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From "Traditional" to "New" Migration: Challenges to the International Legal Migration Regime

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The Arab spring upheavals and civil war in Syria have transformed trajectories of mobility. In this context, the EU, as well as other global legal frameworks evolved, which in turn impacted on notions of identity and belonging. The 2016 New York Declaration for Migrants and Refugees increases the level of international com mit-ment in the fields of protection, recognition, and cooperation. Yet, the questions of how the EU and Switzerland will construe admission, visa, citizenship and nationality laws and of how these levels of governance will interact remain open.

Messages for Decision-Makers

– **With the Global Compacts for Migration and Refugees a new legal framework is arising which is strengthening the Geneva Refugee Convention by complementing humanitarian assistance and refugee protection with livelihood creation – through access to education and employment. The locally and regionally fragmented regulatory frameworks for migrants shall be streamlined into a global undertaking.**

– **While multi-level governance improves policy coherence, the risk of connecting unrelated policy goals might jeopardize migrants' rights.**

– **Recognition of citizenship as an individual right of membership on the basis of belonging instead of being the prerogative of sovereignty allows accom-modating for contemporary migrant biographies.**

Change in Crisis and Cooperation: A Chance for Migration Governance?

With the Global Compacts for Refugees and Migrants about to be adopted, cooperation over migration and asylum is likely to intensify. In this context, national governments tend to delegate responsibilities vertically to supra-national entities. Alternatively, states cooperate across regional units or via the institutional framework of the UN. Recently, shifts of authority have empowered cities, diaspora groups, migrants and refugees. These groups increasingly access courts, issue decrees or sometimes even "correct" national immigration law. In this process, migrants have strengthened their dual identities of belonging "here" and "there" with feedback effects in citizenship and nationality laws. Power shifts have further led to a blurring of categories, for instance between refugees and labor migrants, or between mobility facilitated in trade agreements and migration controlled by national laws. Such processes are captured by the concept of "multi-level governance" (MLG).

The Crisis of Governance as a Driver of Legal-Institutional Change in Europe

Ever since the protracted Mediterranean situation, EU institutional and legal frameworks have dramatically transformed. Our analyses of the multilevel governance

of large migration and refugee movements demonstrate shifts of authority away from the center, moving towards the periphery and to a global scale. On the EUs external borders, Member States, such as the Slovak Republic and Hungary, "de-coupled" from the Union, while others re-nationalized, as the United Kingdom is doing in the context of Brexit. These events, coupled with the non-representation of the EU Parliament in the Turkey Deal and in the approval of the Jordan/Lebanon Compacts, create concerns for the regional level of governance. Should such policy interventions succeed in the long-run, we argue that they must formally involve multiple stakeholders and diverse legal scales to be able to qualify as "governance".

Humanitarian Visa Policy as an Incubator of "De-Coupling" from Europe

The Court of Justice of the European Union denied the possibility for Member States to issue Schengen visas for persons seeking international protection. In this context, it became clear that in crisis settings, certain EU Member States, such as Belgium or Italy, but also Schengen associated countries like Switzerland "de-coupled" from the unsatisfactory Schengen solutions for refugees. Instead, they re-interpreted the Schengen Code's policy space for issuing humanitarian visa in favor of Syrian refugees. To investigate whether such "escape" from Europe could count as a variation of multi-level governance or if their unilateralism jeopardized the Union level of intra-Schengen solidarity, was the focus of this research. While the Schengen system often relies on the lowest common denominator among 26 states, we suggest that in case of inconsistencies, the solution should be first created in domestic law.

Shifting Perceptions of Belonging Are Rescaling the Right to Citizenship

Despite citizenship being recognized as a human right, state sovereignty in regulating membership in daily practice had until recently remained untouched. This project shows the transformations of the naturalization legislation, a highly contested aspect of the right to citizenship. Such transformations have powerful implications of inclusion and exclusion because of the discretionary power and politicized procedures in many states. Interdisciplinary approaches to law and society help to perceive citizenship as part of a person's social identity. Such a conceptualization of citizenship as a human right, which is undeniably attached to a person's identity, has increasingly limited what was a presumed "domaine reservé" of states. We propose a rights-based approach to citizenship as a more nuanced way of addressing the question of boundary making, rendering access to naturalization more inclusive for individuals and strengthening judicial control of states' citizenship regimes.

Multinational Ways of Living Bypass Nationality as Connecting Factor

Moreover, "new" civil statuses have been created, for instance registered partnerships or "duo motherhood", together with new rights derived from traditional principles. One example is that "pater est" – right attached to marriage – has in the Netherlands been extended to registered partnerships and same-sex marriages. This evolution has led to the transformation of the jurisprudences in the courts in Strasbourg and Luxembourg. A minimum set of rights attached are already protected by both Courts' case-law. Nonetheless, as the project shows, some parts of the law move faster than others: as a consequence, the antiquated and immobile notion of nationality as the connecting factor to establish the applicable law to a status has led to confusion. This is especially true for multinational individuals and families. At the same time, the legislative procedure, that requires unanimity in the Council, hinders progress towards the free movement of civil statuses. We propose to separate the recognition of the civil status itself from the law applicable to the rights that are attached to it. This would lead to a common market where the status, such as same-sex marriage is guaranteed, but the law of the forum is applied to the rights. In the case of joint adoption by same-sex couples, for instance, both partners must be recognized as parents of the adopted child by a Member State to which they move; yet if they want to adopt another child in that Member State, national law applies. The project endorses as a first step the establishment of a Single European Persons Register, similar to the one for legal persons, as a driver for recognition.

Key Publications

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– de Groot, David. "Law by Blood or Blood by Law?" in *Bloodlines and Belonging: Time to Abandon Ius Sanguinis?*, EUI Working Papers, RSCAS 2015/80 (2015): 30–31.
– Panizzon, Marion, and Micheline van Riemsdijk. "Introduction to Special Issue: 'Migration Governance in an Era of Large Movements: A Multi-Level Approach.'" *Journal of Ethnic and Migration Studies*, 2018 (online version).
– von Rütte, Barbara. "Das Neue Bürgerrechtsgesetz." *Schweizerische Anwaltsrevue* 05/2017 (2017): 202–14.
– Wieruszewski, Marek. "Humanitäre Visa – Eine Auslegeordnung Die Schweizer Praxis unter Berücksichtigung der Rechtsprechung des EuGH und BVGer – eine Studie im Auftrag des Schweizerischen Roten Kreuzes." Bern: University of Bern, January 2018.