Dr. Patrick Weil

Director of Research at the National Center for Scientific Research (*Centre national de la recherche scientifique*, C.N.R.S.) university of Paris 1-Sorbonne (France).

Immigration Policies in developed countries: A Comparative Approach (Europe-North America)

At the beginning of the 1970s, it was still relatively easy to characterize the immigration experiences of the countries of the transatlantic community: Canada and the United States of America were countries of immigrants; France had a tradition of large scale immigration since the end of the nineteenth century, while Belgium, Germany, the United Kingdom, and the Netherlands became countries of immigration after the Second World War; Greece, Ireland, Italy, Portugal and Spain, on the other hand, were seen as traditional countries of emigration.

In 2000, however, all these countries are host of the permanent settlement of immigrants, regardless of their past histories. During the past two decades, the countries of Europe and North America have seen record levels of immigration. Even the traditional immigration countries, such as the United States and Canada, have been ill prepared for the new immigration. They last experienced the current volume of movements in the early 1900s and have seen a shift from the heavily European migration of earlier generations to the mostly Latin American and Asian migration of today. In Europe, the time has come to compare and evaluate immigration policies in order to facilitate the harmonization envisioned by the Amsterdam Treaty. Until now, cooperation between EU Member States in the fields of asylum and immigration policy has taken place on an intergovernmental basis: first completely outside the community structure; then, since the Maastricht Treaty, under the Third Pillar (which governs matters of Justice and Home Affairs). Apart from three important treaties (Schengen Agreement, Schengen Application Agreement, Dublin Convention), most of the decisions taken in these frameworks were non binding and had limited impact on national immigration policies. The Amsterdam Treaty transfers important areas from the Third Pillar to the Treaty Establishing the European Communities (TEC) by creating a new Title on Visas, Asylum, Immigration and Other Policies Related to the Movement of Persons. Article 73i mandates that a vast program of measures be adopted by the Council in the next five years on immigration matters, such as 'measures aimed at ensuring the free movement of persons, directly related flanking measures with respect to external border controls, asylum and immigration, other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries. The recent European Union summit in Tampere has addressed a wide range of migration issues and has called for further harmonization of

policies as well as improved management of migration flows. The European leaders also reiterated the need for their countries to work more effectively with source countries of immigration to reduce emigration pressures while, at the same time, attending to the integration of legal immigrants into European society. In this context, it seems increasingly necessary to identify the convergences and disparities of national immigration policies, to understand better the factors and the environment of migrations and to think about possible common policies and best practices suitable for transference to other countries.

I) the States Effective Actions and the Difficult Decision to Emigrate

Having originated primarily in developing countries, immigrant populations tend to choose developed countries as their destination : the last figures from the United Nations show that in 1990, 38 percent of 120 million migrants in the world were concentrated in the United States (16 percent), and in Europe (22 percent) and new migrants tend to settle in regions of the host country where immigrant populations are already concentrated. (US Commission on Immigration Reform,1995, Guillon, 1996).

As a large part of these settlements is the result of developments which were not predicted and which are viewed as unwanted - the permanent settlement of what were meant to be temporary workers or arrival of new migrants - it is received wisdom now generally believed that the countries of the North face the same risk with respect to immigration : "uncontrollable" movements of people fleeing the poverty - stricken South, and additionally, in the case of Europe, a vast movement from the East to the West. This common perception of an ever-increasing immigration pressure is often reinforced by some theoretical analysis : Alfred Sauvy, a noted French demographer, wrote in " Richesse et Population " (Sauvy, 1943) that "the general Laws of migration perfectly explain immigration movements in the last few years. Migration is a phenomenon which functions like 'communicating vessels' " (Le Bras, 1995). In this perspective, Immigration flows are the product of self-regulation between developing countries with high rates of population growth - which send migrants- and developed nations with little or negative population growth which attract them. With projections of population growth in the Third World serving as an ever-present warning, the common perspective on the future of North-South relations is often dominated by visions of a massive and unavoidable movement of Africans or Asians towards Europe, of Latin Americans or Asians towards the United States. Logically the State cannot do anything about that.

More recently, State's inability to control migration has also been emphasized by some political scientists : in linking the European examples of Germany and France to the U.S., Hollifield (Hollifield, 1992), for example, argues that a mixture of political and economic liberalism explains recent trends in the immigration phenomena : the strength of the market explains why States are unable to control entry, while

the rise of political liberalism explains why a set of human rights are granted to illegal immigrants and the extreme difficulty involved in deportation, even when stronger laws allow such procedures.

In what follows, I suggest that common views largely exaggerate the limitations faced by developed countries in controlling and regulating migration. Implicitly, such perspectives posit a crude dichotomy: either States have completely unrestrained authority to treat non-citizens as they wish (to deny them entry, to deny them social and economic rights in the country, to expel them at will), authority of a sort which arguably existed before World War II, *or* States are entirely powerless in matters of immigration control. The situation is in fact a good deal more complicated than this. The range of international agreements and international institutions which exist today to protect individual rights have limited, to a degree, States ' freedom of mobility in immigration policy. These agreements have been largely internalized in post-war domestic legislation in Europe and in the United States, and they create the limits of the States' capacity to limit immigration. Yet, within these limits, a subtle process has occurred in which States have learned to formally respect these international requirements while finding new policy responses to regulate migration. A historical survey of immigration policy's evolution in Western states demonstrates that public policy has enjoyed marked success in precisely pursuing that aim which is said to be unattainable: limiting the entry of migrants. It suggests, in fact, that the State matters.

If the theorists of the "communicating vessels" were right, both the Chinese and the Indians would long ago have distributed themselves harmoniously on the surface of the globe. While it is true that the 120 million legal immigrants, refugees, asylum seekers, temporary workers and unauthorized workers living outside their country of origin would - taken together - constitute the world's tenth largest nation, the actual question is not how many, but rather how few migrants decide to move to industrial countries (Martin, 1993).

Those who emphasize the strength of the labor market's attraction give little consideration to the psychological component of the decision to immigrate, which is therefore subject to a certain level of inertia. To argue otherwise is to ignore the emotional and cultural cost of emigrating : leaving one's family, one's village, and one's country is never easy. The vast majority of the world's population does not even consider migration as a possibility (Massey & alii, 1993).

With respect to the demographic/economic approaches described above, one needs only to notice infinitely more Africans live in conditions of extreme poverty than try to migrate to the North. One can also compare the migration forecasts immediately during the collapse of communist regimes of Eastern Europe and USSR with the relatively limited number of immigrants that actually did leave these countries. In 1991, many Western observers were deeply concerned about the potential destabilizing effects of a flood of immigrants brought about by economic recession and ethnic conflicts in the countries of the former Soviet Union. François Heisbourg, director of the International Institute for Strategic Studies in London predicted

in 1990 that " economic and even environmental prospects in Eastern Europe will play a key role in provoking population movements to the prosperous West " (Heisbourg, 1991). Jean-Claude Chesnais forecasted in 1991 that the most probable scenario after the break-up of the Soviet Union would be the following : " If one considers the worsening of the economic crisis and the increase in political tensions, one can expect in the future more or less uncontrolled waves of departures. " (Chesnais, 1991[1]). Since 1989, only the civil war in the former Yugoslavia has been a source of a important migration movements ; 692 500 of refugees have left, mainly for Germany (309 449), Sweden (76 189), Austria (55 000) and Netherlands (42 253)[2]. It is important to note that during the twentieth century in Europe, only major civil or international wars have provoked anything approaching as a massive and sudden movement of population across borders). It is only the fear for one's life provoked by civil war, an internal revolt, a collapse of a government, or a nuclear catastrophe in a near by country, and the resulting hope in the possibility of finding a safe haven, that could lead to such massive exodus.

Concerning Russia, a study by Robert Brym and Andrei Degtyarev (Brym & Degtyarev, 1993 ; Helmstadter, 1992) in October 1992[3] confirmed that 6.7% declared their intention to temporarily or permanently emigrate in the near future to one of the developed countries in the West. In a previous study in February 1991, Robert Brym evaluated the emigration potential of Russia at between 4.75 and 8.90 million, but he prudently added that " whether or not this potential is realized depends in part on Developed States' willingness to accept immigrants "(Brym, 1992).

The cost of emigration is further increased when countries of destination develop restrictions concerning the entry of immigrants and put legal or repressive barriers in place, thereby considerably increasing the risk of any attempt to migrate.

First, a look back to the 1960s reminds us that in Western Europe, for example, immigration rates peaked as a result of the overlapping interests of industry, and the governments of the labor-exporting and labor-importing countries. During the same time period, however, restrictive migration-flow policies in nations that were also experiencing rapid economic growth (such as Japan), and, inversely, in nations with a high emigration potential (such as the Soviet Union), demonstrate the dramatic impact that such policies can have on migration (Dowty, 1987). In Europe, when the convergence of interests mentioned above ceased to exist, the political decision to stem the flow of foreign labor proved to be relatively effective (Schain, 1995).

Furthermore, data demonstrate the efficacy of more recent governmental actions. The article 16 of the German Basic Law concerning was right of asylum was approved by CDU, CSU, FDP and SPD, the main

---

[1]) For the opposite scenarios, see OECD- SOPEMI (1990).
[2]) Source: UNHCR, 1994
[3]) based on a telephone poll conducted among 988 residents of Moscow

German political parties on December 6, 1992, voted by the Bundestag on May 26, 1993 and instituted on June 23, 1993. Previously, the 1949 Basic Law guaranteed the right of asylum for any political persecuted person as a subjective right *(subjektives öffentliches Recht)*. It meant that the German State had to take seriously the application of any foreign individual who applied for the exercise of that right (Ablard & Novak, 1995). The new art.16a of the Basic Law 1creates the notion of two kinds of safe countries: No foreigner can benefit from the art.16a protection if he or she has the nationality of a member State of the European Union or of a State where there is no political persecution or inhuman treatment (Art.16a $3), or if she or he arrives in Germany from another member State of the European Union or another third State, as defined by the law, in which the application of the 1951 Geneva Convention and the European Convention on Human Rights is guaranteed (art.16a, $2). Austria, Czech Republic, Finland, Norway, Poland, Sweden and Switzerland have been designated safe third countries for the purpose of the law, permitting Germany to be " encircled" by safe countries (Ablard & Novak, 1995).

This reform has led to a decrease in the number of asylum applicants from 438,200 in 1992 to 127,200 in 1994, 104,353 in 1997 and 95113 in 1999.

In France, the Government introduced, in July 1974, a ban on the migration of foreign workers. Hollifield argues that this decision only had a limited effect on immigration, since the decrease in immigration of full-time workers was compensated by an increase of inflows of family members, refugees, seasonal workers, and illegal migrants. In fact, the number of foreign workers -the only group affected by the decision to stop immigration of unskilled non European workers ban of 1974- immigrating into the country fell from 174,000 in 1970 and 132,000 in 1973 to 24,388 in 1993 (of which 15,796 were residents of the European Union.) Regarding immigration by the families of foreign workers, in 1974, the level was approximately 85,548 in 1971, 79009 in 1972 and 78 068 in 1973. This dropped to 63,000 in 1976, 58 683 in 1977 and 45 688 in 1978. The data were 36 949 in 1990, 35 625 in 1991 and 32 665 in 1992. In 1993, the government of France decided to increase restriction to family reunification. The new law rightly denied access to members of polygamous families ; the legal immigrants who previously were required to have lived in France legally for one year before applying for their family reunification are now required to have spent two years in France before receiving the same privilege ; and the application must include all the children in the family. Immigration of families of foreign residents has dropped to 20 646 in 1994 and to 14 360 in 1995. It has reached 21 690 in 1998.

A similar policy effect could be observed in asylum policy. In the 1980s, France was confronted with an increase in asylum requests, from 22,000 in 1983 to 61,000 in 1989. In 1989, the Government decided to increase the administrative resources of OFPRA, the institution in charge of treating the applications for asylum and to recruit new judges in order to multiply the number of courts of appeal; the delay of treatment of the application dropped from three or four years to six months, including the appeal. In 1991, the applicants for asylum had their temporary labor permit withdrawn : they no longer had the right to work

during the application process period : as a result, between 1989 and 1994, the number of asylum requests decreased by 56 percent (from 61,372 in 1989 to 28 873 in 1992). In 1999 the data are 30907.

In Great Britain, the Commonwealth Immigrants Act of 1962 restricted the entry of Commonwealth immigrants for the first time on the basis of a labor voucher scheme. To enter the United Kingdom, Commonwealth citizens had to obtain one of three types of labor vouchers. The 1965 White Paper abolished vouchers for unskilled workers and reduced by more then half the vouchers allocated to skilled workers (Hansen, 1997, chap.5). The effect of these two actions was to decrease arrivals of workers from 57,700 in 1960 or 136,400 in 1961 to 28,678 in 1963 (the first year of full implementation of the 1962 Act) and 5,141 in 1966 (the first year of full implementation of the 1965 White Paper)(Crowley, 1995).

The 1994 reform of the procedure for asylum seekers in the United States has also produced clear results : the number of applicants has dramatically decreased in 1995, the first year of full implementation of the reform.

These facts run counter to theories which emphasize the declining ability of governments to be effective when they pass restrictive legislation. As Stephen Castles and Mark J. Miller have already noted, the different theories of immigration which exclude government policy as a central factor in explaining the number of immigrants do not stand up to the facts (Castles & Miller, 1993).

Nonetheless, despite the States' documented success, public opinion is unconvinced by the results, in large part because it is wedded to a pre-war belief in complete State autonomy in immigration policy. While the State retains the formally unfettered right to determine which foreigners may enter its territory and acquire its citizenship, developments since the War have partially limited this prerogative. During the last twenty years, the liberal democracies have incorporated these constraints and adapted immigration policies to international norms.

II) Nation-states and Immigration policies : the three historical stages of a convergent evolution.

The world is divided into around 190 nation-states (186 members of the United Nations and a few others). These nation-states are defined by the territory they control and the population to whom nationality of the state is attributed. Each nation-State, in effect, includes a small percentage of the human race and excludes the remaining large majority of the world population. This organization, this fundamental split between nationals and aliens, is at the core of the definition of the issue of

" international migration. " Therefore, by definition, each State defines its contacts with foreign individuals through the elaboration of rules of access to its territory and to its nationality (Plender, 1972, chap.1 and Aleinikoff, Martin, & Motomura, 1995, Chap 1).

1) The autonomy of the state in determining the Immigration Policy

Theoretically, if a State wishes to stop immigration, to deport every immigrant, or to block all forms of naturalization, it can do so. In practice, no State has gone to such an extreme, but the principle of sovereignty has nonetheless justified a complex of formal and informal controls on international migration.

Control of aliens has always existed in the nineteenth century United States (Neuman, 1996), as in the nineteen century Europe (Fahrmeir, 1997). The autonomous power of the federal State was affirmed by the Supreme Court which, in the opinion of an unanimous decision in *Chae Chan Ping v. United States* (1889), explained that the power of the US government "to exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory is to that extent an incident of every independent nation. It is part of its independence."(Neuman, 1996, p.119).

The degree to which this control was exercised has varied greatly throughout history. At the end of the nineteenth and in the beginning of the twentieth century, when the flow of immigration became massive in immigration-oriented countries such as the United States and France, means of control were hotly debated and immigration policies developed considerably. However, in these two countries, debate has never been centered on the question of total control or the complete lack thereof ; it has always revolved around the level of control or on the means required for implementation of these controls.

. Until the Second World War, the autonomy of the state to determine the level of immigration and the means of control was almost complete. Before World War II, when the selection of immigrants became an issue in the United States and in France because of their massive arrival, the debate in the two countries was organized, broadly speaking, around two forms of control: an "egalitarian" and "universalistic" selection based on individual qualifications (physical, mental, moral, and eventually educational, involving the infamous literacy test) or a selection based on national or racial affiliation. In the US, the racialist approach gained strength in the years following the end of the Civil War (1870) and officially dominated U.S. policy from the 1920s through to 1965. Starting in the 1920s, the United States implemented a policy of selecting immigrants based on their nationality and their race. The candidate not only had to fulfill the condition of being part of a national quota, but also had to belong to a race eligible for naturalization. Furthermore, those admitted to the U.S. had to be deemed " unlikely to be a public charge ". In the 1930s when

unemployment peaked, these national quotas were never filled, despite the needs of hundreds of thousands of European refugees escaping Nazi oppression (Divine, 1957). In France, the racialist approach was never publicly implemented. Following the First World War however, it was pursued in practice. During the 1920s, France repatriated "unwanted" Asian and African colonial soldiers and workers, who had been brought to the country during the War([4]). The deportations occurred at a time when France was trying to attract European Immigrants through International Conventions of Labor with Poland (September 3, 1919), Italy (September 30, 1919) and Czechoslovakia (March 20, 1920) (Bonnet, 1976); this is clear evidence that the French authorities did not want these colonial workers to settle in the metropolitan area for purely racial reasons. At the end of the 1930s, a climate of economic crisis, compounded by the threat of war with Germany and a possibility of a large scale arrival of refugees put France on the verge of adopting national and racial quota policy similar to that used in the U.S. In fact, even after the war, in 1945, the government, with the approval of Charles de Gaulle, considered implementing such a policy. However, the French civil service opposed such a project, arguing that an immigration policy based on a hierarchy of racial or national origins would too closely resemble Nazi ideology. As such, any legislation based on the explicit mention of national criteria as a basis for the selection of immigrants was stigmatized (Weil, 1995b).

The stigmatization of all forms of 'racial science' by its association with Nazi ideology was, in the West, complete. Immigrant selection or selective naturalization procedures based on racial criteria or national origin were progressively eliminated from American legislation, culminating in a full repeal of national quotas in 1965. When other European countries, followed by Japan, became countries of immigration, they were forced to respect this normative constraint and to formally avoid any eligibility tests of immigrants based on national or racial origins.

2) The rise of normative constraints on immigration laws

The world's woefully inadequate response to Nazi persecution prior to and during the course of World War II provoked the development of a new international humanitarian normative structure (Martin, 1990) which throughout the 1970s and 1980s had the consequence of placing limits on the type of restrictive control policies which could be legitimately implemented by democratic governments. As Peter Schuck has written, in the case of the United States the rise of these normative constraints produced a " transformation of immigration law " (Schuck, 1984).The rising condemnation of the racialist criteria as a mean of selection,

[4]) An official statement of the government of France declared on February 11, 1921, that 105 000 colonial workers have been repatriated since November 11, 1918; 15 000 Chinese workers were remained because of the lack of founding for their repatriation ; they were employed in the former zone of WWI battles (Bonnet, 1976).

its inability to cope with refugees situation in 1945, led to the creation of alternative legal categories: refugees, families of citizens and immigrants, and different kinds of workers : skilled workers and temporary workers.

The right to permanent residence, guaranteed by international conventions or domestic laws and granted to refugees, asylum seekers or families of foreign residents, was extended to legal immigrants and, in some instances, to illegal immigrants.

The refugees and asylum seekers :

Since W.W.II, the refugee immigration have become an additional path of access to countries of immigration such as the US and France and in countries which formally oppose it such as Germany, and later on Japan. The United States, Japan, and the European States have all signed 1951 Geneva UN Convention and the New York 1967 UN protocol on the status of refugees. Article 1 of the Convention defines a refugee as a person who is unwilling or unable to return to his or her country "owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion". The admission to a national territory remains in the realm of each State, however, and they continue to limit the right of asylum through domestic policy (Goodwin-Gill, 1983). The Convention did not guarantee that an applicant would be granted asylum if he deserved it : it simply stipulated that he would not be returned " to the frontiers of territories where his life or freedom would be threatened " (Art. 33).

Although all the countries involved in this study now recognize and claim to respect the convention, it was incorporated and it is implemented in a different manner in each of the countries.

-In France, the differentiation between refugees and other types of immigrants is not new. France received the largest number of refugees in Europe in the inter-war period, at a time when, for economic reasons, the immigration of foreign workers was prohibited. In 1938, for example, restrictions on immigration were reinforced, but at the same time the right to asylum and refugee status were formally guaranteed (Weil, 1995a). The French Office for the Protection of Refugees and Stateless Persons, created in 1952, is in charge of the recognition of refugee status. The Preamble of the 1958 French Constitution specifies that " any person persecuted on account of his actions in favor of Liberty has a right to asylum within the territories of the Republic. " Additionally, at the discretion of the state, *de facto* refugee status and permission to remain on French territory can be provided to persons who lack proof of well-founded fear of individual persecution necessary to claim 1951 convention status.

-Despite its liberal reputation and the exemption given to political and religious refugees from the main requirements of the Alien's Act of 1905 (Plender, 1972), the United Kingdom did not welcome numerous

refugees after the First World War. According to Michael M. Marrus only about 15,000 Russians and 1,000 Armenians migrated to Great Britain (Marrus, 1985). Therefore, it was only in reaction to the refugee crisis of 1938 as well as in compensation for the restrictionnist policy towards Jews who wanted to settle in Palestine that Great-Britain cautiously opened its doors (Holmes, 1988). At the end of 1939 about 50,000 refugees from the Reich and 6,000 from Czechoslovakia had received asylum on the territory of the United Kingdom, and London was the seat of the Intergovernmental Committee on Refugees created in 1938 after the Evian conference. Since that moment, Great Britain has involved itself in international action for refugees and participated actively in the elaboration of the 1951 Convention. Great Britain implemented the convention formally, choosing its universal option (" in Europe and elsewhere ") as a nod towards liberalism.

-Founded in 1949, the Federal Republic of Germany far surpasses the restrictions of the Geneva convention which it signed in 1951. The inclusion of a provision related to asylum in the 1949 Basic Law was seen by its drafters as an important commitment to human rights in the aftermath of the War, symbolizing the rejection not only of national socialism but also responding to political persecution in Eastern Europe (Kanstroom, 1991). Art. 16 paragraph 2, sentence 2 of the German Constitution provides that " the politically persecuted shall enjoy asylum ". Three kinds of applicants, and therefore refugees, are recognized in the German system (Neuman, 1993): " Article 16 " refugees, Geneva convention refugees, and the *de facto* refugees who lack individual proof of a well-founded fear of persecution needed to obtain the Convention status but who are nonetheless permitted to remain on humanitarian grounds, under the implicit rule of " **non-refoulement** " imposed by art. 33 of the 1951 Geneva convention.

-In the US, it was only after the Second World War that different statutes for refugees and asylum seekers were progressively introduced (Zucker & Zucker, 1992). This was partly a response to the desire to maintain an overall restrictive approach to immigration while respecting the lessons of the thirties and of the War and the expression of the fight against Communism (Breitman and Kraut, 1987 ; Robbins, 1987). The 1948 Displaced Persons Act was the first legal recognition of those fleeing persecution ; it separated this category from other migrants (Zolberg, 1995 ; Stanton Russel, 1995). However, the Act was still integrated into the system of national quotas : the entry of 205,000 displaced persons authorized by the implementation of the Act was " mortgaged " against immigration quotas of future years. After the Refugee Relief Act of 1953 created a special allotment of 214,000 non-quota visas, the 1957 Refugee-Escapee Act eventually removed the mortgaging system imposed by the 1948 Act, thereby validating a process of special admittance based on special rights of access independent of other immigrant categories and regulations. For the first time, the refugee was defined as a victim of racial, religious or political persecution fleeing Communist or Communist-occupied or dominated countries, or a country of the Middle East. This restrictive definition - i.e. excluding a large part of the World -prevailed until 1968 when Congress ratified the 1967 New York Protocol, but it is only in the 1980 Refugee Act that the substantive statutory

requirements affecting political asylum were changed so as to permit the full implementation of the Protocol (Martin, 1990). While the United States was a major refugee-receiving country between 1946 and 1980 -more than two million refugees came as refugees in that period (Castles & Miller, 1993)- the focus of its policy was clearly the fight against communism. It was only in 1980 that the United States implemented the Geneva Convention and the New-York Protocol, creating a special provision related to territorial asylum.

The United States distinguishes between two paths of access to its territory for those who seek political asylum. The first is based on the attribution of status outside of national territory. It involves a selection process by United States authorities, administered currently within the " Overseas Refugee Programs ". The second is for those who reach the United States territory and apply for political asylum on American soil (Aleinikoff & alii, 1995). Finally, the Immigration Act of 1990 includes a provision authorizing the Attorney General to grant " temporary protected status " to aliens from countries experiencing civil war, environmental disaster, or other conditions preventing the aliens' safe return (Aleinikoff & alii, 1995).

Japan acceded to the 1951 Convention in 1981, under the pressure of the international community and at a time when concern for South-East Asian refugees was high. Its refugee policy remains limited: by June, 1993, 1,009 persons had applied for refugee status and only 203 had been recognized.

Family reunification

Family unification involves two rights: the right to live within a family end, in pursuit of this right, the right to enter a given country. The former has been progressively guaranteed by international conventions and national courts. The first stage of international recognition of a right to live with one's family was the adoption of the United Nations Universal Declaration of Human Rights of December 17, 1948. It stipulated that any individual has the right to marry and have a family, which it defined as the "natural and fundamental group unit of the society and is entitled to protection by society and the State." The General Assembly of the United Nations ratified two pacts on December 16, 1966 relating to the implementation of the principles in the Declaration of 1948. In Europe, the European Convention for the Safeguard of Human Rights, signed in 1950, guarantees the right of any human being living on the territory of a member State the right to a normal family life and the freedom of marriage.

These rights, however, do not ensure automatic family reunification. In instances when family unification contravenes national values, such as a prohibition of polygamy, it is denied. The aim itself remains full of ambiguity: it can involve the merely the right to cohabitated, or it can create a claim to minimal resources (housing, income, etc.) (Lahav, 1997).

It is also important to distinguish the rights of citizens from those of legal residents. In the United States and in Europe, the right to family reunification has been guaranteed as a *de jure* right for the immediate

family of *citizens*. Although the Act of May 19, 1921 (42 Stat. 5), using a quota for the first time, limited the yearly migration from any country to 3 percent of the foreign born population of that country resident in the United States (as enumerated in the 1910 census), the quota did not apply to the children of naturalized American citizens. Section 2 (d) of the Act granted preference under the quotas to immediate family members (wives, parents brothers, sisters, children under eighteen), fiancées of citizens, resident aliens who had applied for citizenship, and aliens eligible for citizenship who had served in the armed forces between April 6, 1917 and November 11, 1918. Even the immigration Act of May 26, 1924 (43 Stat. 153), one of the most restrictive pieces of legislation, guaranteed the entry, outside the quota, of unmarried children under eighteen years of age and wives of citizens ([5]).Under the current Immigration and Nationality Act, no quotas apply to immediate relatives of US citizens - spouses, unmarried children under 21 and, if the applicant is over 21, parents as well (Aleinikoff, Martin & Motomora, p. 125). In 1977, the US supreme Court stated that "the federal government should not lightly force an American citizen to choose between family life and remaining in the United States (Neuman, 1996, p. 130)."

There is something of a difference in European and American approaches to family reunification. French and German courts have supported the right to reunification for families of legal residents in their legal decisions in the last twenty years. The French *Conseil d'Etat* recognized it in a *Groupement d'Information et de Soutien aux Travailleurs Immigrés* decision of 1978. In Germany, the Federal Constitutional Court has extended the protection of the family provided for by Article 6 of the Basic Law ([6]) to foreign residents, as for example in 1987 (Motomura, 1995). In both countries, alien residents who wish to be joined by their family members must satisfy three requirements : a) legal residence b) sufficient living space c) means of financial support. In the United States, by contrast, family reunification remains a national preference, rather than a right. With respect to legal immigrants, the 1952 Immigration Act introduced preference for families of such immigrants, within the national origin quotas. Since the repeal of quotas in 1965, family immigration has become the core of legal immigration in the United States. In practice, however, the difference is not terribly significant, as American courts would likely defend family unification were Congress to suddenly end the practice.

A quasi-ban on forced return of legal residents

Finally, a de facto right has emerged in the 1970s. It is increasingly recognized in the West that the categorization of immigrants into various groups (temporary, permanent, refugee, guest workers etc.) has had little impact on the actual duration of the stay. Before the Second World War, legal immigrants were

[5]) changed to to under twenty one for children by the Act of May 29, 1928 ; husbands of citizens by marriage prior to June 1, 1928 were added by the Act of July 11, 1932.
[6]) § 1 : Marriage and family shall enjoy the special protection of the state. § 2 : The care and upbringing of children are a natural right of, and a duty primarily incumbent on, the parents.

often forcibly returned to their countries or territories of origin at the expiration of their residence permit and/or when economic recessions intensified competition for jobs. This occurred in France, in 1934-35, when ten of thousands of Poles were forcibly repatriated during the peak years of the economic depression (Ponty, 1985). It also occurred in the United States, a country in which legal immigration traditionally leads to naturalization, when Mexican workers who migrated under the Bracero program were repatriated in 1954 (Calavitta, 1992).

These policies have been increasingly viewed as illegitimate since World War II, even if the learning process has proceeded at different pace in different countries.

In France, the ethical and practical impossibility of repatriating "unwanted" foreign workers by force was recognized when President Valery Giscard d'Estaing attempted to forcibly repatriate the majority of legal North African immigrants, especially Algerians, between 1978 and 1980 (Weil, 1991). A strong reaction from the political Left, the labor unions, the RPR, and the CDS, insured that the initiative failed. Giscard's idea of repatriation also provoked a vivid reaction from the French Administrative Supreme Court (the *Conseil d'Etat*). In its decision, the Court, while primarily referring to republican values and constitutional principles, also invoked the damaging effects of such a policy for France's image abroad. The force of this rebuttal caused the government to back down. In June 1984, the French Parliament passed an Act which eventually guaranteed the permanent residence for 99% of the foreign workers living legally in France, and their families, regardless of their origin.

In Great Britain, the 1948 law granted not only the right of permanent residence but also full citizenship to many " unwanted " members of the Commonwealth even before that as soon as they set foot on British soil. It is perhaps due to this fact, and to the accompanying recognition that its colonial 'immigrants' were there to stay, that Great Britain restricted immigration beginning in 1962, much earlier than other European countries.

In Germany the result was similar, although the evolution occurred in a different manner. The courts were at the center of a policy revolution which has not been readily admitted in official discourse. Officially, the Government of Federal Republic of Germany maintained that it is not a country of immigration, although it had recruited a large number of foreign workers, from the 1950s until the 1970s, to support the nation's rapid economic expansion. These immigrants were officially defined as temporary workers (*Gastarbeiter*) who would return to their countries of origin after several years of work in Germany. At the same time, the Federal Republic favored the return to the " Fatherland " of those populations having German ancestors or, in other words, " German blood, " living in the GDR or other parts of Eastern Europe. These immigrants were automatically granted German nationality, in conformity with the conception, still dominant at the time, that the nation was defined by the ethnic origins of the German people, regardless of their geographic distribution throughout Eastern and Central Europe.

In 1970 (Miller, 1986, p.71), a Bavarian administrative court ruled that a foreign worker's stay in Germany of more than five years was sufficient grounds "to deny further residency (authorization), as each extended residency (authorization) would tend towards settlement, which ordinarily runs counter to state interests because the Federal Republic of Germany is not a country of immigration. " This decision was overruled at the federal level and, in 1972, the Federal Government stated that " the limitation of the duration of the stay of foreign employees will not be regulated through repressive measures under the law related to foreigners." The German Constitutional Court based its judgment on the Preamble of the Basic Law which recognizes and protects fundamental human rights, as well as economic and social welfare rights. The Constitutional Court drew on the Basic Law and its jurisprudence and viewed as a " spiritual-moral confrontation with the previous system of National-Socialism " (Kanstroom, 1991) the extension of the principles of the basic rights and protections of the *Jedermann Grundrechte* not only to German citizens, but also to aliens living in Germany. In 1978, the Court recognized that "an alien acquires a constitutionally protected reliance interest to remain in Germany as a result of prior routine renewals of his residence permit and his integration into German Society. In 1982, the Federal Government announced an active return policy which took place in 1983-1984 (Dustmann, 1996). Officially the number of individuals, including family members, who returned was reported to be 300 000, in their majority Turkish. But as the policy was debated during eighteen months before being implemented, it was also reported that many immigrants who would have returned anyway postponed or advanced their departure in order to secure payment for doing so (Weil, 1995, p.328) : the actual policy effect was evaluated at 133 000 departures (Höhnekopp, 1987) for a global cost of 900 000 millions Deutsche Marks. The legal foreign population in Germany declined from 4, 534 millions in 1983 to 4, 363 millions in 1984. It raised again in 1985 and in 1986 was at the same level than in 1983. The legal right for residence became a massive sociological reality.

This moral and legal constraint on the forced departure of legal and illegal immigrants provided by the international democratic community contrasts sharply with the relative liberty with which other States, which are not as responsive to the same normative constraints are still deporting legal foreign workers (Saudi Arabia in 1991, Iraq in 1990, Libya in 1984 or Nigeria in 1983).

The fact that host democratic nations are more or less forced to accept "unwanted" settlers as permanent immigrants (Turks in Germany, Koreans in Japan, immigrants from former colonies in Great-Britain and in France), has led many specialists to claim that immigration policies have lost their meaning (George, 1974). Such assumptions were based on a categorization of types of immigration according to different aims - meeting the needs of the economy, compensating for a low birth rate (Teitelbaum & Winter, 1985) or respecting the claims of refugees ; each category corresponded to an implicit duration of residency. As such, economic migration was often viewed as temporary, lasting only as long as there was a labor shortage in the host country ; political migration was linked to the risk of persecution in the nation of origin ;

and only immigration aimed at compensation for a low birth rate was by definition permanent. Such an approach has clearly been invalidated by the Western experience of immigration.

The protection of non immigrants' rights

In Europe and in the United States, the last two decades have also and finally been marked by a parallel, yet contradictory, evolution. As administrators and legislators, became increasingly concerned with illegal immigration, national courts extended the rights of illegal migrants, thereby constraining public action. Peter Schuck describes this evolution as the unfolding of "communitarian " principles grounded in the perception that individuals, societies and nations are bound to each other by " pervasive interdependencies... (implying) certain moral and legal consequences " (Schuck, 1984) for " all individuals who manage to reach America's shores, even to strangers whom it has never undertaken, and has no wish to protect " (Schuck, 1984). In Europe, the same phenomenon can be interpreted as a reaction to the scars left by the events of World War II.

The principles behind these policies emerged from different experiences : it came from the development of a practice which the US calls " extended voluntary departure ", and it applies in situations in which returning an alien, to whom asylum cannot be legally granted, to its country of origin, might threaten physical harm. The liberal states provide such individuals " temporary " refuge for an renewable or indefinite period : in the US it had been provided to Poles, Afghans, Ethiopians or Ugandans. (Schuck, 1984, p.60), in France to Algerians, Poles, Lebanese and Bosnians. Such protection is based on the legal guarantees given by the courts to aliens, and it reflects a decrease in judicial deference in questions of immigration, a move away from a period in which the US Courts considered Immigration as part of the independent and sovereign power of other branches (legislative or executive) of the US government. The power to detain or to deport an alien has been put limited by judicial system and constitutional principle.

3) The third stage of the immigration policies : multiple state responses to normative constraints.

Democratic States have learned that the immigrant's status *vis-à-vis* the host nation upon his arrival has little real effect on the actual duration of stay. Today, any foreigner authorized for legal residence has to be considered by the State as a potential permanent resident. This is not to say that all immigrants who enter will stay indefinitely, since every year there are a significant number of immigrants who spontaneously return to their country of origin" and who are often not counted by official statistics (Wyman, 1993). In any case, the weak link between an immigrant's status and the length of stay has had the important

consequence of demonstrating that policy measures that provide for temporary residence permits are largely inefficient, if not counter-productive ([7]Martin & Midgley, 1994).

As a result of the learning curve concerning the entry and the prolonged settlement of foreigners, host countries have progressively adapted their policies. Formally, three categories of immigrants are authorized to enter all European and North American countries, subject to certain legal conditions : **1)** foreign spouses and minor children of citizens, **2)** refugees and their families, and **3)** families of foreign residents. A fourth group, skilled workers, are still often encouraged. In practice, over the past decade or so, many governments have been submitted to increasing political pressure to stop immigration. This political pressure, at times highly mobilized (such as the *Front National* in France, has led governments to develop new means of restrictive aimed at limiting, through the legal windows still open, illegal and, at times, legal immigration. These attempts include employer sanctions, legal deterrence, international Co-operation, and an increase in funding for the State agencies implementing immigration policy. They reflect a continuing process of State adaptation to immigration phenomena and the evolution of jurisprudence. In certain countries, such as the US or France, policy-makers some 'legalized' illegal immigration in order to begin the process of limiting further immigration from 'clean slate.'[8]

This process of policy adaptation has occurred in very different geopolitical and institutional contexts, contexts which lead to very different policy outcomes : despite great differences in the sizes of their populations, Sweden, Belgium and Great Britain each accepted almost the same number of foreign nationals in 1993 : between 53,000 and 55,000 (OECD, 1993). Even though in absolute numbers the United States has admitted the largest number of immigrants over the past decade (Zlotnik, 1993) (welcoming 974,000 permanent immigrants in 1992 and 904,300 in 1993 for example), approximately the same number of migrants were allowed into Germany, which has a significantly smaller population. Germany (which refuses to acknowledge that it is " country of immigration ") received between 1990 and 1994 8 -10 times more new foreign registered immigrants ([9]) than France, which is seen as the traditional country of immigration and asylum in Europe. Over this period, Germany accepted 1.240.000 asylum seekers while France only received 190 000 ([10]).

---

[7]) This learning curve has not yet resulted in the harmonization of definitions. Although the European States have essentially eliminated the distinction between temporary workers and permanent workers, the U.S. still considers temporary workers to be non-immigrants. Of 21 million such non-immigrants admitted to the US in 1993, 17 million were tourists, 3 million were business visitors, and 1 million from miscellaneous groups, including 165,000 temporary foreign workers, 257,000 foreign students etc. The last category, foreign students, holds particular promise for those wishing to become permanent settlers.

[8]) In France 132,000 illegals were regularized. In the US 3.07 million were regularized under the 1986 IRCA and under the Special Agriculture Worker Program. Regularizations in Spain in 1985-1986 and 1991 involved respectively 44,000 and 105,000 persons; in Italy in 1987/88 and 1990, 105,000 and then 216,000 additional illegal migrants were declared to be legal immigrants.

[9]) Even though illegal immigration is common in the same economic sectors (agriculture, construction, confection, and services) of different countries, were accurate data on illegal immigration available, it would probably demonstrate huge differences from one country to another.

[10]) Source : SOPEMI Report Tables A.2 and A.3.

The question that remains is why these countries which have very similar formal rules in their immigration policies have different policy outcomes, despite the broadly similar problem facing them and despite the similar institutional constraints. Policy divergence, I will argue, is due to the differing cultural, historical and geo-political factors in the countries of immigration themselves, rather than to the range of policy tools available to any one country.

III) Geopolitics, Institutional Environment, and Policy Divergence

The combination of different factors described below can often help to explain why countries with the same policy orientation often cannot choose the same means of implementation and why, if they do choose similar methods, implementation produces different outcomes in different countries (Weil, 1998). The factors leading to policy divergence may be divided into two categories: (1) the geopolitical context of immigration; and (2) the influence of institutions on the policy processes.

Geopolitical context of immigration policy

The geopolitical factors that account for discrepancies in migration policy outcomes include differences in geographical situations; political cultures; specific historical interactions; and foreign policy constraints.

Often, but not always, sea borders are much easier to control than land borders. In addition, a country's position in relation to potential sources of immigration is significant. The geographical situation of Germany on the edge of Eastern Europe, more than the content of the German Basic Law, brought about the Federal Republic's transformation, after the fall of the iron curtain, into the country receiving the greatest number of migrants in Europe.

Control of immigration often involves fragmented police and justice administration, in addition to the involvement of a number of economic actors, such as employers and trade unions. Differing levels of interaction and control between the State, the market, and society, as well as values shared by members of society, can have important effects on the implementation of immigration policy.

A nation's general attitude towards immigrants also depends largely on the role immigration played in the founding and development of the society. One can differentiate between countries of immigration such as the United States, where even restrictive policy is implemented within the context of a general belief that immigration is the foundation of the society. In countries of immigration, such as France or Germany, on the other hand, the incorporation of immigrants is reluctantly perceived as a necessity or a burden. The apparent convergence of the rules and practices governing migration policy conceals widely diverging cultural perceptions of immigration that have contributed to the development of diverse policy outcomes.

Moreover, constitutional and ethical values can influence the organization of immigration policy. A good example is the right of the police to control identity through photo identification papers. The use of identity checks as means of immigration control is largely dependent on political culture. In continental Europe, identity control is viewed as legitimate, while it is highly controversial in the United States and the United Kingdom.

Another factor that has significantly influenced the legitimization of policies is historical attitudes towards refugees or immigrants (foreign or colonial). Likewise, the history of the relationship between the host country and the countries of origin can strongly affect immigration policy. One can cite as example relations between Germany and Turkey and between France and Algeria.

Finally, migration policies inevitably influence international relations. Unless they are naturalized, immigrants have the citizenship of a foreign State (and they often retain it after naturalization), and are subject to many of its laws. Migrants often come from countries with which the welcoming country has intricate and delicate relations, e.g. common borders, historical allies or enemies, former colonial ties. Migration issues are often included in a large set of bilateral issues that induce bargaining and/or are treated in a multilateral system that creates normative constraints.

Institutional context of immigration policy

The other set of constraints concerns the effect of politicization on the policy-making process, the process of agenda-building, administrative and legal traditions, and structures and systems of resource allocation between government agencies.

Immigration involves national identity and human rights. Thus, by definition it is an issue that lends itself to politicization in one form or another. Whether or not immigration becomes a political issue depends in large part on the organization of the political system, the specific modes of agenda building, and the context of partisan competition.

Immigration policy also varies from State to State according to the procedures for decision making and execution. For example, in France and the United Kingdom, where party discipline is high, it is very easy for the government to pass a law. In contrast, in the United States, with its system of checks and balances, rivalry between the White House and Congress, and conflicts within Congress itself, considerably slow down the legislative process and require frequent compromise. Therefore, there is a time lag between the emergence of a problem on the political agenda and the development of a possible solution, and the implementation of a solution.

Finally, the process of policy implementation is crucial: does implementation depend on fragmented and/or competing administrative agencies or on unified ones? Does it depend on local or on national agencies? Can national or constitutional courts block legislation, effectively slowing down or totally preventing implementation?

For all these reasons, the possibility of successfully implementing immigration (control) policies depends mainly on their fit and on their adaptation to particular constraints. These disparities between situations in different countries must be kept in mind when identifying possible best practices.

But all these differences should not prevent us to compare experiences and best practices. There is an increasing convergence of migration issues to be addresses by western States, and an increasing convergence of solutions adopted. All of them respect the three main avenues open to legal migration (refugees, families, and workers) ; all of them try to fight against illegal migration and abuses of procedures. No one can say: " I have the solution. I know how to deal with immigration". Countries cannot manage immigration through unilateral policies alone. Effective management requires co-operation and co-ordination with other receiving states and with the source countries of migration and exchanges of know-how.

. IV) *Comparison of immigration policies and best practices*[11]

North American and European countries have experienced substantial levels of legal and unauthorized immigration in recent years. There are three avenues of legal immigration : refugees, family members, workers. For all of them, the prompt, case by case consideration of application is preferable to any group or quota system. 2. In preventing illegal migration new strategies (co-development, economic prevention, co-operation between receiving countries) should receive preference over any repression strategy.

1. Legal Immigration (refugees, family members, workers)

a) Policies with Regard to Persons in Need of Protection[12],

All western countries have ratified the 1951 Geneva Convention, supplemented by the 1967 protocol on refugee status. Art. 1A (2) provides that a refugee is 'any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or

[11] Some of the further developments have been made in (TLC, 2000) and in its background paper (Weil, Weidlich & Dufoix, 2000).

[12] To avoid confusing terminology, in this text, only persons coming within the scope of the 1951 Geneva Convention will be called refugees. The term of persons in need of protection is meant to include all other categories which may obtain some kind of humanitarian residence status in the examined countries. As for the diversity of reasons for and shape of such status, see below. Asylum seekers are persons whose application for asylum is still pending. The term 'recognized refugees' will be used to address persons who have been recognized as refugees under the 1951 United nations Convention and/or its 1967 Protocol by a State.

political opinion, is outside the country of his nationality and is unable, or owing to such fear unwilling to prevail himself of the protection of that country[13].'

But aliens in Need of Protection, may be granted either Convention refugee status, constitutional asylum[14], or temporary protection as a victim of a war or civil war situation. Asylum seekers may also obtain a precarious status and may be simply spared from removal for a certain period of time if there is a *de facto* or humanitarian prohibition against deportation. The decline of regular migration opportunities and the simultaneous outbreak of humanitarian crises such as the war in ex-Yugoslavia contributed to the significant increase of asylum seekers in Europe from the mid-1980s to the beginning of the 1990s. The numbers of asylum claims lodged in the most important receiving states[15] in western Europe reached a peak of 692,380 in 1992, compared with 432,483 in 1990, 224,424 in 1988, 197,778 in 1986 and 73,700 in 1983.[16] Similarly, in the United States and Canada, asylum applications rose from 31,091 in 1983 to 172,928 in 1993.[17] Since regular migration opportunities have sharply declined, persons who do not possess skills in demand, substantial amounts of capital to invest or close family links may use asylum procedures to remain legally in the receiving country in order to gain access to employment or social welfare benefits. In 1993, for example, of 685,000 asylum applicants in Western Europe, only 45,000 obtained refugee status, while an additional 178,000 were granted another type of status. One can not overlook the fact, however, that a considerable number of asylum applicants do not fit into any of the above mentioned categories, but rather flee economical deprivation.

The reaction of EU Member States to the overwhelming demand for asylum has been two-fold: on the one hand, they thoroughly reviewed their legislative, administrative, and even constitutional provisions on asylum; on the other hand, there has been a shift towards more temporary solutions with the aim of preventing persons in need of protection from gaining permanent residence status. The idea behind this shift has been that protection should only last for the duration of the actual global risk. The United States

---

[13] There are some obvious differences in the interpretation of the scope of the convention : One striking example concerns the agent of persecution. While there is a consensus that persecution may originate from agents other than the state, in most Member States persecution must be imputable to the state. There is a need for harmonization of the substantive criteria for asylum, which should not, however, result in a lowering of standards for granting asylum. At the European level, these differences will probably be reduced in the future by decisions of European Court of Justice.

[14] In some countries, besides the 1951 Convention status, there exists a constitutional status for persons fleeing political persecution. In Germany, for example, Article 16a Basic Law (a replacement of the former Article 16 (2)), in its first sentence, guarantees asylum to all persons fleeing political persecution (*politisch Verfolgte*), a notion which has been defined by the Constitutional Court as closely based on the terms of Article 1 A of the 1951 UN Convention. The Preamble of the 1958 French Constitution specifies that any person persecuted on account of his actions in favor of liberty has a right to asylum within the territory of the French Republic.

[15] the statistics refer to Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Spain, Sweden, Switzerland, U.K.

[16] IGC (Secretariat of the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia), *Report on Asylum Procedures - Overview of Policies and Practices in IGC Participating States*, September 1997, p. 402.

[17] Ibid.

has also amended its asylum law along these lines in recent years. These changes include, among other things, the following measures. First, a one-year deadline for asylum applications has been established. Second, at ports of entry, asylum seekers may be deported without hearing if they do not state that they are seeking protection from persecution immediately upon arrival. Third, individuals who have been convicted of even relatively minor crimes may be returned without consideration of the risk of future persecution.[18] Fourth, an alien may be returned to a 'safe' third country, at the state's discretion, provided he/she wont have access to a full and fair asylum procedure there. Finally, expedited removal processing has been instituted for all illegal and undocumented entrants.[19]

The practice of granting a temporary stay on humanitarian grounds, which was previously only informally applied in many countries, has become more formalized. In some countries, temporary protection schemes are not only meant to fill the protection gaps of the 1951 Convention, but also to bypass the traditional refugee determination system and to facilitate repatriation, irrespective of the causes of flight (Fitzpatrick, 1994).

While many have expressed concern that national legislators have gone too far by removing procedural safeguards and introducing deterrence measures, some scholars and politicians hold that the reform of asylum legislation has not gone far enough. The latter have begun to criticize the limits established by the Convention. They argue that the socio-political conditions upon which the 1951 Geneva Convention was premised have changed and question whether the Convention regime is well-suited to handle current situations of mass influx. The Convention is characterized as outdated, since it does not leave states enough room for maneuver to cope with new situations.

The withdrawal of European and North American States from the 1951 Convention system would be a very dangerous development. Such a development would undermine the international legitimacy of the Convention for protecting and assisting refugees worldwide.[20] The vast majority of refugees obtain asylum in neighboring countries within developing regions. If Europe and North America renege on their commitments under the Convention, it would be extremely difficult to persuade these countries to continue to offer refuge. Disengagement could therefore lead paradoxically to an influx of asylum seekers to Europe and America.

Admittedly, the 1951 Convention refugee definition refers to cases of individual persecution and is not adapted to all situations of mass movement. In the case of mass arrival, governments may (but have no obligation to) defer decisions on individual status for a short and reasonable period. A temporary protection scheme that prevents applicants from lodging an asylum claim under the Convention should only be applied in these cases for a brief and reasonable period. If the emergency causing the mass influx continues beyond the short and reasonable period, an individual status determination procedure should be instituted. Asylum should be granted to persons meeting the Convention criteria, and a complementary

---

[18] UNCHR, Country Profiles, U.S.A., http://www.unhcr.ch/world/amer/usa.htm.
[19] IGC-Report on Asylum Procedures, op. cit., p. 369 et seq.
[20] currently 132 States are members to the 1951 Convention; see Federal Republik of Germany, Federal Ministry of the Interior, Fundstellennachweis B: Völkerrechtliche Vereinbarungen, Verträge zur Vorbereitung und Herstellung der Einheit Deutschlands, Stand: 31. Dezember 1998, p. 317.

status should be granted to those whose return would otherwise endanger their safety. Setting a specific and short time frame for temporary protection will encourage states to cooperate in finding solutions that will permit safe return to take place in a timely manner. It also ensures that *bona fide* refugees who cannot return home are not left in limbo for unnecessarily long periods. It will also deter abuses of the new status.

b) Family reunification

In all North American and European States, family reunification has become the main path of immigration. In most of Europe, family reunification rules only apply to the so-called nuclear family, i.e. spouses and minor, unmarried children, whereas other relatives may be admitted under general hardship clauses. An alternative method is the quota system used by the United States. Under U.S. immigration law, most categories of immigrants are subject to numerical limits. As concerns family reunification, as a rule, only immediate relatives (children, spouses, and parents) of U.S. citizens are exempted from the quotas. Sponsorship of parents occurs under the additional condition that the U.S. citizen applying for family reunification is at least 21 years of age. Other family members of citizens and relatives of permanent residents are, in most cases, subject to a system of preferences. The Immigration and Nationality Act establishes four categories of family-based immigrants who are subject to an overall numerical limitation and to different ceilings for each preference, which leads to different waiting times. Within the preferences, visas are granted based on the principle of first come, first served. The number of immediate relatives is subtracted from the global level, although a certain minimum cannot be breached.[21] The first family preference includes unmarried sons and daughters of U.S. citizens, and concerns especially those over the age of 21, since offspring below this age are considered immediate relatives. The second preference includes spouses, unmarried sons and unmarried daughters of permanent residents, the third category includes married sons and married daughters of citizens and, finally, the fourth category includes brothers and sisters of citizens. In certain cases, family-based immigration operates outside the preference system, under INA ' 203 (d), which confers a derivative immigration status on the spouse and children (under 21 years of age) of each family-preference immigrant or other categories of legal immigrants[22], 'if [they are] not otherwise entitled to an immigrant status and the immediate issuance of visa under subsection (a), (b), or (c)'.[23] The numerical limits have resulted in considerable waiting periods. In the United States, in November 1995, permanent residents' spouses and minor, unmarried children, who were granted second

---

[21] INA, section 201 et seq.; see also Commission on Population and Development, *Draft: World Population Monitoring, 1997, Issues of international migration and development: selected aspects*, ESA/P/WP. 132*, 20 December 1996, p. 148.

[22] see Motomura, *The Family and Immigration, A Roadmap for the Ruritanian Lawmaker*, in: Hailbronner, Kay/Martin, David A./Motomura, Hiroshi, Immigration, Admissions, The Search for Workable Policies in Germany and the United States, Vol. 3, Oxford 1997, p. 81.

[23] (a) Preference Allocation for Family-Sponsored Immigrants; (b)Preference Allocation for Employment-Based Immigrants; (c) Diversity Immigrants.

preference visas had been waiting for more than three years, while adult, unmarried sons and daughters had waited for more than five years.[24]

Among the EU countries, Austria is so far the only Member State to have introduced a quota system that applies to family members. Every year, the federal government, with the consent of the principal commission of the National Council (*Nationalrat*), must decide the number of residence permits[25] to be granted during this period to third-country nationals, i.e. to non-EEA-country nationals who want to take up dependent employment or work as self-employed persons, to their spouses and minor, unmarried children, and to spouses and minor unmarried children of third-country nationals who do not intend to work (' 18 Foreigners Act). Several categories of employees[26], EEA nationals, and 'privileged family members[27] of EEA nationals and Austrians, as well as spouses and minor, unmarried children of these groups are exempt from the quota system if they meet certain additional conditions.

Introduced in 1997, the basic principle of family reunification within the Austrian quota framework maintains that every newly arriving foreigner must state, at the very moment of his/her request for a residence permit, that he/she intends to claim admission for his/her spouse and minor, unmarried children. A first permit, which is subject to the quota system, may only be granted if the quota for the region (*Land*) of intended settlement allows for the necessary permits to be issued to the foreigner and his/her family. If the quota is exhausted, the decision will be postponed until a future settlement regulation covers both the foreigner and his/her family. If the foreigner does not apply for family reunification right from the beginning, admission is restricted to spouses and children under 14 years of age (' 21 (3) Foreigners Act). The rules described above also apply whenever the applicant requests renewal of his permit, which is also subject to the quota system. An application for renewal is rejected whenever family members do not come under the quota. Austrian law restricts the reunification of families of resident aliens who immigrated before the new regulation of 1997 went into effect, i.e. before 1 January 1998, to spouses and children under the age of 14. The annual quota also limits their immigration.

The small number of admissions[28], considerably outpaced by the demand for entry, result in waiting periods of up to three years.[29] This is especially true because special priority is given to family members of newly arriving, highly skilled workers who are immediately admitted, and who fill up the quota for family reunification. This leads all the more to unacceptable hardship cases, since the relevant moment for establishing the age of the child is not the moment of application, but rather the moment of the administrative decision.

---

[24] see Motomura, The Family and Immigration, op. cit., p. 89.

[25] '*Niederlassungsbewilligung*', a literal translation would, more accurately, be settlement permit; however, this permit may be temporarily limited and does not imply that the foreigner is admitted for permanent immigration.

[26] certain groups of employees working for an internationally operating employer and subject to a rotation system, employees of foreign information media, artists, foreigners whose employment does not fall within the scope of the 'Aliens Employment Act' (*Ausländerbeschäftigungsgesetz*).

[27] Spouses and descendants up to the age of 21 and beyond in case they are maintained by the alien resident, and ascendants where they are dependent (' 47 III).

[28] For 1997, the quota allowed for 17,320 admissions. 9,890 were reserved for family-reunification categories.

All other EU countries do not place numerical limits on family-based immigration. A foreigner is admitted once the competent authorities have established his/her eligibility. In most of the states examined, at minimum, the members of the nuclear family are eligible for family reunification, provided they meet certain additional requirements (resources, lodging). Generally, the age limit for children is 18 years[30].

US and Austrian experience show that quota systems tend to generate considerable backlogs and therefore result in long waiting times. While long waiting periods may be acceptable with regard to non-nuclear family members, who in some European states would not be admitted at all, the same delays cause extreme hardship when applied to the nuclear family. This in itself is undesirable because it keeps a family in a state of separation. It also undermines the integration of minor children : the earlier they are admitted in the receiving country, the better they can be raised and educated in the host society. Additionally, long waiting periods may lead to increased numbers of undocumented immigrants. Finally, European harmonization of family reunification policies based on the principal of numerical limitation might collide with norms of national constitutions and the European Convention on Human Rights. The German Federal Constitutional Court, for instance, has suggested that numerical limits leading to significant waiting periods would disproportionately[31] harm the constitutional interest in family unity.[32] For these reasons, it seems that governments give priority to the reunification of nuclear families without setting special numerical limits/quotas on these admissions. Eligibility should extend to the nuclear family of citizens and legal immigrants alike.

c) Admission of labor

In the domain of foreign workers, where admission is a matter of public and active policy and not of the respect for human rights, North America and Europe are in a very different situation. Firstly, EU countries have faced a high level of unemployment rate which has justified a very restrictive policy of admission, over

---

[29] source: personal conversation with a member of the CARITAS consultation service for foreigners. Members of the '*Beratungszentrum für Migranten und Migrantinnen*' (Consultation Center for Migrants) in Vienna even speak of waiting times up to five years in Lower Austria.

[30] There are exceptions: in Germany, for example, children of resident aliens are only entitled to family reunification, provided they have not yet reached the age of 16. In some cases, the authorities have the discretionary power to make an exception to this rule and admit a child between the ages of 16 and 18. The Austrian provisions set the age limit at 14 for children of foreigners who acquired permanent resident status in Austria before January 1, 1998. At the other end of the spectrum, U.S. law admits unmarried sons and daughters under the age of 21 of American citizens without numerical limits and confers a derivative immigration status on the children under age 21 of each family-preference immigrant

[31] In its ruling, the court did not find that the constitution guarantees an absolute right for foreigners to join their resident alien relatives in Germany, but it held that any legislative or administrative provision regulating admission and residency of family members must be 'proportional'. This requirement of proportionality comprises a three-step evaluation: first, legislation must be 'appropriate' (*geeignet*) to achieve a public goal that is not in itself disapproved by the constitution; second, the legislation must be necessary to achieve this goal, which means that there must not be any other to achieve it that would impair constitutional rights any less; and third, the public-interest provisions protected by the questioned provisions must be balanced against any harm to family unity as protected by the Basic Law.

[32] BVerfGE 76,1, 65

the last 25 years. The European political context makes policy decisions to admit foreign workers more difficult to justify.

Secondly, if all western countries are reluctant to admit unskilled workers, North America has encouraged high-skilled migration through a quota system. It has been argued that the permanent admission of high-skilled migrants is desirable because it benefits not only the migrants whose talents would not be used effectively at home, but also the receiving countries that gain access to skilled labor. In Europe, many see such migration as contributing to a "brain drain" that robs developing countries of their most productive citizens.

Nevertheless, although unemployment is still high in Europe, some European firms are facing labor shortages and claims have increased, in the context of the UN report on "Replacement Migration"(UN Division of Population, 2000), for a re-initiation of labor migrations. Advocates of a more liberal immigration policies arguing that this system could reduce illegal migration pressures, have asked : "Why not a quota system"?

I would argue that in the European context a quota system would involve useless politicization, and bureaucratization without fulfilling the needs of the market and stopping illegal migration. On the contrary, setting individual criteria of admission for workers would align decision making with the companies' needs, while preventing politicization and being more efficient in deterring illegal migration.

The quota system was developed in the US so as to limit immigration and not to encourage it. Yet, even if the numerical limit is sometimes hotly debated in the US, there is no discussion of a complete halt to immigration. In the US however, debate has never centered on the question of total control or the complete lack thereof ; it has always revolved around the level of control or on the means required for implementation of these controls. North America is a land of immigration where everyone (except native Americans) is either an immigrant or a descendant of immigrants. Even restrictive policy is implemented within the context of a general belief that immigration is the foundation of society. In the American Congress in 1995-96, debate revolved around limiting the number of legal immigrants allowed into the country annually between 500,000 and 800,000. In France or Germany, on the other hand, the incorporation of immigrants is reluctantly perceived as a necessity or a burden. To set a system of quotas would likely entail a politicized debate and proposals which would range from "zero immigrants" to more rational ones. The quota system would mean that these debates would take place before any immigrant would have been admitted into the country. The recent 20,000 visas initiative of the German government shows how even a country's offer to migrate might not always be fulfilled by the demand to migrate. Quota systems also means establishing an administration in charge of managing the quota, sharing it between regions, countries, professions. It often leads to bureaucratization, mismanagement and delays which undermine the fulfillment of market needs and provoke the rise of illegal migration.

It is in fact possible to set legitimate criteria, based on which admission could be decided as it is in the domains of asylum and of family reunification. Employers who would like to invite or legalize foreign

workers could request individual administrative authorization. Admission should balance the interest of business in having access to a global labor market with the employment situation or the interest of domestic workers in gaining protection against unfair competition from foreign workers.

With regards to high skill migrants, European should evolve. Adjustment to permanent resident status should be possible for high-skilled immigrants who opt to remain in Europe or North America and otherwise qualify for admission. Rigid policies requiring repatriation can cause harm to individuals, particularly when foreign students and workers marry host country nationals, and disrupt economic activities in receiving countries. They are at the same time inefficient because refusals of admission will often lead high skill workers not to go back to their countries of origin but instead to accept offers from other western countries.

Governments must enhance the benefits of high-skilled migration for both countries of origin and destination. Migration can be mutually beneficial for both countries, as professionals who migrate can become an important link between the capital available in wealthy countries and developing industries in home countries. Immigrants also can help open markets for home country goods and services abroad. Categories of highly skilled workers who should enjoy special conditions for admission include foreign scientists, scholars, artists and cultural professionals. International movement of these individuals promotes scientific, economic and cultural progress, as well as improved international relations. The admission of high-skilled immigrants should not, however, come at the expense of their countries of origin. At present, these immigrants may lose their permanent residence in the receiving country if they return to their home countries for extended stays. Those high skilled workers and students who receive permanent immigrant status should enjoy the right to return to their countries of origin for research and work without forfeiting the right to re-enter their new country. Similarly, those who re-establish residence in their home countries after study abroad should be able to re-enter European and North American countries for temporary visits. In a world dominated by internationalization of research and economic activities, many professionals in developing countries see employment abroad as an essential component of personal mobility and an important contribution to economic development in their countries of origin. While abroad, professionals may be able to tap expatriates for the investment and trade that can accelerate economic development. At the same time, it should be emphasized that developing countries may fail in their efforts to develop strong economies if they lose too many of their best-educated and most ambitious citizens.

2) preventing illegal migration

a) through immigration control

In Europe and North America, there is a discernable tendency towards convergence in the implementation of more restrictive provisions. The existence of illegal migration obliges each country to develop, in addition to means of control through visas and border checks, procedures for investigating the presence and activities of illegal aliens on its territory. Unauthorized migration undermines respect for the rule of law and serves as a barrier to the adoption of credible legal immigration policies. Control mechanisms must be consistent, however, with the values embraced by liberal democracies. The implementation of fair policies affecting legal immigration is one means of facilitating control. The best policy of control is one based on clear rules of the game. It has proven impossible to stop immigration by outlawing it. The implementation of better practices in the control of migratory flows requires not the blocking of legal immigration channels, but rather the facilitation of legal immigrants' admission in order to deter illegal entry and illegal work as much as possible. Some recent, very restrictive laws, such as French immigration rules between 1993 and 1998, have shown that focusing on the suppression of legal immigration tends to favor illegal immigration by transforming into illegal migrants individuals who would otherwise enter the territory in a legal fashion. This strategy is likely to paralyze public action. It is thus of utmost importance that countries mark a clear difference between those who are allowed to enter and those who are not, between legal and illegal immigration.

However, preventing illegal entry is generally more effective than attempting to remove migrants who enter without authorization. Among the actions governments could develop to deter unauthorized entries are: rapid and professional examination of asylum applications: it protects more rapidly bona fide refugees and deters abuses of the procedure; visa requirements and patrolling of land borders: because visa requirements and enhanced border controls can be effective mechanisms for facilitating entry of legal migration and control of unauthorized migration by preventing entry of persons who are likely to abuse the terms of their admission.

Fighting delinquent employers should also remain a priority. Jobs continue to be a magnet for unauthorized migration to many North American and European countries. It is important to reward *bona fide* employers, since such actions have, in the past, often proven more effective than punishment. Some employers inadvertently hire unauthorized migrants because they do not have the information needed to determine if an applicant is legally authorized to work. Other employers purposefully hire unauthorized migrants.

Governments should assist employers to determine if applicants are authorized to work by: 1) specifying a limited number of counterfeit-resistant identification documents to be used to establish work authorization, and 2) facilitating employer access, under appropriate safeguards, to information systems that can be used to verify the authenticity of the specified documents.

Finally some European employers do not report the hiring of seasonal workers because of the complexity it entails. Facilitating such administrative processes and creating some incentives for reporting the

recruitment of seasonal workers, such as tax breaks, could be more helpful than sanctions for non-compliance.

Last but not least, taking action against new smuggling criminality needs more international cooperation which go beyond western countries. The continued strengthening of border controls has led to deeper reliance by unauthorized migrants on the existence of smugglers whose operations seek to facilitate unlawful entry. Smugglers now work in networks, with the help of very sophisticated techniques for avoiding governmental controls. Smuggling and trafficking in aliens has become a multi-billion dollar industry that impedes control over unauthorized entry, leads to exploitation of migrants and endangers their lives and safety. Cooperation is certainly the most efficient way to fight against smugglers who very often act in networks and operate in several countries. Actions by individual countries will not disrupt these operations over the long term. There is urgent need for enhanced cooperation of European and North American governments in combating alien smuggling and trafficking. Specific areas requiring increased cooperation include: penal law harmonization and law enforcement activities involving police and immigration authorities of multiple countries; intelligence gathering about smuggling and counterfeiting operations; public education campaigns to warn migrants of the risks incurred in smuggling and trafficking; and protection of the rights and safety of smuggled and trafficked migrants, particularly those whose lives would be endangered if they gave testimony against the smugglers and traffickers.
Yet priority should be given to economic prevention and cooperation with sending countries

b) through economic prevention

Most national studies on illegal workers show that their distribution almost exclusively falls within only four economic sectors: construction, labor-intensive services, textiles, and, especially, agriculture. At least two of these sectors, agriculture and construction, are characterized by the existence of a strong seasonal need for manpower, which explains why reactive enforcement often has little effect on unauthorized work. The only potentially effective strategy is deeper State involvement in the national economy. Such action pertains especially to continental Europe, where economic regulation is viewed as more legitimate than in the rest of the transatlantic community.. Another potential method of reducing unauthorized work in seasonal jobs in Europe is giving legal residents (national or alien) increased access to the seasonal job-market, even if they continue to receive unemployment benefits at the same time. For the moment, such measures are often possible in theory but impossible in practice, since potential applicants are reluctant to apply for seasonal jobs for fear of losing benefits entitlements or of going through overwhelming bureaucratic process. This often leaves employers no choice but to resort to the recruitment of unauthorized workers. Action at the European level, where national unemployment rates hover around 10 percent, should seek to make jobs in areas that are susceptible to unauthorized employment more attractive to native workers and others on the legal labor market. Incentives to hire legal domestic workers can easily reduce dependence on illegal –domestic or foreign – labor. Some of the countries of Europe and North America permit admission of agricultural and other lesser skilled foreign workers, particularly for

employment in seasonal jobs. In order to prevent illegal migration, the use of seasonal foreign labor have proved to be effective measures only under certain conditions: there is an adequate level of control over unauthorized entry and work; incentives are in place for employers to hire domestic workers or take other actions, such as mechanization, to reduce dependence on foreign workers; and bilateral agreements enlist the cooperation of source countries in curbing illegal movements and readmitting their nationals.

Under these conditions, all actors can benefit from such policies: the seasonal workers obtain skills and earn a salary which provides them with a substantial advantage in purchasing power compared to that with which they would have had in the country where they worked. Their country of origin benefits from the influx of remittances and a more highly skilled work force. The company hiring such workers profits through lower wage rates and freedom from heavy fines imposed under the earlier hiring of illegal migrants. Finally, the Host State reduces illegal migration, reduces the cost of border control, resource-draining legal procedures and eventual deportation. The state can also benefit from taxes and social welfare contributions of these temporary or seasonal workers. Of course, in these programs, a fraction of these workers overstayed the duration of their contract and remain illegally in the country. Yet the continued presence of a few illegal migrants is preferable to a *laissez-faire* policy with large sectors of the economy depending on the work of totally undeclared illegal migrants. Yet the success of this kind of policy needs the legitimacy of the state's. Morocco has recently develop such agreements with European countries.

c) through cooperation with sending countries

Yet the next stage of immigration policies might reside in improving cooperation with sending countries, what some would call "co-development". When one has to conclude a lecture or a speech on immigration, often he or she would say somehow pompously : " the 'solution' resides in development". We have tried to demonstrate that development gaps has a small effect on immigration flows ; economic development is depending more on World Bank, IMF or OMC policies than on immigration. Yet, it might be possible, the benefits and the costs of immigration are evaluated by sending and receiving countries and for the immigrant him or herself, to imagine a trade-off which can make immigration be beneficial for all of them.

On the side of the sending country, cooperation with the receiving countries the benefits could be : receiving more remittances through salaries or retirement wages ; setting seasonal workers programs which will bring financial resources and decrease the pressure on labor market ; more visas for tourists, students or businessmen.

On the side of the receiving country, cooperation with the sending countries can benefit by : a better control of illegal entries and an improved efficiency in repatriation of illegal alien ; the fulfillment of labor shortage.

Above all, Governments should recognize and adjust to the increasingly temporary nature of many transnational movements. As Michael Piore argues, " migrants are a solution because they typically view their migration as temporary. Their hope is to come to the developed area for a short period of time, earn and save as much money as possible, and then return home to use their savings to facilitate some activity in their place of origin "(Piore, 1986). It is often claimed that because of the decreasing costs of international transportation, illegal or legal immigrants can move more easily to the host countries. But this argument can be reversed and one can add that if illegal or legal immigrants are more mobile, this means also that they can also return to their country of origin more easily. In a world of rapid and inexpensive transportation, in the context of a continuing reluctance to permanently emigrate among potential migrants, a round-trip journey is often the best solution for many actors of the immigration game : immigrants, companies, receiving states and states of origin. States administration are not adapted to that new game. They have always preferred persons to be static. International permanent status for high skill workers, or a temporary one for seasonal workers - which would provide them the right to work each year, for a short period of time, in some defined countries - might be in a future usefully developed for the benefits of the migrant and for the one of the receiving and sending country.

Aleinikoff T. Alexander, Martin, David A. & Motomura Hiroshi, (1995). *Immigration Process and Policy,* St Paul, Minn : West Publishing Co., 3rd Ed.

Amnesty International (1993). *Japan: Inadequate Protection for Refugees and Asylum Seekers.*

Body-Gendrot Sophie & Schain Martin (1992). *Immigrants in Two Democracies : French & American Experiences*. Horowitz Donald L. & Noiriel Gérard Eds. New York and London: New York University Press.

Bonnet Jean-Charles (1976), *Les pouvoirs publics et l'Immigration dans l'entre-deux guerres,* Lyon: Centre d'histoire économique et sociale de la région lyonnaise.

Breitman Richard, and Kraut Alan M. (1987). *American Refugee Policy and European Jewry, 1933-1945.* Bloomington: Indiana University Press.

Briggs Vernon (1984). *Immigration Policy and the American Labor Force,* Baltimore: John Hopkins University Press.

Brym Robert & Degtyarev Andrei (1993). Who wants to leave Moscow for the West? Results of an October 1992 Survey. *Refugees* (Geneva), Vol.13, n°2, (may), p.24-25.

Brym Robert J. (1992). The Emigration Potential of Czechoslovakia, Hungary, Lithuania, Poland and Russia: Recent Survey Results. *International Sociology.* Vol 7, n°4, pp. 387-395.

Calavitta Kitty, 1192. *Inside the State,The Bracero program, Immigration, and the I.NS.* New York & London: Routledge.

Castles Stephen, and Miller Mark J. (1993). *The Age of Migration, International Populations Movements in the Northern World.* London: MacMillan Press.

Chesnais Jean-Claude (1993). *Les migrations d'Europe de l'Est vers l'Europe de l'Ouest : de l'histoire à la perspective (1990-2000*), *Report for Council of Europe* (Vienna).

Cohen Daniel (1996). Insertion et Transit : les réfugiés juifs de l'après-guerre 1945-1948. *Archives Juives.* Liana Levi ed. n° 29/1 (1st sem.), pp.92-101.

Cornelius Wayne A. (1995). Japan: The Illusion of Immigration Control. *Controlling Immigration, a Global Perspective.* Cornelius Wayne A., and Martin Philip L., and Hollifield James F. eds. Stanford: Stanford University Press.

Crépeau François (1995). *Droit d'asile- De l'hospitalité aux contrôles migratoires*. Bruxelles: Ed. Bruylant, and Ed. de l'université de Bruxelles.

Divine Robert A. (1957). *American Immigration Policy, 1924-1952.* New Haven and London: Yale University Press.

Dowty, Alan (1987). *Closed Borders.* New Haven and London: Yale University Press.

Dustmann Christian (1996). Return Migration: the European experience. *Economic policy*. April 1996 pp.216-250.

Fitzpatrick Joan, Flight From Asylum: Trends toward Temporary 'Refuge' and Local Responses to Forced Migrations', *Virginia Journal of International Law*, Vol. 35:13 (1994), p. 13-70, see p. 16 et seq

Goodwin-Gill Guy S. (1983). *The Refugee in International Law*. Oxford: Clarendon Press.

Groenendijk K. and Hampsink R. (1994). *Temporary Employment of Migrants in Europe*. Nimegue : Editions Reeks, Recht, and Samenleving.

Guillon Michelle (1996). *Etrangers et immigrés en Ile-de-France*. Paris: Institut National d'Etudes Démographiques and Presses Universitaires de France.

Hansen Randall (1997). *The Institution of Citizenship. Immigration Policy and Nationality Law in Post-War Britain.* (unpublished PhD dissertation) Oxford: Oxford University.

Hathaway James C. (1984). The Evolution of Refugee Status in International Law : 1920-1950. *International and Comparative Law Quaterly*, Vol. 33 (april), pp. 348-380.

Heisbourg François (1991). Population Movements in Post-Cold War Europe . *Survival,* Vol. XXIII, N°1 (january-march), pp. 31-43.

Helmstadter Sarah (1992). The Russian Brain Drain in Perspective. *Radio Free Europe/Radio Liberty Special Report* (August 18).

Hollifield James F. (1992). *Immigrants Markets and States. The Political Economy of Postwar Europe.* Cambridge: Harvard University Press.

Holmes Colin (1988). *John Bull's Island, Immigration and British Society, 1871-1971.* London: MacMillan.

Höhnekopp, Elmar (1987). Rückkehrförderung und Rückkehr ausländischer Arbeitnehmer. *Beiträge zur Arbeitsmarkt und Berufsforschung*

Kanstroom Daniel (1991). Wer Sind Wir Wieder? Laws of Asylum, Immigration, and Citizenship in the Struggle for the Soul of the New Germany. *The Yale Journal of International Law*, Vol.18, n°1, p.194.

Kingdon John W. (1984). *Agendas, Alternatives and Public Policies.* London, Illinois: Scot, Foresman and Company, Glenview.

Kubat Daniel, and Hoffmann-Novotny Hans-Joachim (1981). Migrations : vers un nouveau paradigme. *Revue Internationale des Sciences sociales,* Vol. XXXIII, n°2, pp. 336-359.

Le Bras Hervé (1995). Migrations Internationales : de la colonisation à l'invasion ou la rhétorique des vases communicants. *The Tocqueville Review,* Vol. XVI, N°1.

Marrus Michael M. (1985). *The Unwanted, European Refugees in the Twentieth Century,* Oxford: Oxford University Press pp. 149-154.

Martin David A. Making Asylum policy: The 1994 Reforms. *Washington Law Review* (Washington D.C.), Vol. 70, n°3, pp. 725-755.

Martin David A. (1990). Reforming Asylum Adjudication: On Navigating the Coast of Bohemia. *University of Pennsylvania Law Review,* Vol. 138, n° 5 (may), pp. 1247-1381.

Martin, David A. (1993). *Statement before the Subcommittee on Immigration and Refugee Affairs, Senate Comittee on the Judiciary.* Washington D.C.

Martin Philip L. (1993 a). *Immigration and Integration: Challenge for the 1990s* (text presented to the American German West Coast Conference, The Baltmore Hotel, Los Angeles, December 4, 1993).

Martin Philip L. (1993 b). *Trade and Migration: NAFTA and Agriculture.* Washington D.C: Institute for International Economics.

Martin Philip L., and Midgley Elizabeth (1994). Immigration to the United States : Journey to an Uncertain Destination. *Population Bulletin,* Vol. 49 (september), pp. 6-7.

Massey Douglas S., and Arango Joachim, Hugo Grame, Kouaouci Ali, Pellegrino Adela, Taylor J. Edward (1993). Theories of International Migration: A Review and Appraisal. *Population and Development review,* Vol. 19, n°3 (september), pp. 431-466.

Wyman Mark (1993). *Round-Trip to America, The Immigrants Return to Europe, 1880-1930.* Ithaca: Cornell University Press.

Zlotnik Hania (1993). Comparing Migration to Japan, the European Community and the United States. *Population and Environment: A Journal of Interdisciplinary Studies.*

Zolberg Aristide R. (1995). From Invitation to Interdiction: U.S. Foreign Policy and Immigration since 1945. *Threatened Peoples, Threatened Borders, World Migration & U.S. Policy*. Teitelbaum Michael S. and Weiner Myron eds. New York: Norton.

Zucker Norman L., and Zucker Naomi Flink (1992). From Immigration to Refugee Redefinition: A History of Refugee and Asylum Policy in the United States. *Journal of Policy History,* Vol 4, n°1, pp. 54-70.