

‘Migrants’, ‘Mobile Citizens’ and the Borders of Exclusion in the European Union



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In his opening contribution to this debate about the future of free movement in the European Union, Floris de Witte concludes that ‘free movement must be celebrated and defended as the core of EU citizenship, as a right that is available for all 500 million EU citizens, and as an idea that *benefits all those citizens* – whether they make use of it or not.’ [emphasis mine] One of the key reasons de Witte provides for his defence of free movement is that ‘it makes us sensitive to practices of exclusion’. He argues that ‘the right to free movement and non-discrimination attached to EU citizenship can be understood to correct instances of injustice and promote the inclusion of outsiders: it makes national distributive systems sensitive to the need to incorporate EU migrants who contribute to the host state in an economic and social way.’

De Witte is right that free movement serves the important goal of promoting the inclusion of EU migrants (the ‘outsiders’ in de Witte’s analysis) in the economies and societies of EU member states. This is clearly an important achievement of free movement. However, what about the inclusion and exclusion of the much larger group of ‘outsiders’, namely, people from outside the European Union? If part of our evaluation of free movement is based on its effects on the exclusion of outsiders –and I agree that this should be a fundamental concern – don’t we need to consider *all* outsiders, not just those from within the EU?

My main critique of de Witte’s discussion is that it considers free movement in complete isolation of EU countries’ immigration policies and exclusionary practises toward non-EU nationals. This focus on free movement without consideration of wider immigration policies is striking, especially in the context of many EU member states’ highly restrictive policies towards

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the large number of refugees and other migrants seeking protection in Europe over the past few years. As Sarah Fine points out in her contribution, ‘how can we try to defend free movement as the core of EU citizenship without considering what is happening right now at (and indeed within) the EU’s own borders?’

I argue that we need to connect debates about the ‘free movement’ of EU citizens with discussions about EU member states’ ‘immigration policies’ toward people from outside Europe. This is exactly the opposite approach to the one traditionally taken and advocated by the European Commission and many other European policy-makers who have insisted on a clear distinction between ‘mobility’ of EU citizens on the one hand, and ‘immigration’ of third-country nationals on the other.

To develop my argument, I first outline some of the key differences between how ‘migrants’ and ‘mobile EU citizens’ are debated and regulated in the European Union. This is followed by a brief explanation of why I think the current distinctions may be considered problematic from both a moral and political perspective.

Migrants

There are very large differences between how EU member states currently treat “migrants” from outside Europe and ‘mobile EU citizens’ from within Europe, in terms of both regulating their admission and rights after entry. In all countries, immigration is restricted through an often complex range of national admission policies that regulate the scale and selection of migrants. National immigration policies typically distinguish between high-skilled migrants (who face fewer restrictions on admission), lower-skilled migrants (relatively more restrictions) as well as different rules for admitting family migrants, students, asylum seekers and refugees.

National immigration policies also place considerable restrictions on the rights of migrants after admission, including their access to the labour market, welfare state, family reunion, permanent residence and citizenship. As it is the case with admission policies, rights restrictions typically vary between high- and low-skilled migrant workers (with the rights of lower-skilled migrant workers significantly more restricted) and across family migrants, students, asylum seekers and refugees. As I have shown in my recent [book](#)¹ that focuses on international labour migration; European and

¹ Ruhs, M. (2015), *The Price of Rights Regulating International Labor Migration*. Princeton: Princeton University Press.

other high-income countries' immigration policies are often characterised by trade-offs between 'openness' and some 'migrant rights', that is, labour immigration programmes that are more open to admitting migrant workers are also more restrictive with regard to specific rights (especially social rights).

Public debates and policy-making on immigration vary across countries but they are typically framed in highly consequentialist terms, i.e. based on the (perceived and/or real) costs and benefits of particular admission policies and restrictions of migrants' rights for the host economy and society. This cost-benefit approach to policy-making has been a long-standing feature of labour immigration policies. Arguably, it is also becoming an important factor, and in some European countries *the* most important consideration, when it comes to policies towards asylum seekers and refugees. Some European countries' recent policies toward refugees and migrants fleeing conflicts and violence in Syria and other places are primarily shaped by the perceived impacts on the national interest of the host country rather than by humanitarian considerations, protection needs or respect for international refugee conventions.

A central feature of national migration policy debates in European and other high-income countries is the idea of 'control' i.e. the idea that immigration and the rights of migrants can be controlled and regulated, at least to a considerable degree, based on the perceived costs and benefits for the existing residents of the host country. Of course, states' control over immigration is never complete and subject to a number of constraints but the idea of control is still at the heart of national immigration debates and policy-making. The perceived 'loss of control' over immigration has been a major driver of the rise of Donald Trump in the United States, Britain's referendum vote to leave the European Union, and the growing support for right-wing parties across various European countries.

Mobile citizens

The policy framework for regulating the movement of EU citizens across member states, and their rights when residing in a member state other than their own, is very different from the restrictions imposed on people from outside the EU (or the EEA, to be exact). The current rules for free movement give citizens of EU countries the right to move freely and take up employment in any other EU country and – as long as they are 'workers' – the right to full and equal access to the host country's welfare state. This combination of unrestricted intra-EU mobility and equal access to national welfare states for EU workers is an important exception to the trade-off between immigration and

access to social rights that characterises the labour immigration policies of high-income countries. Critically, while the idea of ‘control’ is a central feature of debates and policies on the immigration of people from outside the EU, EU member states have effectively no direct control over the scale and characteristics of the inflows of EU workers. From the perspective of the EU, the overall aim has been to encourage rather than limit and control the mobility of EU citizens between different member states.

In terms of the European institutional framework, *free movement* is kept completely separate from the immigration of third-country nationals. While free movement is part of the remit of [DG Employment, Social Affairs and Inclusion](#) and [DG Justice](#), policies for regulating immigration from outside Europe are dealt with by the [DG Migration and Home Affairs](#). One of the consequences of this division has been that EU debates and policy aimed at the integration of migrants have been heavily focused on migrants from outside the EU.

A third distinction relates to the terminology used to describe and discuss the cross-border movement of EU citizens and non-EU citizens. European policy-makers typically insist that EU citizens moving from one member state to another are not ‘migrants’ but ‘mobile EU citizens. (Although I am critical of this distinction, for the sake of clarity I have stuck with this terminology in this contribution.) This distinction is not just a reflection of differences in policy approaches but also serves the purpose of framing public debates in a way that suggests that mobile EU citizens are very different from the (non-EU) outsiders whose migration needs to be carefully regulated and controlled.

Linking migration and mobility

The distinctions made in the public debates and policies on ‘immigration’ and ‘mobile EU citizens’ raise a number of important ethical and political questions. First, insisting on near-equality of rights for mobile EU citizens while at the same time tolerating what are sometimes severe restrictions of the rights of migrants from outside the EU is, in my view, morally problematic. On the one hand, current policy insists on equality of rights for EU workers including, for example, equal access to non-contributory welfare benefits, i.e. benefits that are paid regardless of whether the beneficiary has made prior contributions or not. On the other hand, many EU member states are unwilling to admit and protect large numbers of refugees who are fleeing

violence and conflict and/or grant them full access to the national welfare state. While a preference for protecting the interests and rights of insiders can of course be defended on moral grounds, I suggest that the magnitude of the discrepancy between how EU member states treat each other's 'citizens' compared to most migrants from outside the EU should give us pause for critical reflection.

The disconnect between 'mobile EU citizens' and 'migrants' may also be politically problematic, in the sense that it potentially endangers (rather than protects, as is commonly argued) the future sustainability of the free movement of EU workers within the European Union as well as public support for immigration more generally. The inflow of 'mobile EU citizens' in a particular member state has very similar types of effects, and raises very similar economic issues and tensions, as the immigration of migrants from outside the EU. As it is the case with 'migrants', 'mobile EU citizens' affect the labour markets and welfare states of host countries in one way or another, creating costs and benefits for different groups. Insisting that 'mobile citizens' are not 'migrants' runs the danger of obscuring these impacts that mobile EU citizens have on the economies and societies of their host countries. This may, in turn, prevent important debates at European level about the consequences of free movement for EU citizens who do not move, and ultimately result in a decline in political support for the free movement of labour within the EU and perhaps also for immigration more generally.

A third question concerns the potential inter-relationships between EU member states' policies on immigration and mobility. How are our policies for the inclusion/exclusion of EU citizens related to our policies for the inclusion/exclusion of people from outside the EU? We know² that past EU enlargements have in many member states led to more restrictive labour immigration policies for non EU-nationals, especially lower-skilled workers. This may be a perfectly justifiable response within the sphere of labour immigration. The picture gets more complicated and problematic, however, if we consider the potential relationships between the free movement and equal treatment of EU *workers* and the highly regulated admission and restricted rights of *asylum seekers* and *refugees* from outside Europe. How, if at all, do the current policies for the inclusion of mobile EU citizens affect our policies

² Zelano, K. (ed.) (2012), *Labour Migration: What's in it for us? Experiences from Sweden, the UK and Poland*. European Liberal Forum, available at http://fores.se/wp-content/uploads/2013/04/labour-pdf-web_1_1_.pdf.

for excluding/excluding asylum seekers, refugees and other migrants from outside Europe – and vice versa? These are open and important issues for empirical research. Any defence of the current rules for free movement should, in my view, consider and engage with these wider questions and inter-relationships

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