and fostering racism and xenophobia - notably in the labor market. This could lead to anti-immigration mobilization and foster populist and extreme-right political formations (Castles 2004, 873). According to Walzer (1983), if states do not control migration, people will do it themselves through more-or-less violent rejections of foreigners. In line with these preoccupations, some EU countries have explicitly set their priority on integrating already present migrants and on social cohesion, rather than on opening up to new flows of foreigners. But these arguments are not straightforward. The correlation between xenophobia and the number of immi-

grants is unclear, as very few foreigners may cause disproportionate hostile reactions in regions not used to immigration. More fundamentally, border controls indirectly feed racism by reinforcing the idea that foreigners and foreign-looking people are undesirable. Ultimately, this reinforces internal boundaries along ethnic lines, jeopardizing migrants' access to decent living conditions and challenging social cohesion (Hayter 2000). The impact of migration policies on integration is further reinforced by the fact that, since September 11th, tightening controls for security reasons has gone hand in hand with a critique of multiculturalism, according to which the non-assimilation of immigrants represents a danger for their allegiance to Western states (Cohen 2005). Finally, control policies absorb funds and energy to the detriment of integration; in Europe, for example, policies focus overwhelmingly on the control of flows rather than on the social incorporation of migrants and their descendants (Leitner 1997).

This discussion of social cohesion highlights the multifaceted dimension of mobility. Moving from one state to another is only one aspect of mobility: migrants, once in a country, may indeed be inhibited in their participation and incorporation in the receiving society, particularly in terms of welfare, labor, rights, and citizenship. As Jacobson (2001, 161) notes, "Bordering has become more multifaceted of both geographic and nongeographic forms, of social, political, and economic characters." Therefore, a right to mobility makes sense only if it encompasses internal borders that limit migrants' mobility within societies. In other words, social cohesion is about far more than migration; the role of migrants should not be ignored but neither should it be overwhelmingly emphasized to the detriment of other major challenges to social cohesion.

Economic Wealth

A frequent argument in favor of unrestricted mobility is of an economic nature. In a classic article, Hamilton and Whalley (1984) showed that the liberalization of the world's labor market would double the world gross domestic product (GDP). More recently, Rodrik (2002) argued that the biggest gains in terms of development and poverty reduction do not lie in the much-discussed issues surrounding free trade, but in the international movement of workers, and that even a minor liberalization in this field would massively foster the development of poor countries. Free movement is thus advocated on the grounds that restrictions on the mobility of people are counterproductive, which echoes free trade arguments - according to which the liberalization of the circulation of goods, capital, or services would be economically beneficial. Free migration would reduce inequalities at the world level, hence, diminishing the necessity to migrate.

Economic theory is based on assumptions that do not necessarily correspond to reality, which calls for prudence in the interpretation of these results. One could note that comparing flows of people to flows of capital, information, or commodities neglects the social complexity of migration; the equalizing impact of free movement on wages and living standards may also be achieved at an undesirably low level, raising social and political objections well before it has any effect. Moreover, migration has distributional effects, benefiting some and threatening others. For example, skilled migration is good for receiving countries, but less so for sending countries; family reunification is important to migrants but not always useful to receiving countries; and

unskilled migration may benefit the economy of the destination country, but jeopardize the well-being of its working class.

Nevertheless, restrictions on migration constitute an exception in the current spirit of globalization and liberalization. Although borders used to stop everything—money, goods, and people—today they stop mostly people. The Mexico-U.S. situation is the best example of this paradox: two countries united within a free trade agreement are separated by a militarized border. This contradiction is tellingly illustrated by the World Trade Organization (WTO) negotiations on the so-called “mode 4” that involves the “temporary movement of natural persons.” Recognizing that trade in services needs direct physical contact between suppliers and consumers and wishing to foster the liberalization of international trade in services, WTO members have engaged in negotiations on cross-border movement of workers. In principle, this concerns exclusively temporary service providers and excludes all the issues surrounding permanent migration, citizenship, residence or employment. However, the boundary is not clear-cut and this issue remains unexplored and controversial (Bhatnagar 2004).

Security and the Governance of Migration and Borders

As Massey and Taylor (2004) suggest, a third way between open and closed borders could be a system of multilateral governance of migration flows whereby states would coordinate their migration policies for their mutual benefit, just as they do with flows of capital, commodities, and goods. In recent years, many voices have called for what is usually referred to as “migration management,” which has led to propositions such as the “New International Regime for Orderly Movements of People” (Ghosh 2000), “General Agreement on Movements of People” (Straubhaar 2000), “General Agreement on Migration and Refugee Policy” (Harris 1995, 224), “Global Agreement on the Movement of People” (Veenkamp, Bentley, and Buonfino 2003, 98), “General Agreement on Migration, Mobility and Security” (Koslowski 2004) or the WTO model “World Migration Organization” (Bhagwati 2003). In its above-mentioned report, the GCIM examines in detail the prospects for such an initiative, reviewing the possible ways in which already existing organizations could work together or merge and proposing the creation of an “Inter-agency Global Migration Facility” (GCIM 2005, 65-78). The underlying assumption is that the co-operation of sending and receiving states would avoid the pitfalls of unilateral policies while ensuring that the migration process does not hurt the interests of any state or of the migrants themselves.

Security arguments mitigate against such interstate co-operation. Today, faced with terrorism-related threats, states respond with a “rebordering” process: “In both political debates and policy practices, borders are very much back in style. Rather than simply being dismantled in the face of intensifying pressures of economic integration, border controls are being retooled and redesigned as part of a new and expanding ‘war on terrorism’” (Andreas and Biersteker 2003, 1). Whether this is the most appropriate and efficient answer to these preoccupations is problematic, however. Flynn (2000, 57) argues, for example, that the internationalization of most national economies implies heavy cross-border movements of people, vehicles, and shipments and that, in such a context, “intercepting the ripples of danger in this tidal wave of commerce is about as likely as winning the lottery.” To truly control these flows would be so costly and time-consuming that it would harm economic growth. Thus, addressing the risks represented by flows of dangerous items and people amidst this heavy traffic implies

methods other than border control. What is needed are “smart borders” that, rather than acting as barriers, serve as filters, even if these raise concerns over human rights and privacy (Andreas 2003). By sharing intelligence and co-operating to control flows beyond national borders, states may reduce security risks while enabling fluid border crossing (Schoenholtz 2003).

According to this line of thought, a right to mobility is potentially dangerous and chaotic and the answer to the shortcomings of unilateral policies lies in mechanisms of governance through which states could co-operate to achieve their goals. Although the need to go beyond strictly national policies cannot be contested, the issue is the nature of these goals: states can and should co-operate, but with what aims in mind? At one extreme, one could conceive a situation in which co-operation between states would be an indispensable but temporary step in the establishment of a right to mobility. Since no state can be expected to progress in this direction if at least some other states do not follow the same path, a multilateral approach, whether in the form of agreements or organizations, is a necessity. However, migration can be “managed” in a very repressive way and it is easy to imagine a situation in which interstate co-operation would merely perpetuate current restrictive policies.

The point is that tight control policies, whether nationally or multilaterally implemented, create situations of illegality and mistrust that make co-operative border management even more difficult. As mentioned above, border controls do not really stop people but rather incite them to go underground. Moreover, they provide smugglers and traffickers with enhanced business opportunities: “If migrants cannot enter a desired country of destination under their own steam because of restrictive policies and/or border enforcement, they will rely on the help of third parties. And the more effective migration controls become, the more lucrative smuggling becomes and the higher the fees that are payable by those who are smuggled” (Doomernik 2004, 43). In short, controls not only increase the vulnerability of migrants, they also complicate migration policies and increase security threats by making flows invisible. Johnson (2003, 203) argues that “open borders are entirely consistent with efforts to prevent terrorism. More liberal migration would allow for full attention to be paid to the true dangers to public safety and national security.” Restrictive migration policies further generate mistrust across borders. In her contribution to this volume, Julie Murphy Erfani (2005) documents, for instance, the negative impact of control policies on civil society and on people’s values in borderland regions. Although efficient migration and security management would require smooth and trustworthy experience and information-sharing across borders, tight controls fuel precisely the opposite, namely, social tensions and feelings of insecurity. In this respect, border policies create a specific border culture that may then jeopardize efforts to promote much needed cross-border co-operation.

We are confronted here with a key issue - that is, the structure-agent relationship; border policies create a context to which individuals react which, in turn, influences structure. Tight migration policies generate undocumented migration, smuggling, and trafficking, which then prompt calls for more control. In the meantime, the values of control policies impact social relations and people’s attitudes, not only creating a perceived need for increased control but also undermining the cross-border human ties that would make interstate co-operation possible. In this context, a right to mobility may be a way to break this vicious circle by helping to shed a critical perspective on the notion of “management” or “governance” in fields such as migration or security. To what extent is cross-border co-operation possible if people are not allowed to easily

travel from one side of the border to the other, meet, exchange, and develop a sense of regional belonging? In an interconnected world, more and more issues will require multilateral or interstate approaches. However, this cannot be done exclusively from above, at a government or an administrative level; people too play a role, and in the absence of straightforward human cross-border connections, cross-border policies are unlikely to succeed.

Conclusion

A right to mobility is ethically defensible and usefully complements the human right to emigration. It can serve as a stimulus, not only to elaborate fairer migration policies, but also to question the moral, cultural, and political foundations of contemporary practices. Migration policies have implications both for migrants and borders and for the very identity of Western receiving states. Restrictive policies generate suspicion toward outsiders and internal boundaries within societies as they are informed by the idea that Western societies, threatened by the rest of the world, should close and protect themselves. This is an obstacle to fruitful relations between people across borders and an encouragement to social and psychological behaviors characterized by mistrust.

A right to mobility may appear as a naïve utopia. However, it is equally utopian and naïve to believe that minor arrangements of contemporary policies will provide sustainable answers to the challenges raised by international migration. Considering mobility as a right is a provocative way of questioning the justification of policies that are now taken for granted. Today's utopia may be tomorrow's reality and innovative debates and ideas are necessary to ensure new directions.

Endnotes

¹ United Nations, Economic and Social Council, E/CN.4/2002/NGO/45.

² *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/IP/4/Eng/REV.1, Chapter 1, article 39.

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