

OXFORD

MIGRATION **in** POLITICAL THEORY

The Ethics of Movement and Membership



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Selecting By Merit

The Brave New World of Stratified Mobility

Ayelet Shachar

Immigration is often referred to as the “last bastion of sovereignty” in the rising tides of globalization. Accordingly, much of the scholarship on immigration is still country-specific and gives significant weight to domestic-centered factors in shaping a country’s immigration law and policy. This chapter takes a different approach. While acknowledging these classic considerations of identity and belonging, it conducts an inquiry into the skill-based selection criteria adopted by immigrant-receiving countries, and in doing so reveals a surprising picture: states are *interacting* with one another in increasingly complex ways, not only to reinvent migration control policies, but also to reconfigure their membership boundaries.¹ Such interaction may take a restrictivist and enforcement-oriented direction, as in the creation of Frontex as a supranational agency operating on behalf of European Union member states to control and police the external perimeter of Europe. Or, instead of anything resembling the cartelization of international immigrant flows, it may generate an increasingly vigorous competition among states, each seeking to recruit and attract to its respective jurisdiction the world’s best and brightest.² In recent years, this global race for talent has gained tremendous

¹ Looking at migration as a process shaped by states, within a broad cross-national perspective, fits in the tradition bequeathed by international migration scholars such as the late Aristide Zolberg. See Aristide Zolberg, “Matters of State: Theorizing Immigration Policy” in Charles Hirschman, Philip Kasinitz, and Josh DeWind (eds.), *The Handbook of International Migration* (New York: Russell Sage, 2000), pp. 71–93.

² My focus throughout this discussion is on international labor-market migration, rather than family-based migration or the humanitarian obligations of states to refugees, asylum seekers, trafficked persons, undocumented migrants, or other vulnerable persons. Within the broad range of international labor-market migration streams, highly skilled migration programs fall squarely

momentum, but the significance of the new reality it represents—the opportunities it creates and the risks it poses—remains largely unnoticed and under-theorized in the literature. This chapter begins to fill the gap.

Across the globe, countries are vying to outbid one another to attract highly skilled migrants with extraordinary talent. In this dynamic and competitive environment, immigration policymakers (operating primarily but not exclusively at the national level) constantly learn from, or simply “borrow” and refine, the innovations of their counterparts. This represents an *uncoordinated* response by nations to the perception that, in the knowledge-based global economy, “the resource that is in greatest scarcity is human capital.” Indeed, countries are willing to go as far as to invest membership in exceptionally talented individuals—in the arts, sciences, sports, technology, innovation, and the like—in order to gain or sustain a comparative advantage. Pressure is mounting in this competitive scramble, as no country wants to be left behind.³ Each wants to reap the expected benefits—economic, cultural, and reputational—associated with the infusion of immigrants with abundant human capital to their respective jurisdictions. Call this the new paradigm of *selecting by merit*, in contrast with the traditional pattern that Christian Joppke has provocatively termed *selecting by origin*.⁴

This transformation—“from origin to merit” (to paraphrase Henry Maine’s catchphrase “from status to contract”)—is vitally significant, as it touches upon some of the most foundational and sensitive issues that any society must address: how to define who belongs, or ought to belong, within its circle of members. The global race for talent, which reflects the zenith of the logic of selecting by merit, opens up the otherwise heavily bolted gates of admission to those who have acquired the specialized skills and human capital now valued by states operating in a more competitive and global knowledge-based economy. Many of those who benefit from the shift to selecting-by-merit hail from the global south, and, as such, would likely have been categorically barred from access to membership under the old regime of selecting-by-origin, which officially subscribed to racially discriminatory immigration laws until as late as the mid-1960s.⁵ At the same time, the rise of managed migration regimes as

into the category of “discretionary immigration.” See Michael Blake, “Discretionary Immigration,” *Philosophical Topics* 30:2 (2002), 273–89.

³ Ben Wildavsky, *The Great Brain Race: How Global Universities Are Reshaping the World* (Princeton, NJ: Princeton University Press, 2010).

⁴ Triadafilos Triadafilopoulos and Craig D. Smith, “Introduction,” in Triadafilos Triadafilopoulos (ed.), *Wanted and Welcome: Policies for Highly Skilled Immigrants in Comparative Perspective* (New York: Springer, 2013), pp. 1–12. See also Christian Joppke, *Selecting by Origin: Ethnic Migration in the Liberal State* (Cambridge, MA: Harvard University Press, 2005).

⁵ The long history of anti-Asian immigration and naturalization laws in the United States—the birthplace of today’s global race for talent—is well documented. For a concise overview, see Gabriel J. Chin, “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” *North Carolina Law Review* 75 (1996), 273–345.

part of today's global race for talent also entrenches new inequalities and stratifications. These tensions and contradictions inform and motivate my analysis here.

This chapter focuses on the highly skilled, exploring the centrality of state action in facilitating the competitive scramble to lure "those with brains, skills, and talent," before turning to address the core legal and ethical conundrums associated with these dramatic yet under-theorized developments.⁶ The details vary, but even countries that have experienced a backlash against multiculturalism tend to grant privileged access to those who possess remarkable prowess and a proven track record of success in their fields of expertise.⁷ The effects of this process of "picking winners" become particularly evident when we focus on those at the top echelons of the talent pyramid—virtuoso artists, brilliant scientists, elite athletes—who possess precisely the kind of "added value" that competitive states covet most.⁸ The willingness of governments—our public trustees of citizenship—to grant membership goods as part of the transaction to lure the "top crop" among the best

⁶ Darrel M. West, *Brain Gain: Rethinking U.S. Immigration Policy* (Washington, DC: Brookings Institute, 2010), p. 131.

⁷ Interestingly, related reconfigurations are simultaneously occurring in emigrant-sending countries themselves. Whereas in the past, skilled emigrants were regarded as lost causes who had "exited" their home national community, the new era of competitive immigration regimes has changed countries' attitudes towards their own emigrants. These individuals are now treated as long-lost sons and daughters who have made a sacrifice by working and living abroad. Emigration countries are adopting more flexible approaches to dual citizenship and designing various rules that allow successful emigrants to maintain their membership ties with their home nation, thus engaging in the same game of trying to reap the benefits of highly skilled migration. Their position represents a mirror image of the talent-for-citizenship exchange in the receiving state: the sending country is offering the emigrant (who, despite leaving the home community, may still feel attached to it) what we might call a "preservation of membership" entitlement. The emigration state now enthusiastically uses its control over the definition of political membership in the home country as a tool to maintain and strengthen ties with those who have settled abroad. See Kim Barry, "Home and Away: The Construction of Citizenship in an Emigration Context," *New York Law Review* 81 (2006), 11–59. How this is achieved varies among countries, but it may involve reforms to dual-citizenship rules, investment laws, and even the granting of voting rights to emigrants who permanently reside abroad. This raises complex and still unresolved puzzles about the relationship between powerful and successful citizens abroad and their countrymen and women who reside in the country of origin. Some perceive these recent developments as overdue and redemptive, giving due credit and respect to the efforts undertaken by those who have left, while at the same time encouraging them to continue to contribute handsomely to the home country. For others, they represent a vexing illustration of how asymmetry is formalized between those residing outside the country, who get to enjoy rights to political participation across borders, and those who stay, who must contend with the brunt of the corresponding political duties—potentially eroding the ideal of democratic equality and control. I thank Sarah Fine and Lea Ypi for their insights on this point.

⁸ For further discussion, see Ayelet Shachar, "Picking Winners: Olympic Citizenship and the Global Race for Talent," *Yale Law Journal* 120:8 (2011), 2088–139; Ayelet Shachar and Ran Hirschl, "Recruiting 'Super Talent': The New World of Selective Migration Regimes," *Indiana Journal of Global Legal Studies* 20:1 (2013), 71–107.

and brightest here becomes a metric for signaling the perceived value of the recruited knowledge migrant to the recruiting country.⁹

The discussion is divided into two main parts. The first is devoted to identifying the core legal mechanisms and major turning points that have shaped the global race for talent from the perspective of immigrant-recruiting nations. I will also briefly examine related developments in emigrant-sending countries. In shedding light on the surge in skills-centered selective migration regimes, I explore why policymakers are eagerly intervening in the “global market” for the highly skilled, and discuss how interjurisdictional competition raises the stakes for the countries involved. This permits theorizing about the core elements of the nascent paradigm of selecting-by-merit while taking into account the crucial role of human-capital valuation in shaping and molding selective migration priorities and the discursive casting of the highly skilled as the new breed of “desired” migrants. This is a shift that is associated with deeper transformations in the conception of citizenship that place on a pedestal those who actively contribute and successfully integrate into the membership community.

In the second part of the discussion, I explore the main conceptual and ethical puzzles associated with the global race for talent, and reflect on the potential implications of these fast-paced developments on the very future of citizenship in the twenty-first century. More specifically, I will explore two kinds of arguments: an argument grounded in fairness (which analytically can be subcategorized as: (1) fairness to other streams of migrants, (2) fairness to those who stay in the country of origin, and (3) fairness to those who already reside in the receiving society); and an argument based on a concern with the erosion of the ideal of citizenship as a political relation grounded in equality rather than competition.

9.1 The Paradigm Shift: Selecting by Merit, not Origin

Immigration today is among the most controversial and high-profile topics in the public domain. It touches on foundational questions about how we live together as members of a shared political community and where we draw the lines of inclusion and exclusion. These issues are fraught with disagreement and open to legal and ethical contestation. Recent years have witnessed a renaissance of sorts in the field of citizenship and migration studies. Contemporary scholars approach the topic from a variety of disciplinary perspectives,

⁹ This can be seen as a new twist on the classic Lockean labor theory, where manual or agricultural labor is replaced with sophisticated knowledge economy equivalents, and applied to the acquisition of membership status in the state rather than of property in cultivated land.

from political philosophers to neoclassical economists, to critical geographers studying the spatial dimensions and inequalities manifested in patterns of mobility across borders. These perspectives reveal a largely bifurcated international migration order: movement and membership are becoming more readily available for some while increasingly sliding out of reach for the majority of “standard” would-be immigrants, who face more and more hurdles to lawfully entering the once-promised lands of migration.¹⁰

This tension between restrictive closure (for the many) and selective openness (for the few) provides the context for my inquiry into the rise of the global race for talent and the interjurisdictional zeal involved in finding the most sophisticated methods for identifying, selecting, and luring the so-called best and brightest (a term of art regularly used by policymakers worldwide). This is a new phase in the checkered history of migration. As Aristide Zolberg famously documented, even countries like the United States that purport to be open to anyone who wishes to come have in fact long treated immigration as part of a social-engineered narrative of nation-building.¹¹ In today’s global knowledge economy, what is desired are those who can shore up the human capital reserve of the nation. This makes the study of competitive immigration regimes for the highly skilled ever more vital and fascinating. We can investigate the question of why this paradigm shift toward managed and selective migration—with the global race for talent at its apex—has occurred, and why it has occurred now, from several perspectives.

The political economist would begin the inquiry by highlighting that, unlike other factors going into innovation and production, talent is distinctive: it is encapsulated in individuals. As such, it cannot be codified, duplicated, sold, or easily transferred from one person to another. In other words, it is the *human* in “human capital” that makes it a unique and irreplaceable factor of production and a quality-of-life multiplier in the new knowledge economy. Faced with more opportunities, and with a longer list of destination countries wooing and enticing them, it is only rational for skilled migrants with abundant human capital—people with aspirations and proven adaptability to new

¹⁰ Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge: Cambridge University Press, 2008); Christian Joppke, “Comparative Citizenship? A Restrictive Turn in Europe,” *Law and Ethics of Human Rights* 2:1 (2008), 1–41; Valsamis Mitsilega, “Immigration Control in an Era of Globalization: Deflecting Foreigners, Weakening Citizens, Strengthening the State,” *Indiana Journal of Global Legal Studies* 19:1 (2012), 3–60; Ayelet Shachar, “Citizenship” in Michel Rosenfeld and András Sajó (eds.), *Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012), pp. 1002–19.

¹¹ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge, MA: Harvard University Press, 2006). Zolberg’s analysis focuses on domestic factors, where certain social and economic interest groups manifest preferences for, and seek to influence the design of admission policies that favor, certain kinds of migrants over others, whereas I focus on the interjurisdictional dimension and how the global competition among states affects the design of their respective selecting-by-merit admission and settlement programs.

challenges—to redirect their patterns of international movement in response to competitive governmental offers.

The social historian would add that people with extraordinary talent have always enjoyed greater mobility across borders, while emphasizing that the specific set of desired skills and occupations has changed “according to the time period, location, and nature of the technologies in use.”¹² In nineteenth-century America, artisans and craft workers were seen as highly skilled, whereas today the highly skilled are the sharpest minds, the keenest entrepreneurs, the prodigious innovators. But, not only has the *definition* of talent and valued skills changed, so has the *scale* and *intensity* of the competition, which now involves more countries and regions as well as ever-increasing stakes. As the International Migration Outlook summarily stated, the “competition for talent [now] goes well beyond the OECD area.”¹³

The empiricist would observe that, contrary to the predictions of postnationalists, countries have not “lost control” over their membership boundaries, but instead have significantly changed how control is manifested.¹⁴ States and their governments, operating alone or in concert, have been hard at work to (re)assert their authority over determining whom to admit, whom to turn back, and whom to keep at bay. Legal strategies to recruit the highly skilled play a vital role in this larger process of redesigning membership categories and regaining control over borders, turning such ideational shifts into actionable plans. By continually “retooling and recalibrating” selective skills-based admission avenues to attract the best and brightest, governments engaged in the global race for talent have demonstrated their willingness and their ability to intervene in the market for the highly skilled.¹⁵ Adding to this is that leading countries are increasingly learning from and emulating one another in the international competition for highly skilled immigrants. In this selective and stratified mobility market, membership goods—including fast-tracked access to permanent residence and the granting of citizenship as the ultimate prize—are turned into “incentive packages” tailored by governments to attract the new brand of desired migrants. We typically think of citizenship and immigration as an identity-laden and domestically centered policy arena, steeped in questions of membership and belonging. Alas, no state is an island, and the legal measures adopted by *other* countries can lead to interdependent

¹² Joseph P. Ferrie, “A Historical Perspective on Highly-Skilled Immigrants to the United States, 1820–1920” in Barry R. Chiswick (ed.), *High-Skilled Immigration in a Global Labor Market* (Washington, DC: The AEI Press, 2010), pp. 15–49.

¹³ SOPEMI, International Migration Outlook 2011, 1.

¹⁴ Scholars of migration studies and international relations sharply disagree on whether the nation-state is in decline, or whether it has enough resources to reinvent itself in the current era of globalization.

¹⁵ A concrete example of this broader pattern is found in the increased recruitment of international students by competitors in the global race for talent.

causality whereby, in developing their own strategies, countries factor in the already-tested policies or projected responses of their major competitors in the global race for talent. Policymakers who specialize in targeted migration regimes for the highly skilled routinely engage in transnational “borrowing”—or simply “importing”—of the innovations of their counterparts.¹⁶

This pattern can be best demonstrated with the example of the point-system rubric, a prevalent mechanism for selecting-by-merit, which originated in Canada and has since spread to the four corners of the world. Under the point system, applicants are assigned a cumulative numeric value determined by assessing a set of predefined factors, such as the applicant’s highest educational degree, professional experience, linguistic proficiency, and adaptability. The origins of the point system are rooted in the late 1960s policy overhaul that repealed the old system of selecting-by-origin by introducing new skills-based criteria designed to select immigrants on the basis of their professional and educational achievements as well as potential ability to contribute to the country’s economy and labor markets. In sharp contrast with the previous system that distinguished among potential entrants on the basis of national origins, under the point system “applicants’ ethnic and racial backgrounds were no longer to be considered in determining their eligibility for admission to Canada.”¹⁷ In a classic example of interjurisdictional emulation, the point system was later adopted in Australia as part of that country’s formal abolishment of its infamous “White Australia” policy.¹⁸ It has since been “copied and pasted” (with relevant local variations) in various other countries, including, most recently, Denmark, Singapore, Hong Kong, and the United Kingdom.¹⁹ A variant of the point system was proposed (but never adopted) in the United States as part of the major legislative overhaul of America’s notoriously cumbersome and byzantine immigrant-selection system. The introduction of a merit-based point system would have represented not only an instance of interjurisdictional borrowing along the model of competitive immigration regimes,

¹⁶ On the rich literature on policy emulation and diffusion, see e.g., Beth A. Simmons, Frank Dobbin, and Geoffrey Garrett (eds.), *The Global Diffusion of Markets and Democracy* (Cambridge: Cambridge University Press, 2008). On competitive immigration regimes, Ayelet Shachar, “The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes,” *New York University Law Review* 81:1 (2006), 148–206.

¹⁷ See Triadafilos Triadafilopoulos, “Dismantling White Canada: Race, Rights, and the Origins of the Points System” in Triadafilos Triadafilopoulos (ed.), *Wanted and Welcome: Policies for Highly Skilled Immigrants in Comparative Perspective* (New York: Springer, 2013), pp. 15–37 at p. 16.

¹⁸ On this change and its impact on Australia’s contemporary “gatekeeping” function, which has shifted to an emphasis on language and social class, as well as occupational skills, see Gwenda Tavan, *The Long, Slow Death of White Australia* (Melbourne: Scribe Publications, 2005).

¹⁹ As could be expected, each jurisdiction slightly adjusts the point system to fit its own specific local demands and trajectories. In Germany, for example, a proposed bill that introduced the point system (which ultimately did not become part of the law) would have given points to individuals with ethno-national ties to Germany, reflecting the *volkish* aspect of German identity that still resonates even with its more liberalized interpretations of citizenship and membership.

but also a concerted effort by the United States to strike back and reclaim its once-legendary position as the world's leading "IQ magnet" for the highly skilled.

Unlike international efforts to harmonize or increase coordination across borders, the global race for talent results from *non*-cooperation among fiercely competitive jurisdictions seeking the prize of the best and brightest among the highly skilled. The core stakeholders in this multiplayer game—recruiting nations, knowledge migrants, and countries of origin—have become increasingly sophisticated, and the competitive scramble now involves a range of different tiers, establishing a "talent pyramid" of skilled migrants who are recruited at different stages of their professional careers. At the top of the talent pyramid we find high-achieving migrants with a track record of international achievements. They are in an enviable position in today's global race for talent: they are perceived to know where they are wanted. For this reason, they can vote with their feet, which increases the pressure on recruiting nations to lavish them with attractive settlement packages.²⁰ But this privilege applies primarily to those with the potential to "substantially benefit prospectively the national economy, cultural or educational interests, or the welfare of the [country]," as is required, for example, under American immigration law provisions of the selective EB-1 (employment-based first preference) admission category that immediately grants the successful applicant a green card—and with it the freedom to establish herself in the United States—while waiving standard requirements for gaining an employment offer or a domestic sponsor. In the United Kingdom, "exceptionally talented individuals in the fields of science, humanities, engineering and the arts" are invited to join in under the new Tier 1 exceptional talent category. And the list goes on. Even based on this brief description, the talent pyramid can be seen to reflect a "scale of attractiveness" according to which the more desired the immigrant is, the faster she will be given an opportunity to lawfully enter the country and embark on a fast-tracked path to its membership rewards. This is part of a subtle yet potentially dramatic redefinition of citizenship connected with the rise of the new selection-by-merit paradigm of "value added" human mobility and membership.²¹

The exponential growth of the global race for talent means that it is no longer necessarily tied to, or motivated by, cyclical domestic skills shortages. Rather, it is about "building [a] future through well-managed entry and

²⁰ The choice of destination for these migrants is of course neither unlimited nor necessarily determinative. It is likely that language, networking, family ties, and postcolonial channels of migration play a role in shaping the directionality of human mobility, although emergent patterns of "super diversity"—a condition that refers to small and scattered multiple-origin global migration flows—reveals a level of complexity that surpasses previous experiences and predictions. See Stephen Vertovec, "Super-Diversity and its Implications," *Ethnic and Racial Studies* 30:6 (2007), 1024–54.

²¹ See Shachar and Hirschl, "Recruiting 'Super Talent'."

settlement of people.”²² Today’s skills-based migration priorities reflect a technocratic, econometric, and managerial logic that aims to bring an air of objectivity (through measures such as the point-system rubric) into the otherwise deeply charged and politicized terrain of discretionary immigration.²³ By setting human capital criteria for selecting *whom* to admit, governments signal their clear preference for a particular class of immigrants—educated, cultivated, innovative, and productive individuals—so as to meet the impetus to “maximize the economic benefits that skilled immigration can provide.” Of course, these functional and efficiency-based standards obscure the less convenient “gatekeeping” ramifications that come with selecting-by-merit, such as the inevitable head start it gives to those with greater access to higher education, sustained records of paid employment, multilinguistic proficiency, and so on (in short, what sociologists would term as the social class advantage), a point to which I return later in the discussion.²⁴ At this stage, suffice it to say that as a matter of political expediency in the face of growing public support for ever restrictive immigration policies, the focus on the highly skilled allows governments leeway to respond to international competitive pressures while domestically conveying a message of control, and to signal to those with high-demand skills and extraordinary talent that they are “wanted and welcome.”²⁵

Indeed, government officials are willing to go as far as to redraw the boundaries of membership and tender citizenship in an expedited fashion for those at the top echelons of the talent pyramid. To provide but one particularly visible illustration of this pattern at work, consider the intersection of sports, nationality, and grand international events that bring together athletes from around the world as individual competitors *and* members of national teams. In anticipation of the London 2012 Summer Olympics, for example, medal-contender athletes were recruited and bestowed fast-track citizenship grants by talent-hungry nations. Some of these nationality swaps, as they are known in the athletics world, were approved only ten days prior to the Games’

²² Australia, Joint Standing Committee on Migration 2011, *Inquiry into Multiculturalism in Australia*, DIAC, Submission no. 150, May 2011.

²³ As mentioned earlier, the category of discretionary migration does *not* apply to refugees, asylum seekers, and other humanitarian claimants who have a special legal and moral standing vis-à-vis the state in which they seek a safe haven. See Blake, “Discretionary Immigration.”

²⁴ The point system is often described by immigration officials as a “transparent and objective method of selecting skilled migrants with the skills and attributes” that are valued by the admitting society. While facially neutral and formally open to all, the point-system assessment scheme is not free from biases. For example, it privileges the breadwinner over the homemaker, the professional over the non-professional, the “productive” over the “dependent,” and so on. These binary oppositions historically traced gender-based distinctions, which favored the full-time (male) wage earner over the stay-at-home (female) spouse who did not formally engage in the paid labor market.

²⁵ I am here borrowing from the title of a collection of essays on highly skilled immigrants edited by Triadafilos Triadafilopoulos: *Wanted and Welcome*.

opening ceremony.²⁶ Proactively “snatching” top talent from other countries or offering a soft landing for rising stars who seek to leave their home countries is, of course, not limited to elite sports. This strategy is also utilized to advance national interests in academia, science, technology, arts, and media. Internationally, this practice of “picking winners” has become more common than ever; it can lead to situations in which individuals serve as ambassadors for a nation to which they have nothing but the flimsiest of links. This “bartering” of membership goods raises significant fairness and global inequality concerns, addressed in the following section. It also brings into sharp focus additional dilemmas at the heart of the global talent hunt. These include the blurring of allegiance with commodification, the dilution of citizenship-as-membership by proliferating form-over-substance grants, and the conflation of the language of national pride with neoclassical economic principles that treat human capital as a factor of production able to generate significant branding and reputation gains. The advent of savvy and sophisticated skills-based migration routes thus intriguingly demonstrates both the erosion and the revitalization of a country’s control over its membership boundaries (alas, along more strategic and instrumental lines), since it takes agency and governmental action to attract and retain these highly skilled migrants: the very same talent pool in high demand that other competitive nations wish to lure to their respective jurisdictions.

9.2 Theoretical and Ethical Conundrums

In the previous pages, I have provided a glimpse into the vigor and zeal of the fast-growing worldwide competition for talent. Counterintuitively, and under conditions of uncertainty, national immigration agencies (and increasingly local and regional officials, too) have reasserted themselves as significant players in the global market in the highly skilled. They have done this by developing the logic of competitive immigration regimes, maintaining tight control over their power to govern legal entry, and conferring membership goods to attract highly skilled migrants perceived as “assets.” This last point is significant. Granting full and formal membership in the political community remains the only good that even the mightiest economic conglomerate cannot offer to the skilled migrant. Only governments can allocate access to, and the security of, citizenship.

The global race for talent, with its increasingly calculated and instrumental approach to selecting-by-merit, provides us with a new lens through which to

²⁶ I discuss this pattern in detail in Shachar, “Picking Winners.”

observe the centrality of competitive states—the fashionable alarms about their decline notwithstanding—in controlling and allocating membership goods. Challenging the prevalent view that states have “lost control” over border and membership boundaries, the recent changes identified here illuminate a more nuanced and complicated picture. Clearly, the extensity, intensity, and velocity of today’s globalization transactions generate a more competitive environment for the cross-border recruitment of the highly skilled.²⁷ The crucial point, however, is that *governments*, too, by fine-tuning immigration categories and procedures, have played an active role in facilitating the flow of human talent across borders. This has important ethical ramifications, strident ones, since the state is held to stricter standards of justification and democratic accountability than markets and amorphous globalization forces.

This paradigm shift, which is only beginning to gain wider scholarly recognition, presents several conceptual and normative puzzles which I formulate here as grounds for further research with the potential to bridge the empirical and ethical aspects of migration studies. There are at least three different issues at stake: (1) Does giving priority in the citizenship line to those with brains, talent, and special skills erode the basic egalitarian thrust of political membership?; (2) In a world still characterized by severe inequalities across borders and regions, are receiving countries under any obligation (moral, or potentially legal as well) to “compensate” sending countries for their potentially severe loss of institution builders, innovators, and reformers?; (3) Within admitting countries, is there a risk that reliance on the recruitment of highly skilled migrants will lead to decreased public investment in cultivating homegrown talent through educational and related measures benefitting the domestic population, or that the emphasis on high-demand skills will crowd out other streams of migrants that have not achieved the merit requirement of exceptional ability?²⁸ These challenges, which I briefly address in the following pages, reveal the potential use and abuse of citizenship as a recruitment tool in the worldwide hunt for talent. They also reveal the evolving matrix of interactions among sending and receiving countries, the nascent tensions between mobile and sedentary populations, and ultimately, the issues of inequality and stratification in cross-border mobility, and the influence of market-oriented concepts in reshaping traditional understandings of citizenship.

²⁷ David Held et al. list extensity, intensity, and velocity as three of the four elements of today’s globalization era. See David Held, Anthony McGrew, David Goldblatt, and Jonathan Perraton (eds.), *Global Transformations: Politics, Economics and Culture* (Stanford, CA: Stanford University Press, 1999), pp. 14–28.

²⁸ For some discussion of these and related considerations, see Anna Stilz’s chapter in this volume. On the broader question of legitimate selection criteria, see the chapter by Sarah Fine.

I will divide these challenges into two categories of normative argument: the fairness argument (which analytically can be broken into distinct subcategories: fairness to other would-be immigrants; to the population of the admitting country; and to those who stay in the country of origin); and an argument based on a concern with the erosion of the ideal of citizenship as a political relation grounded in equality rather than competition. By exploring these arguments we also come to see more clearly the political and distributive aspects of the global race for talent. I address each in turn.

Fairness. When speaking about fairness in the immigration context, the initial task we face is to discern the scope and scale of the comparative unit: should we take as our baseline the distribution of sovereignty among states under the current international system, or should we focus on subnational and supranational alternatives, or perhaps begin with a global welfare matrix? The choice of scale will determine which dimensions of equality and inequality we capture, potentially affecting our conclusion as to what is fair and just. As a simplifying heuristic let us assume, for the foreseeable future, a world of regulated human mobility in which recognized and independent states, acting alone or in concert, remain the primary units of political organization and border control. Taking the existing order as a background condition for our normative evaluation is congruent with the strategy adopted by other leading political and legal theorists.²⁹ It permits us to take into account existing tensions and assess the trade-offs that may arise when states exercise their prerogative to selectively recruit whom to admit. In such a world, there are at least three possible communities of reference that we ought to consider: fairness to other streams of international migrants; fairness to the population of the home country; and fairness to the population of the receiving community.

9.2.1 *Fairness to other potential migrants*

The main concern here is that while granting new opportunities to the world's mobile knowledge migrants, the emphasis on skills-based migration streams may "crowd out" other bases for admission.³⁰ This argument assumes,

²⁹ This is what Joseph Carens refers to as the engagement with the "conventional normative view on immigration." See Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013).

³⁰ Political scientists, development economists, and demographers of international migration traditionally have emphasized a different "crowding out" concern, namely that associated with network migration (also referred to in the literature as chain migration or secondary migration) of family members, friends, and relatives of the original migrants who have settled in the new country. The main theoretical insight here is that once it passes a threshold or tipping point, "migration becomes self-perpetuating because each act of migration itself creates the social structure needed to sustain it." See Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali

however, a zero-sum relationship between the different categories of international migration, something that has to be proven and not merely purported. In fact, no country relies exclusively on skills-based selection programs. Even immigrant-receiving societies that rely on the human-capital accretion model and have made it a centerpiece of their selective admission policy, such as Australia and Canada, have never treated it as the sole purpose of their immigration law and policy. Rather, they have always maintained multiple streams, or pathways, to membership, including family-reunification, employment-based, and humanitarian streams.³¹ They have done so to fulfill certain ethical and legal obligations (especially in reference to refugees, asylum seekers, trafficked persons, and the like) and partly as a matter of political expediency.³² Immigration is a contentious issue everywhere, and as Gary Freeman and others have shown, elected officials face significant pressures from competing lobby and interest groups, including business organizations, labor unions, and so-called ethnic lobbies.³³ These pressures make it nearly impossible to have an immigration policy that is limited to a singular admission route.

Still, the critic might argue that the competition to lure those with an abundance of talent and human capital underwrites the new political economy of wanted-and-welcomed migration. Preference is given to marketable skills and talent over the moral claims of those with vulnerabilities and needs. The potential to bring tangible results and increased reputational value to the recruiting nation distinguishes suitable from unsuitable candidates.³⁴ It is the reliance on the language of economic growth and innovation that allows talent and human capital to seem neutral and unobjectionable as criteria for selection. So the concern here may have more to do with a conceptual shift and prioritization of certain marketable skills that are valued in the knowledge economy, something that some segments of society—those who have had access to higher education or specialized professional training (whether in the countries of origin or destination)—gain more readily than others. This adds

Kouaouci, Adela Pellegrino, and J. Edward Taylor, "Theories of International Migration: A Review and Appraisal," *Population and Development Review* 19:3 (2005), 431–66.

³¹ In addition, their skills-based immigration categories also include immediate admission to the applicant's immediate relatives (spouse and children) as part of the talent-for-citizenship exchange.

³² The humanitarian stream is not part of the "discretionary migration" framework in which the global race for talent operates. As such, at least in principle, it is immune to the effects of placing greater faith in human capital admission criteria. In practice we might worry about a slippage or erosion at the edges of the legal parameters governing humanitarian migration as well.

³³ Gary P. Freeman, "Modes of Immigrant Politics in Liberal Democratic States," *International Migration Review* 29:44 (1995), 881–902.

³⁴ See Bill Jordan and Franck Duvein, *Migration: The Boundaries of Equality and Justice* (Cambridge: Polity Press, 2003), pp. 91–5.

considerations of skills selectively and social class to the presumably objective and universal selection matrix embedded in the point system or related merit-based assessment criteria that are adhered to with zeal by the competitors in the global race for talent. In this brave new world of stratified mobility, explicit discrimination on prohibited grounds such as race, ethnicity, and national origin is strictly prohibited. But that doesn't imply that all are equally welcome. Even among the highly skilled, as we have already seen, those at the top echelon of the talent pyramid enjoy faster and smoother routes to admission and membership.

At the level of theory building, we must acknowledge, however, that we are dealing here with *would-be* entrants, whom even Joseph Carens describes as "potential immigrants who have no specific moral claim to admittance."³⁵ This realization requires us to step back and take in the fuller picture. Even these privileged beneficiaries must earn—through their extraordinary talent and achievement—what is automatically assigned as a result of nothing but fortuitous station of birth to those who "naturally" belong to the admitting society. Although discredited in all other fields of law, it is birthright—not migration—that remains the primary route for citizenship acquisition. Some are born to sweet delight, others to endless night. In our world, the latter is far more common. Only a minuscule minority of the global population—estimated at 3 percent of the world's population—partakes in international migration, and those who do are neither the poorest nor the neediest locally or globally. Instead of engaging in a tactic of divide-and-conquer among the meager numbers of those who have managed to move (and thereby to defy their ascribed lot in the birthright lottery), we need to push the question back one step further and ask whether in the absence of migration, the persistent and dramatic inequalities in life chances that attach to the reliance on birthright in the distribution of membership by virtue of circumstances that none of us control—namely, where or to whom we are born—are justified in the first place. This is a task I have taken on elsewhere and will not discuss in detail here, but I mention it to clarify the kind of questions that should occupy us in reimagining mobility and justice for the twenty-first century, a reimagining that must take place on a larger canvas and not fall into the dangerous trap of finger-pointing among migration categories.³⁶ Further complicating matters is the harsh legal reality that in today's world, each of us has a right to *exit*

³⁵ Carens, *The Ethics of Immigration*, p. 179. Undocumented migrants are another category of de facto would-be entrants, but they fall beyond the scope of this chapter because they are not officially selected by states through standard admission routes.

³⁶ For a detailed analysis of the legal, normative, and distributive consequences of reliance on ascription in membership allocation by birth, see Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009). For a different take on birthright citizenship, see Joseph Carens in this volume.

our ascribed home country but no corresponding right to *enter* a political community to which we do not yet belong as members.³⁷ The force of the fairness argument among would-be migrants is thus significantly diminished as soon as we recognize that in a world of regulated borders (like our own), *no one* has a guaranteed shot at gaining access to membership by virtue of volition or want.

As long as human mobility remains so strictly regulated, we must also be cautious not to assume a causal link between the instrumental and strategic considerations that fuel the fires of talent migration and the stricter mobility-curbing measures imposed upon other streams of migration. The two processes may occur contemporaneously, but that does not establish that the former is the cause of the latter, or vice versa. The harsh policies adopted by many European countries in recent years that have led them to tighten family admission, intercept asylum seekers at open sea, and place culturally infused barriers on certain third-country nationals (for example, the Netherlands' pre-admission screening test) reflect the troubling return of the demons of exclusion, or what has aptly been labeled the new "restrictive turn" in immigration control.³⁸ These re-emerging patterns reflect a long and dark history of migration that cannot plausibly (or chronologically) be the "result" of the rise of the global race for talent. These different streams of migration appear to be rationalized and socially constructed in strikingly different terms of discourse: "*l'immigration choisie*" as opposed to the "*l'immigration subie*," as the French would put it.³⁹ With the rising anti-immigrant sentiment, members of the latter category are pejoratively presented in political discourse as holding immutable cultural differences that make them unassimilable, quintessential "Others," whereas selective migration is presented as a culture-free zone that is treated functionally and technocratically as a measure to advance the country's economic, reputational, and scientific advantage. If anything, the rise of merit-based admission categories and the fine-grained developments of managed migration that I have discussed in the previous sections are more likely the result of, rather than the cause of, these shifting sentiments in immigrant-receiving countries. Politicians and policymakers alike are attracted to skills-based migration programs as a panacea for what they see as the failure of previous policies.

³⁷ The only exception to this general rule is the special case of refugees and asylum seekers who cannot be deported, based on a well-founded fear of persecution, to their country of origin or their last place of abode. On this topic, see Anna Stilz's and Christopher Heath Wellman's contributions to this volume.

³⁸ See Joppke, "Comparative Citizenship?."

³⁹ Triadafilopoulos and Smith, "Introduction," p. 4.

9.2.2 Fairness to the countries of origin

With the advent of the global race for talent and the formal removal of race- and national origins-based restrictions to mobility, many of the highly skilled who are drawn by the promise of permanent residence and eventual citizenship in a stable, rule-of-law society hail from poorer and less developed countries, especially those in Asia and Africa. It seems unjust that countries that are already struggling to fulfill their basic obligations towards their own citizenry should invest their scarce resources (educational and otherwise) to help their best and brightest, only to see those potential institution builders, innovators, and democratic reformers lured to the greener pastures of more affluent recruiting nations. Even the most brilliant athlete, scientist, or innovator needs a community in order to succeed; the social-cooperative efforts and public investments made by the home countries in skilled emigrants are of relevance here: “[p]eople don’t rise from nothing” as Malcolm Gladwell so vividly illustrates in *Outliers*.⁴⁰

Some have suggested a protectionist response to this predicament, recommending a restriction on the mobility of highly skilled migrants in order to help home countries develop an adequate response.⁴¹ This is a band-aid approach that does nothing to address the root causes of the problems that lead skilled emigrants to consider leaving their world behind in the first place. It also stands in tension with individual freedom and human mobility in that it “locks up” people in the polity into which they happen to have been born. It amounts uncomfortably closely to assigning “ownership” of individuals’ cultivation and refinement of their human capital to some anonymous governmental authority to assign as it sees fit.⁴² On this account, the collective (utilitarian) interest in having a skilled migrant stay in the country of origin ought to trump other considerations, including individual liberty. Alas, if we go down this path, where do we stop? Who decides whose freedoms and skills are to be owned by others, and distributed according to some macro-efficiency plan? And why force the doctor, the lawyer, the teacher from the poorer country to remain in it forever, while freeing equally qualified professionals born in more affluent societies from any responsibility to improve, to the best

⁴⁰ Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown and Company, 2008), p. 19.

⁴¹ The most commonly cited examples relate to the mobility of healthcare workers.

⁴² It is not raw talent per se (which is arguably arbitrary from a moral point of view) that is tracked and valued by selective skills-based admission routes, but the result of the concentrated effort that goes into developing one’s human capital, which is, as Charles Beitz convincingly argues (in his critique of John Rawls’ position), bound up with identity and therefore protected by considerations of personal liberty. See Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press; revised edition 1999, originally published 1979), pp. 138–9. For further discussion, see Ayelet Shachar and Ran Hirschl, “On Citizenship, States and Markets,” *Journal of Political Philosophy* 22:2 (2014), 231–57.

of their ability, the situation of the world's neediest? This protectionist argument therefore only further accentuates (rather than minimizes) the ramification of the birthright lottery. It places yet additional restrictions and obstacles to mobility on members of less well-off polities. As one commentator succinctly put it, referring to the American context, "could we [justly] say to a Ghanaian doctor that she must return to her country while an immigrant Russian doctor is allowed to settle down and start a new life?"⁴³ This kind of distinction, if rationalized on the basis of national origins, or worse, race, comes close to amounting to prohibited grounds.

The anti-mobility stance also seems to ignore the simple fact that it is individuals and households, and not some abstracted economic function of a social-welfare-utility unit to be maximized in the service of the home country, who move—migrants who are part of communities, who are dreamers, who may be dispossessed, who may feel pushed into a corner, or who may fit the designation of "exceptional people" (to borrow from the title of a recent bestseller on the history of immigration).⁴⁴ Whatever their story, those who engage in migration, even privileged emigrants at the top of the talent pyramid, take a tremendous risk by leaving their whole world behind, whether permanently or temporarily. Once we bring this human dimension into the analysis, we can no longer categorically assert that it is ethically imperative that we restrict or prohibit the mobility of the highly skilled based on some implied commitment (if not "indenture") to the society into which they happened to have been born. This would amount to allowing considerations of social utility to trump, categorically and by definition, competing interests of liberty and freedom.

Such an approach also misguidedly removes another crucial question from the table: namely, whether competitive states engaged in the active recruitment of the highly skilled have a responsibility to "offset" the losses suffered in those places skilled migrants leave behind. While there are significant knowledge transfers ("brain circulation") and other forms of investment that skilled emigrants contribute handsomely to their home countries, the responsibility for shaping and implementing immigration policy lies squarely with governments, especially when they proactively create supply-side admission schemes to lure knowledge migrants in the global race for talent. Accordingly, they should be key players in any attempt to systemically and more fairly address the consequences of skilled emigration as between sending and receiving countries. Instead of restricting mobility, it is possible to imagine fresher ideas, such as creating a link between seizing home countries' talent and

⁴³ Jagdish Bhagwati, "The Brain-Drain Panic Returns," *Project Syndicate*, January 27, 2012.

⁴⁴ See Ian Goldin, Geoffrey Cameron, and Meera Balarajan, *Exceptional People: How Immigration Shaped Our World and Will Define Our Future* (Princeton, NJ: Princeton University Press, 2011).

establishing structural channels for giving back, for instance, by investing in infrastructure, education, health, anti-corruption, and democratic empowerment in the communities from which emigrants hail, under the guidance of democratic deliberation informed by local insights and needs.

In the early days of the brain-drain discussion, the focus was on whether highly skilled emigrants should redirect a share of their newfound bounty (material or symbolic) back to their home country, and if so, whether this should amount to a voluntary or mandatory obligation. Today, it is evident that the transfer of knowledge and skills is less unidirectional than was initially assumed. We witness complex patterns of transnational relocation, circular migration, time-limited resettlement, and even "reverse brain drain" (from developed to less developed countries). Many successful emigrants and their progeny who have settled abroad maintain a multiplicity of connections with their home country; the bulk of these are retained without any formal obligation to do so. Remittance flows are a prime example. Economists are quick to point out that remittances now have a value more than three times that of official development assistance, and that they provide cash (or in-kind) transfers directly to resident households.⁴⁵ But diaspora communities do more than send back cash or its equivalent. They also engage in technological and knowledge transfers, cultural transmission, start-up investments, and so on. While it may well be correct to assume that some of those who have left would have contributed more to their home societies had they stayed (the counterfactual hypothetical), the normative issue is, as I have already mentioned, slightly different. It asks whether talent-recruiting nations, as beneficiaries of skilled emigration from the rest of the world, are under any obligation (moral or eventually legal, as well) to counterbalance the consequences of their actions, especially if an unintended consequence of the global race for talent is to drain sending countries of their most promising institution builders, innovators, and democratic reformers. Even if remittances are sent back home, the development effects of talent emigration run deeper than what monetary and knowledge transfers (important as they are) can offset.

Shifting the focus from skilled migrants themselves to the governments that actively recruit them (with the assistance of various third-party intermediaries, be they employers, international recruitment agencies, and so on) is a first step. We already established that the anti-mobility stance that advocates banning or significantly restricting the mobility of international talent is unnecessarily harsh and punitive, amplifying rather than minimizing brute luck. It unfairly places an added burden on those hailing from the huge swaths

⁴⁵ There is a debate in the economics literature about how these remittances are spent by recipients in the home countries, and whether they increase household consumption or reduce the level and severity of poverty and improve health and education expenditures.

of the world's population that already bear the brunt of unequal mobility and opportunity. The ethical resolution does not lie in giving each birthright community a veto to override the migration choices of its members (or more accurately the very few of its members who will gain a chance to lawfully enter another country on the strength of their skills and specialized knowledge). Although space limitations do not permit me to develop possible policy alternatives here, suffice it to say that a more comprehensive approach will require addressing the competing interests at stake. The global race for talent, as the name indicates, is characterized by *interjurisdictional* flows, innovation, and emulation. It is anything but static and fixed. In this multiplayer context, it seems anachronistic to pin the responsibility for improving the dire situation in the home country solely on the skilled migrant herself, as recommended by those holding the anti-mobility stance.⁴⁶ Better to involve the multiple stakeholders in the global race for talent—including government agencies in the receiving country, the migrant's future employers, intermediaries that may have helped facilitate the transaction, local and regional non-governmental organizations, and the international community at large—in efforts to make whole the country of origin, and ideally to increase opportunities for the vast majority of people worldwide who will not move, but may be indirectly affected by the benefits and possible costs of relocation of the highly skilled. This can be achieved through inter-state, regional, or even international initiatives for bringing considerations of migration and development more closely together. It also permits us to begin constructively to address the "citizenship premium" of the birthright lottery as part of the brain-drain debate, taking into account the growing tensions that may arise between the sedentary or mobile segments of the global population.

9.2.3 *Fairness to the population of the recruiting nation*

Discussions of human mobility in the context of the global race for talent often neglect to address questions of membership and mobility as seen from the perspective of residents of the home countries that seek to recruit and retain knowledge migrants. But what is at stake for those who are already members of the political community that welcomes in the highly skilled? It is to be expected that certain segments of society would benefit more from this practice than others, but there is another concern that does not relate to

⁴⁶ My position here differs from the Bhagwati tax, which places the burden of compensation on the emigrant herself, but does not challenge the underlying motivation to find creative ways to permit skilled migration (the freedom and individual choice dimension) while allowing the country of origin to share in the spoils that the mobility of the highly skilled can generate, for instance, through remittances, knowledge and skills transfers, political engagement of the diaspora, and so on.

immediate returns, but to a deeper realignment. The basic concern is that if the world's best and brightest can be "imported" at will, with governments fast-tracking admission to those they covet on the basis of an expected return—material, reputation, or otherwise—we might see decreased attention paid to the kind of persistent, long-term investment that is required in order to build up a creative and professional workforce to meet the challenges of the knowledge economy in the twenty-first century and to cultivate home-grown talent in arts, athletics, sciences, and the like. As a matter of realpolitik, the surest recipe to build popular opposition to skilled migration is to appear to haphazardly waive residency and other naturalization requirements, which sensibly operate as a buffer to ensure that those who gain the prize of citizenship in the talent-recruiting country have indeed made it their new home.

Policymakers who ignore such charged issues do so at their own peril. Emerging economies that have experienced a particularly high ratio of international-to-local talent, such as Singapore and Hong Kong, now invest a tremendous amount of social capital in ensuring that such tensions, if they arise, are proactively addressed. Even market-oriented democracies such as the United States are paying heed. A recent legislative proposal to "staple" a green card to the STEM degrees of advanced international graduate students to facilitate their absorption into the local market is a fitting example. Such a reform, if adopted, would set numerical limits on STEM green cards while simultaneously developing a domestic "pipeline" of U.S.-born and -trained workers with advanced skills and training.⁴⁷ Such legislation would also see fees collected by the federal government from employers who wish to recruit the highly skilled reallocated to grant programs that support and enhance domestic students' STEM education and employee retraining within the United States. This is a concrete illustration of measures required to ensure that the recruitment of highly skilled international migrants does not discount the commitment to local talent in the short or long term. The more pertinent general point is that the significant spoils and benefits associated with highly skilled migration to recruiting nations must benefit the average citizen, not just jetsetters, top universities, and corporate headquarters. Another crucial fairness measure would be to require that those who have gained fast-track admission due to their extraordinary abilities and

⁴⁷ In part, as in food or energy security, no country should ever voluntarily place itself at the mercy of the volatility and risk of an international market that it cannot control. For this reason, building up a robust domestic "brainstock" is in the interest of the local population and various levels of government. Otherwise, they risk political fracture and the economic risk of becoming dependent upon (or "addicted" to) the inflow of international talent, which may eventually dry up or change course to other, more attractive destinations, or back to the countries of origin should their economic fate improve, as we have seen with the "reverse brain drain" to China and India in recent years.

high-demand skills must nevertheless “earn” their civic and membership goods, just like anyone else, by laying roots in the society that has given them a new home and a host of new opportunities.

On balance, many of the doomsday-style predictions about trade-offs and tensions that come with an increase in highly skilled migration are inflated and exaggerated. If anything, the profile of the highly skilled as “net contributors” to job creation and economic growth lends greater fuel to those advocating selective admission through designated pathways for knowledge and talent migrants.⁴⁸ Given the concern to ensure that the domestic workforce is not given short shrift, it would be prudent to see major private- and public-sector stakeholders, including the high-technology industries that are often the most vocal advocates for, and direct beneficiaries of the turn to, skills-based admission programs, do their share and participate in discharging the fairness obligation towards the local population, for instance, by providing retraining programs or other valuable education initiatives to stimulate renewal and more varied access points to the pipelines that eventually build up the talent reservoirs of competitive states and markets.

In sum, rather than preaching either the anti-mobility stance that advocates limiting the mobility choices of those who have drawn the shorter straw in the birthright lottery, or the anti-statist position that calls for demolishing citizenship-centered structures of membership, greater promise lies in recognizing that while skilled migration is not a zero-sum game—neither among different streams of migrants, nor between sending and receiving countries, nor between long-term investment in local populations and short-term gains from fast-tracking international talent—the fact remains that the costs and benefits of highly skilled migration are unevenly distributed, both *within* and *across* jurisdictions. To address these real and pressing challenges, we will require both political will and creative visions for our collective life as members of viable political communities in the twenty-first century.

Another measure to offset the inequalities built into selective mobility regimes would be to insist that the core benefits that make human capital the centerpiece of these new competitive migration regimes—including the knowledge, innovation, and experience gained by the infusion of local markets with international talent—should be diffused more fairly and consistently to the various communities to which the highly skilled belong. The underlying commitment is to greater freedom of mobility for individuals (rejecting calls for making the international migration system even more

⁴⁸ In the United States, studies have focused on the economic impact of foreign-born STEM students trained in American universities, establishing that they have made disproportionate contributions to the creation of new jobs for domestic workers, patent production, and research and development in both industry and university.

restrictive than it is today) while at the same time minimizing the unfairness or adverse effects. These kinds of responses strive to balance the values of freedom, fairness, and community intertwined in this debate, and to articulate the distributive matrix of opportunities and responsibilities affecting mobile and immobile segments of the population, countries of origin, and admitting nations, all of which are operating in a more closely interconnected world.

9.3 Eroding the Ideal of Equal Citizenship

Immigration is not just about crossing borders; it is also about entering communities. If having extraordinary talent or performing strongly on a point-system grid will come to signify the new hard-to-attain gold standard for allotting access to membership for those not born as citizens, then by process of osmosis of ideas and practices we may eventually witness its impact stretch and expand to other realms of decision-making about “who belongs,” and according to what criteria. It is one thing for a country to legitimately seek to draw in the best and brightest, or to fast-track in the visa line talent migrants of the caliber of Russian-born star soprano Anna Netrebko (the recipient of expedited Austrian citizenship on the basis of her exceptional artistic merit), or to draw scientific genius so as to strengthen a country’s research institutions and facilities. It is quite another to turn merit and extraordinary talent into a core criterion for admission and settlement. It is in this regard that the still nascent move from selecting-by-origin to selecting-by-merit poses significant challenges, both philosophical and applied.

The surge in selective migration also alerts us to a deeper transformation, one that cannot be easily averted even if we miraculously manage to address the multiple dimensions of the fairness argument discussed above. At issue is the potential eroding or diluting effect of bringing market-valuation of talent and exchange into assigning and allocating “membership goods”—be they an entry visa, a residence permit, and ultimately, citizenship itself. As Michael Sandel powerfully argues, this kind of objection (which he refers to as “corruption” in the moral sense) focuses on “the character of the goods themselves and the norms that should govern them.”⁴⁹ The global race for talent clearly privileges those who have perfected and honed their skills. It does not reward raw talent per se, but captures instead elements of determination, hard work,

⁴⁹ The distinction between fairness and “corruption” is drawn from Michael J. Sandel, *What Money Can’t Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Girous, 2012), pp. 111–13. Debra Satz, too, emphasizes the importance of evaluating not only the logic that governs the distribution of certain goods, but also the social and political relationships that such goods may sustain and support. See Debra Satz, *Why Some Things Should Not be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010).

and adaptability, traits that some countries' point systems directly reward.⁵⁰ This model vision does not stand in tension with perfectionist conceptions of citizenship, but it does pose serious hazards to democratic and egalitarian notions which at least formally assign membership to individuals *irrespective* of how innovative, talented, or accomplished they may (or may not) be. The emphasis on more calculated interpretations of membership thus sets talent-for-citizenship apart from more ideational understandings of membership and belonging. Thinking about citizenship as a multilayered "bundle" of rights, identity, and legal standing, it becomes clear that how (or based on what criteria) people become members of the political community is a crucial question with far-reaching ramifications for the individuals involved and even the very future of citizenship as grounded in social and political—and not merely market—relations. **This makes the critical study of the transition from origin to merit ever more vital.**

9.4 Concluding Remarks

At present, as I hope to have shown, the vigorously competitive global race for talent offers an exception to an otherwise punitive and increasingly restrictive regime of tightly regulated mobility across borders. Even if the "huddled masses yearning to breathe free, the wretched refuse of your teeming shore"—immortalized in Emma Lazarus' *The New Colossus*—wanted to relocate and start afresh in America (or any other symbolic land of immigration), they would be disheartened to learn that promised golden gate is increasingly closed shut. In such a world, in which mobility remains difficult to achieve, the promise of acquiring access to and membership in a well-off society is a major draw, especially for those coming from a teeming shore. Contrary to the predictions of postnationalists and others suggesting the imminent erosion of borders and bounded membership, it is precisely the security and dignity of membership that makes the talent-for-citizenship exchange into an opportune tool used by the talent-hungry nations in their competitive interjurisdictional scramble to attract and retain the best and brightest.

To their credit, selective migration regimes are officially color-, race-, gender-, and national-origin blind, which is not a minor point given the exclusionary history of world migration. However, the global race for talent is not stratification-free. It reflects a vision of an ideal citizen who is creative and contributory, who has been able to maximize her talent and turn herself into a

⁵⁰ The distribution of raw talent and economic conditions into which one is born can also deeply affect the ability to gain education later in life, and hence skills-based migration can be seen as correlated to, although not the cause of, such larger patterns of inequality.

“net benefit” for her new society. If we think of immigration policy as a porous membrane that in part reflects and discloses the qualities a polity values in its members-to-be, then it tells us something important about the state of citizenship today and about our collective identity. It demonstrates just how far we have gone down the path toward a winner-takes-all society, even at the immeasurable risk of eroding our increasingly fragile understandings of citizenship that are still infused (at least in theory if not always in practice) with ideals of democracy and equality, not just power and prowess.⁵¹

While we cannot read the tea leaves of the changed landscape of citizenship, we can sketch the contours of the dystopian future to which it could potentially lead: a neo-mercantilist world in which the rush to fast-track prized recruits undercuts other important commitments. In this dystopian future, the specter rises of political relations morphing into more calculated transactions (much like processes of stratification in other spheres of social life), subtly yet persistently undercutting the commitment to on-a-par membership that has been at the heart and soul of our modern democratic, civic republican, and liberal conceptions of citizenship. Fortunately, this is not yet a *fait accompli*. Forestalling it further, however, will require many brave voices objecting to and pushing back against the totalizing impact of turning human capital into make-or-break criteria for cross-border human mobility. The matter is neither beyond human control nor immune to resistance. There is no reason, for instance, to assume a priori that skilled migration streams are not compatible with other justifications for migration. Each has its own central guiding principle. Family reunification, for example, takes into account the human dignity and value of exercising the right to family life.⁵² Humanitarian admission is grounded in ethics and a sense of our shared humanity and vulnerability, and specifically in the baseline legal obligation of non-refoulement as codified in the Refugee Convention. Temporary migrants are increasingly recruited to do the necessary but often difficult, degrading, and dangerous (the infamous 3D categorization) work that the local population is loath to do, at least so long as it is accompanied by meager pay and tarnished cultural value. The highly skilled fill a different niche: that of accumulating the nation’s human capital and the innovation,

⁵¹ For staunch critiques of these internal transformations of social citizenship and the imbalances of power in the American economic and political system, see e.g., Margaret R. Sommers, *Genealogies of Citizenship: Markets, Statelessness, and the Rights to Have Rights* (Cambridge: Cambridge University Press, 2008); Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics: How Washington Made the Rich Richer—And Turned Its Back on the Middle Class* (New York: Simon and Shuster, 2012).

⁵² In Europe, this value finds explicit expression in Article 8 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. States have at times resisted this jurisprudence or tried to find ways to limit its impact, but the obligation remains valid and enforceable.

creativity, and growth that are presumed to come with it. While they may partly overlap and intersect, these different streams serve different purposes and follow distinctive logics. There is no principled reason to presuppose that any of these, standing alone, can respond to the full spectrum of human motivations for mobility, nor to the range of pluralistic demands and values that the modern state is expected to respect. None of these migration streams ought to be given priority or exclusivity. They can (and should) operate side by side in a negotiated *modus vivendi*.

The major risk lies elsewhere. Except in Lake Wobegon, the slide toward a vision of society where “all are above average” means that some will be left behind, if not completely outside, the new market-oriented boundaries of membership and belonging.

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