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Justice and Democracy in Migration

A Demoi-cratic Bridge towards Just Migration Governance

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Borders, territory, and rights are key components of our political vocabulary. We simply cannot develop any plausible account of contemporary states without them. In their modern understanding states are legal and political entities, which, as a mark of statehood, enjoy so-called territorial rights. Best understood as a bundle of rights, territorial rights contain three distinct, albeit interrelated, elements, namely (1) the right of territorial jurisdiction, (2) the right to control and use the territory's resources, and (3) the right to control the movement of people and goods across the territory's borders (Miller, 2012: 253; Song, 2018: 61).

Though deeply ingrained in modern political thinking, the idea of territorial rights is coming more and more under pressure. Contrary to the (real or imagined) beginnings of modernity, today's political landscape is no longer marked by isolated and independent states but by high levels of transborder activity and movement. In such circumstances, territorial rights increasingly fail to fulfill their original function, which is to resolve potential conflicts between states by clearly separating their respective spheres of responsibility. Rather than guaranteeing international peace and stability, they have themselves given rise to some of the most urgent interstate problems we face today. The first right, by granting states absolute authority within their jurisdiction, leads to a problem of anarchy in the international arena. Protecting states' ownership over all resources available in their territory, the second right, is at the root of today's problem of global inequality. Finally, the third right, namely states' unilateral control over their borders, creates the problem of migration, which, as with the other two problems, has reached unprecedented levels in recent years.

Even if, in normative political theory, each of these three problems has generated its own area of scholarship, all of them are approached in more or less the same way. Whether we talk about the problems of anarchy, global inequality, or migration, we primarily conceive of them as problems of (global) justice. To respond to the problem of anarchy, we ask: How should power be redistributed across different legal and political levels? Likewise, in reaction to the problem of global inequality, our question is: How should resources be redistributed across different states and regions? Finally, faced with growing numbers of migrants and refugees, we want to know: How should entry and membership rights be redistributed across different groups of people?

Focusing on the third problem of territoriality, namely that of migration, this chapter argues that justice theorizing alone is not enough. If we want to improve migrants' legal situation in a durable and hence sustainable way, we must complement our reflections on *just* migration governance with reflections on *democratic* migration governance. Migration governance, according to this contribution's central claim, cannot become more just without also becoming more democratic. Or, put differently, it can become more just only by becoming more democratic. To develop this argument, the chapter proceeds as follows: Based on a short discussion of Western states' increasingly selective migration policies, Section 1 identifies two problems of justice-based accounts of migration: the problems of conditionality and externalization. Albeit formally bound by norms of justice, states have developed sophisticated mechanisms to circumvent their legal obligations, be this by restricting noncitizens' access to their territory or by placing additional conditions on their access to rights. Seeking to overcome these problems, Section 2 argues that migration governance must become not only more just, but also more democratic. Migrants must acquire political rights and hence the power to hold states accountable for any rights violation they face. To give institutional expression to this claim, Section 3 develops a model of democratic migration governance: Migrants' mobility and residence-related rights should become the object of reciprocal agreements that different governments, each representing their citizenries' collective will, conclude with each other. Section 4 closes by responding to the central challenge that democratic migration governance, as a normative ideal, will face under non-ideal conditions.

1 Migration as a Matter of Justice: Two Limits

Faced with growing numbers of migrants moving to Western states after the end of World War II, political theorists and philosophers started to draw attention to the injustices that characterized their treatment. Reminding liberal democracies of their commitment to respect the equal moral worth of all human beings, they criticized state practices which select migrants on morally arbitrary grounds or lead to permanent forms of second-class membership which durably preclude some groups of people from the rights enjoyed by others.¹

If we look at recent developments in Western states' migration law, at first glance, it seems that liberal accounts of just migration governance have been successful in generating change and transformation. Starting in the 1970s, most migrant-receiving countries in the Global North have reformed their entry and membership rules to comply with liberal norms of equality and nondiscrimination (Joppke, 2008: 3–5; Morris, 2003: 93). Nevertheless, these ongoing liberal trends notwithstanding, as several chapters in this volume demonstrate, for many migrants access to physical and legal security has become more difficult than ever before. Admittedly, whether they are allowed to enter Western countries' territories and claim the comparatively high level of legal protection that these states provide depends today no longer on their origin, but on individual and therefore *prima facie* morally unobjectionable conditions such as their personal skills and talents. However, despite abandoning overtly discriminatory selection criteria, such an individualistic approach can hardly be said to be more just. Not only does it disguise persisting structural inequalities but, in so doing, it also exacerbates the plight of those who belong to the most vulnerable groups in society. Lacking the financial, educational, or professional resources needed to compete in the “global race for talent” (Shachar, 2016), worse-off or low-skilled migrants live in a world that is not marked by increasingly open borders but by borders that are more firmly closed than ever before. This conclusion is even more true when one considers that the two most important noneconomic routes for migration, namely family reunification and asylum, have become the target of severe restrictions in recent years. Seeking to reduce the number of unwanted residents,

¹ For an influential critique of European states' guest-worker programs, see Michael Walzer (1983: 56–61).

more and more Western states have introduced additional conditions for family migrants, who must not only prove existing family ties, but also fulfill family-independent criteria such as financial self-sufficiency and familiarity with local norms and customs. Contrary to the right to family reunification, as an absolute right, the right to asylum has not become more conditional but more difficult to claim in practice. By outsourcing migration and border control to third countries or private organizations, liberal democracies around the world effectively prevent migrants from fulfilling the only condition for claiming asylum, which is to reach their geographic borders (Joppke, 2021: 83–87; Morris, 2003; Shachar, 2016: 186–189, 2020).

Referring to these changing legal cartographies of migration and mobility as the era of the *Shifting Border*, Ayelet Shachar (2020b: 9) writes: “[T]he unique and perplexing feature of this new landscape is that countries simultaneously engage in *both* opening *and* closing their borders, but do so selectively, indicating, quite decisively, whom they desire to admit [...], while at the same time erecting higher and higher legal walls to block out those deemed unwanted or ‘too different.’” While the shifting-border paradigm focuses primarily on territorial borders, describing the increasingly selective admission policies that Western states employ, the same logic of “courting the top and fending-off the bottom” (Joppke, 2021: 90) also applies to their membership boundaries. Marked by a complex stratification of rights and legal statuses, as with territorial borders, they are neither open nor closed but are constantly shifting according to the qualities of those who ask for admission. Indeed, whereas economically valuable migrants find it increasingly easy to acquire permanent residence and ultimately citizenship, poor and unskilled applicants face substantial hurdles on their path to membership. To acquire long-term residence and the desired level of legal security that it provides, in more and more countries they must pass language, civic knowledge, and/or personal integrity tests, whose recent proliferation can be seen as evidence that they succeed in fulfilling their informal function, which is to reduce the number of undesirable migrants in our midst (Orgad, 2020: 351–352). How then should we respond to shifting borders and membership boundaries? Or, to recall the question raised at the outset of this volume: How can we prevent this erosion of rights-protection and the resulting transformation of migrants into rightless subjects?

As we have seen in this section, justice theorizing, if taken on its own, is not enough. Even if norms of justice and morality have induced

Western democracies to refrain from overt forms of discrimination, they have given rise to new, more subtle systems of inequality that are difficult to capture by means of law. With regard to migration, two limits of justice theorizing can be discerned in the examples presented here: the problems of externalization and conditionality. Together they explain the growing discrepancy between legality and morality that characterizes the present era of shifting borders and membership boundaries. Although *de jure* extending an increasing set of rights to noncitizens, *de facto* liberal democracies employ a variety of technical and juridical inventions that help them evade their legal obligations either by preventing migrants from reaching their territory (problem of externalization) or by imposing additional conditions on their access to lawful residence and membership (problem of conditionality).

Of course, states' often deliberate failure to comply with their demands cannot be attributed to theories of just migration governance themselves. However, even if it is undeniably true that they should and could do more to improve migrants' plight, simply blaming states for their immoral behavior does not seem to be sufficient either. After all, states must respond not only to demands of justice, but also to a second type of demand, namely the demands of politics. Whereas the former urge them to adapt traditional understandings of borders, territory, and rights to the new realities of an increasingly mobile world, the latter encourage them to insist on their territorial rights as the best way to protect their internal prosperity and cohesion. As a result, state actors are caught in a tension between morality and national self-interest, between humanitarian obligations on the one hand and sovereignty assertions on the other. While only a balance between these conflicting goals promises to provide a sustainable response to the shifting-border paradigm, it is unlikely to occur by natural means. As long as states are accountable only to citizens, they have a strategic interest in favoring the needs of citizens over the needs of migrants and hence in evading those moral obligations that risk infringing their sovereignty and affluence.

2 Justice and Democracy: A Dialectical Relationship

Despite fulfilling important critical and motivational functions, most theories of just migration governance share a common deficit: Implicitly or explicitly, they are directed at national states and their governments. Depending on the electoral support of citizens, national

authorities, though, have no intrinsic interest in protecting the rights of migrants, which as a result remain insecure. Who then should we entrust with the defense and protection of migrant rights?

A first element of response can be found in history. In his famous evolutionary theory of citizenship, T. H. Marshall describes citizenship as a progressing set of rights that gradually moved from the establishment of civil rights, to political and finally social rights (Marshall & Bottomore, 1992). Even if Marshall's sequence, which closely mirrors the evolution of citizenship in Britain, has been criticized for lacking universal validity, the same cannot be said about its underlying logic. A dialectic between liberalization and democratization lies at the heart of all democratic membership regimes. To have lasting effect, any initial opening and hence extension of rights to formerly rightless persons must be followed by a moment of democratization. "[A] democracy," writes James Bohman (2010: 49), "cannot become more just without also becoming more democratic, and vice versa." Of course, as with moments of liberalization, moments of democratization can be subsumed under the same cumulative logic that underlies Marshall's "tale of progress" (Anderson, Shutes, & Walker, 2014: 7) insofar as both developments expand the set of individual rights. In contrast to civil and social rights, political rights, though, are different. As the "right of rights" (Waldron, 1998), they grant their holders not only additional rights but also authority over them and hence the normative power to protect, alter, and enhance their rights.

If we apply these insights to the developments described in Section 1, the solution to the two problems of externalization and conditionality seems straightforward. Modern migration regimes' recent liberalization must be followed by a period of democratization, which, extending political rights to noncitizens, grants them the power to influence and then later to defend the rights they hold vis-à-vis their host and destination countries. In other words, to overcome the pathologies that characterize modern migration governance, we must move away from state-centered views of justice and envision a new role for immigrants themselves. Rather than mere rights recipients they must be recognized as political actors who can hold states accountable for their plight, thereby providing them with a strategic interest to respect their rights and freedoms.²

² A similar call to recognize noncitizens' political agency motivates Svenja Ahlhaus in Chapter 15.

Albeit compelling at first sight, proposals to enfranchise noncitizens are generally met with strong opposition, which comes not only from communitarian or liberal nationalist, but also from many democratic thinkers.³ It is, in their view, simply impossible to include noncitizens in decisions about their own rights without undermining the very basis of these rights, namely the political community itself. This is the lesson we can learn from recent debates on the so-called democratic boundary problem (Abizadeh, 2008: 45–46; Whelan, 1983). According to a widespread view, boundaries separate not only those who hold political power from those who do not, but also two different social groups with fundamentally opposed interests. Whereas citizens want to protect their community's internal prosperity and cohesion and therefore support a regime of closed borders, noncitizens are interested in strengthening their individual rights and hence in open borders and membership boundaries. With any compromise between both groups being impossible, democratic decisions which include both citizens and noncitizens would necessarily amount to a zero-sum game, which, owing to their global majority position, noncitizens are destined to win. Hence, once empowered to codetermine their own rights, noncitizens would remove all legal distinctions which separate them from citizens and as a result abolish the membership boundaries on which modern polities are built. Are we then confronted with a choice between on the one side a world of open borders with no legal differences between citizens and migrants and on the other side a world in which migrants continue to be abject subjects whose rights, owing to the problems of conditionality and externalization, remain insecure?

The answer depends on whether one accepts the worldview that informs present debates on the boundary problem and, by extension, national thinking more broadly. As we have seen, this is the view of a world which is neatly divided into “us” and “them,” citizens and noncitizens, and hence two clearly separated groups with diametrically opposed interests. Such a view, though, finds less and less support in today's political reality. Contrary to static conceptions of citizenship, identity, and belonging, the present era is characterized

³ Critics of maximal proposals for noncitizen enfranchisement, that is proposals which would expand the franchise beyond a state's territorial borders, include inter alia Sarah Song (2012), David Miller (2020), Claudio López-Guerra (2014) and Ludwig Beckman (2009).

by unprecedented levels of transborder mobility and movement. Once limited to extraordinary circumstances, migration is today no longer an exception but the norm. Owing to new communication and transportation technologies, an internationalized economy, and the spread of English as a world language, migration has not only become a more and more realistic option for many people, but has also given rise to changing patterns of mobility and movement. Originally conceived as a one-directional movement, it has increasingly become circular, with people moving successively for a variety of different reasons such as education, employment, family, and lifestyle choices (Shaw, 2007: 2553). However, as soon as we acknowledge that many of us, taking advantage of these new opportunities, might – at least temporarily – be migrants in other lands, that as a result migrants are not exclusively the others but our own friends, family members, and ultimately we ourselves, it is difficult to uphold the view that citizens and noncitizens are clearly separated social groups. While both groups continue to exist, their internal composition is in constant flux, with people moving from one group to the other and therefore sharing the experience of both sides. In such a world, we are no longer either citizens or aliens, but in many cases assume both roles over the course of our lives. Ideally speaking, we are thus all *potential* migrants, who at some point might leave our home state to study, work, live, and love abroad.

Adopting such a dynamic view of boundaries, though, not only does justice to contemporary migration patterns, but also helps us envision new forms of democratic inclusion that do not run into the boundary problem. As soon as we stop thinking in binary terms and regard both citizens and aliens as potential migrants, democratic decision-making between these two groups becomes possible. As potential migrants we share, as we have seen, a double role. We are not only citizens but, at least potentially, also migrants and thus rights-givers and rights-takers at the same time. In our role as citizens, while we must grant rights to others, in our role as potential migrants we do or will claim rights from these others in return. Consequently, contrary to the assumption underlying the boundary problem, the relationship between citizens and noncitizens, rather than being asymmetrical, which would preclude any viable form of democratic decision-making, is marked by reciprocal needs and interests. Indeed, with our dual role as citizens and potential migrants comes necessarily a dual interest. Insofar as we are members of bounded political communities, we are concerned

with their internal order and cohesion and therefore likely to defend a certain degree of closure and exclusion. Our simultaneous role as potential migrants, though, pulls in the other direction: To facilitate potential cross-border movements, we are interested in extending the rights that we enjoy abroad and hence in inclusive rather than exclusive border and membership regimes. The conflicting interests, which are often attributed to citizens and aliens respectively, are thus united in our own person, which makes it possible to find common ground with those we generally regard as others. Indeed, sharing a similar interest in porous borders and membership boundaries, that is boundaries which are neither completely open nor completely closed, we can take democratic decisions which, rather than amounting to a zero-sum game, satisfy the needs of both groups.

Of course, claiming that we are all potential migrants does not imply that we all have the same potential for becoming migrants and hence the same interest in porous borders and membership boundaries. Even in a world that is far more mobile, interconnected, and globalized than ours is today, a perfect symmetry of needs and interests seems impossible to achieve. However, neither is perfect symmetry a necessary condition for democracy nor does its absence correlate with a preference for closed or open borders. Insofar as we prefer to have more rather than fewer options, we have reasons to support a regime of porous borders, which, while protecting existing political communities, increases the opportunities that are available to us and the persons we love. Moreover, living in a world of increasingly porous borders changes not only our interests, but also our minds. By experiencing, either at home or abroad, new forms of solidarity and trust, we might find it easier to overcome abstract fears of otherness, which, more often than not, prevent us from listening to the other side.

Contrary to the conclusion that has been drawn from the boundary problem, democratic decision-making between citizens and aliens need not necessarily lead to a world of open borders and the disintegrating effects that many democratic thinkers rightly worry about. Rather than shielding modern border and membership regimes from noncitizens' political influence, we must consequently think of the best institutional design which allows both groups, citizens and noncitizens, to face each other as potential migrants and hence express the dual interest that this role entails.

3 Migration as a Matter of Democracy: Demoi-cratic Migration Governance

As we have seen in Section 2, rather than being a logical consequence of migrants' enfranchisement, the open-borders scenario results from insufficient institutional adaptation. If foreigners are included in other states' national elections, both citizens and noncitizens are reduced to only one of their twofold roles and therefore prevented from expressing the common interests that they share as potential migrants.

Seeking to avoid the insufficiencies of the national framework, several political thinkers have argued in favor of global democracy (Agné, 2010; Goodin, 2007). Rather than being within the responsibility of national constituencies, noncitizens' rights should be determined by an all-inclusive and hence global assembly, whose decisions would be binding for all nation states. Albeit transforming noncitizens from voiceless subjects into political actors, the arguments made in Section 2, though, speak against a move to the global level. As with national decision-making, global reforms fail to give expression to the dual role that citizens and noncitizens have. Elected by and therefore accountable to individual voters, a global assembly can represent only their personal interests but not the interests they have as members of bounded political communities. Consequently, even if global reforms promise to strengthen international migrants' rights, they are ill equipped to protect the needs of existing political communities and might, similar to the open-borders scenario, therefore jeopardize the very institutions that have so far proven most effective in securing basic human liberties and freedoms. If, on the contrary, modern migration and membership regimes should respect both individual and communal interests, we need a double form of representation: Citizens and noncitizens must be represented as potential migrants, that is, in their dual role as members of national communities and as autonomous and therefore potentially mobile individual actors.

Meeting such a "dual standard of representativeness" (Bellamy, 2019: 97) is the central claim made by scholars who defend a demoi-cratic political order.⁴ Rather than situating democracy in a single demos, be it either of national or global scope, they call for democratic

⁴ See inter alia James Bohman (2010), Kalypso Nicolaidis (2012), Francis Cheneval (2016), and Richard Bellamy (2019).

structures between existing demoi, who, to use Kalypso Nicolaïdis' (2012: 254) words, should "govern together but not as one." Applied to modern migration governance, theories of demoi-cratic decision-making would demand a two-step process of reform. In a first step, they would transfer migration-specific competencies from the national to the transnational level and hence from unilateral to reciprocal decision-making. Migrants' mobility and residence-related rights would be removed from national authorities' discretion and become the object of reciprocal agreements between states, which, once concluded, would have to be transposed into national law. Contrary to most existing multilateral procedures, demoi-cratic decision-making, though, cannot be reduced to an isolated instance of intergovernmental cooperation. Rather, we should think of it as an ongoing political process, which regularly unites all participating parties in order to assess, adapt, and, if necessary, renew their common legal framework. Consequently, even if, unlike global reforms, demoi-cratic migration governance does not require the creation of a new political authority above existing states, it requires a high degree of institutionalization at the interstate-level.

Nonetheless, intensifying interstate cooperation on migration is not enough to realize the ideal of demoi-cratic migration governance. To ensure that intergovernmentally established agreements reflect not only states' collective but also their members' individual interests, demoi-cratic reforms insist on a strong linkage between national and multinational decision-making (Bellamy, 2019: 4; 90–92; Cheneval, 2016: 50–52). Those state officials who negotiate reciprocally binding agreements with each other must do so as the authorized and accountable representatives of their peoples. Besides enhancing the institutional infrastructure between states, models of demoi-cratic migration governance are therefore equally concerned with strengthening inner-state mechanisms of authorization and control. To strike a balance between individual and communal interests, policies of migration and border control, which, in the present context of an increased securitization of migration, are more or less left at executive authorities' discretion, must be brought under the influence of national citizenries and the wider democratic public. An expansion of interstate cooperation must consequently go hand in hand with a more prominent role of national parliaments, which, as representatives of their citizens' individual interests, must have the power to influence the positions that will be

defended in transnational negotiations and debates (Bellamy, 2019: 92–93, 125–126).

If both conditions are fulfilled, that is, if migrants' transnational rights are determined in reciprocally binding processes of intergovernmental decision-making, which are subject to domestic parliaments' influence and control, modern migration and membership regimes become not only more democratic, but also more just. Or, to resume the formulation used earlier, they become more just by becoming more democratic. Starting with the first claim, namely *demos*-cratic migration governance's democratizing effects, the difference to today's legal landscape is obvious. Migrants would no longer be voiceless subjects but be recognized as political actors who are able to influence the rights that they hold vis-à-vis their host and destination countries. Of course, unlike other proposals for noncitizens' enfranchisement, in the model defended here, migrants enjoy neither a special, that is group-specific, nor a direct form of representation. Rather, their needs and interests would be represented by their countries of origin and the national delegations they send to the interstate level. Insofar as they are entitled to participate in their home state's general elections, they can influence its negotiation position and as a result the intergovernmental agreements that define their cross-border rights and freedoms. However, even if the *demos*- rather than *democratic* mode of representation advocated here grants noncitizens only indirect influence over their rights, it has one central advantage: It gives institutional expression to the dual role and concomitant dual interest that they have as potential migrants. While, in their home state's national parliament, they are represented as individual persons, their government's delegation at interstate level represents their communal interests and hence the interests that they have as members of socially, culturally, and linguistically diverse political communities.

Insofar as *demos*-cratic decision-making, owing to its inherently reciprocal logic, allows citizens and noncitizens, or, more precisely, the members of different *demos* to face each other as potential migrants and therefore negotiate on the basis of similar rather than opposed interests, it overcomes the shortcomings of alternative proposals for noncitizen enfranchisement. Influenced by both individual and communal needs, *demos*-cratic decisions promise to strike a balance between the two extremes of open and closed borders and hence strengthen migrants' rights without undermining existing polities'

internal order and stability. However, pointing to democratic migration governance's tendency to produce a system of porous borders and membership boundaries is not enough to substantiate the second claim made here, namely its advantage in terms of justice. After all, porous boundaries are not a unique feature of democratic decision-making but, as shown earlier, have been proposed by several liberal-minded philosophers and can, at least to some extent, already be observed in practice.⁵ To see why we have good grounds to prefer democratic migration governance not only from a democratic, but also from a moral point of view, we must recall the two limits of justice theorizing analyzed in the beginning. Even if *de jure* today's borders and membership boundaries have become more porous than before, *de facto* states restrict migrants' access to rights either by preventing them from reaching their territory (problem of externalization) or by placing additional conditions on the acquisition of lawful residence and membership (problem of conditionality).

Of course, depending on states' voluntary compliance, democratic migration governance offers no absolute protection against immoral state action. However, owing to its reciprocal *modus operandi*, it reduces national governments' incentives to circumvent their legal obligations towards migrants. Since the rights they owe to other member states' nationals correspond to the rights that their own citizens can claim abroad, any violation of the common agreement is likely to have detrimental effects for their own citizenry as well. To see how democracy's reciprocal logic mitigates the two limits of justice theorizing, consider first the problem of externalization. As soon as they submit to democratic decision-making, according to the model outlined here, states lose absolute authority over two sets of rights, namely the mobility and residence-related rights of international migrants. Decisions about whether newcomers are granted or refused entry would no longer be within their absolute authority but would have to respect the transnational rules that all member states jointly define. Of course, the best protection against strategies of externalization would be a system of free cross-border movement, which, though, is unlikely to gain universal support. What is likely to gain support, by contrast, is a stronger regulation of those legal tools that states employ to prevent outsiders from reaching their shores. By developing

⁵ See, for example, Seyla Benhabib (2004).

ever more sophisticated surveillance techniques, which track people both inside and outside their borders, states restrict not only the freedom of foreigners, but also that of their own citizens as well (Bohman, 2010: 49). Insofar as demoi-cratic migration governance removes questions of migration control from executive authorities' discretion and brings them under the influence of national parliaments and their constituencies, it promises to mobilize resistance against illiberal externalization strategies, which, now coming from both sides of the border, states have good reasons to respect.

However, as we have seen earlier, states curtail migrants' rights not only by increasingly inhumane policies of border securitization, but also by the introduction of additional naturalization conditions that some groups of immigrants will not be able to fulfill. Yet, having lost their authority not only over noncitizens' mobility, but also over their residence-related rights, in a system of demoi-cratic migration governance national governments would no longer be in a position unilaterally to introduce new legal constraints and conditions. With such decisions falling within the joint responsibility of all member states, any government wishing to restrict migrants' access to rights would be left with only two options. It would either have to obtain the consent of all other member states or alternatively withdraw from the joint agreement, thereby accepting the risk of being punished by its own citizens who, as with foreigners, would lose their transnational rights and freedoms.

4 Demoi-cratic Migration Governance in Practice: Objections

Demoi-cratic migration governance, so this chapter's central claim, bridges the gap that moral accounts of migration are unable to overcome. By submitting migrants' rights to democratic decision-making between different demoi, it not only contributes to their strengthening, but also protects them against policies of conditionality and externalization.

Nevertheless, albeit promising to overcome the limits of justice theorizing, demoi-cratic reform proposals face an important limitation: To fulfill the double requirement of both internal and external democratization, all participating parties must be committed to democratic principles in the first place – a condition which excludes nondemocratic regimes and their citizens from demoi-cratic migration governance's

scope (Cheneval, 2016: 26). To gain an idea of the consequences that this limitation has in practice, it is helpful to look at the EU, whose internal migration and membership regime, namely EU citizenship, roughly follows the demoi-cratic logic. Even if EU citizenship grants all member state nationals a comparatively large bundle of transnational rights, it has given rise, to use the words of Seyla Benhabib (2002: 458), to a “two-tiered status of foreignness,” which sharply distinguishes between internal migrants, that is EU citizens, and external migrants who, coming from non-EU states, enjoy a lower level of legal and social protection. Moreover, under nonideal circumstances, in which democratic principles fail to enjoy universal recognition, demoi-cratic reforms not only lead to inequalities and exclusions, but also provide them with a *prima facie* sound justification. Contrary to the discriminations created by national law, those resulting from demoi-cratic arrangements would no longer be based on arbitrary criteria such as people’s nationality but on the *per se* unobjectionable principle of reciprocity. In the hands of restrictive policymakers, demoi-cratic arguments could thus easily be used to reject any obligation to narrow the gap between internal and external immigrants. Since the latter, so the argument could go, are not part of the reciprocal agreement and therefore not committed to the duties it prescribes, they have no legitimate claim to benefit from its privileges either.

However, reducing the ideal of demoi-cratic migration governance to its reciprocal rationale or logic would betray its primary motivation, which is one of emancipation. Indeed, rather than being an end in itself, the norm of reciprocity was introduced to serve a more fundamental goal, namely that of improving the legal situation of international migrants. As we have seen, realizing this goal requires a twofold effort, to (1) give institutional expression to migrants’ political agency and hence grant them a say over their own rights, and (2) uphold the stability of existing polities, which have so far proven most effective in protecting individual rights. Compared with these overriding objectives, demoi-cracy’s reciprocal logic can claim only derivative value: It achieves the best balance between the conflicting demands of noncitizen agency and communal integrity.

Viewed from this perspective, demoi-cratically defined rights are more than mutual concessions between specific nation states. Rather, they are genuine migrant rights which reconcile the background conditions of migration, namely a world of bounded nation states, with

the normative ideal of individual freedom and autonomy. Understood as such, though, that is as genuine migrant rights, national authorities have no principled reason to restrict them to specific groups of immigrants. Such restrictions are permissible only if an extension of equal rights to nonmember state nationals threatens the second value that demoi-cratic migration governance seeks to protect, namely that of communal stability and cohesion. Consequently, even if the ideal of demoi-cratic migration governance does not require strict equality between internal and external migrants, it requires that any form of inequality be justified to a high level by the member states. Accordingly, despite being limited to democratic states, demoi-cratic migration governance sets norms that reach beyond the limits of demoi-cratic associations. As we have seen in this section, it comes with both internal and external obligations. Internally, democratic states must submit their migration policies to joint decision-making and hence reform their domestic border and membership regimes according to commonly defined rules and standards. Externally, they must make efforts to equalize the treatment between internal and external migrants and publicly justify any deviation from this norm.

Conclusion

Starting from the assumption that modern migration governance can become more just only by becoming more democratic, this chapter has argued in favor of demoi-cratic decision-making. To improve migrants' legal situation, national authorities must renounce absolute discretion over their rights, which should become the object of transnational agreements that different governments, each representing their citizenries' collective will, conclude with each other. Of course, even if demoi-cratic reforms promise to strengthen international migrants' rights, they neither provide an immediate solution to the problem of migration nor resolve all the various injustices to which it gives rise. Democratic and moral accounts of migration can consequently not replace but only complement each other. As such, though, that is as a complement to existing theories of just migration governance, models of demoi-cratic migration governance do not free national authorities from their existing moral responsibilities towards outsiders but merely add an additional obligation. As Ayelet Shachar demonstrates in her recent book (2020b), to tame the rights-infringing and dehumanizing

effects of their increasingly shifting borders, states must extend their moral and legal obligations beyond their territories and hence protect the human rights of all immigrants, no matter whether they have actually reached their borders or have been stopped *en route*. In a similar vein, to overcome the limits of justice theorizing that this chapter sought to reveal, democratic states must extend processes of democratic decision-making beyond their jurisdictional confines to bring migration governance under the influence of all those whose rights and freedoms are at stake.