

What Can the United States Learn from Europe?

Christian Joppke

American University of Paris

Abstract

This article gives an overview of the European “immigration system,” which includes both immigration control and immigrant integration. Special attention is given to the Euro-specific division of competences between supranational and national levels, which is still evolving. Some lessons, both positive and negative, for the United States are drawn. Most importantly, there cannot be a coherent “immigration system” but only a patchwork of divided legal regimes guided by conflicting principles, with friction between them likely to be permanent.

The title of this symposium, “Fixing a Broken Immigration System,” presupposes a system once intact. If this premise seems not quite right with respect to the United States, it is wholly inadequate with respect to Europe, which *never had* anything akin to a coherent immigration system. The main problem in Europe today is the transfer and rebalancing of jurisdiction between national and supranational levels, for which there is no parallel in the United States.¹

The quest for a coherent immigration system is a chimera, in whatever place. There can only be a patchwork immigration system with divided legal regimes, and friction between those regimes will be permanent. Why? Because highly variegated migration realities produce highly disparate power/interest constellations and accompanying political logics.

Example 1: high- vs. low-skilled immigration In high-skilled immigration, demand exceeds supply; in low-skilled immigration, supply vastly exceeds demand.² This difference makes for opposite political logics: *stemming* vs. *solliciting*, which cannot be integrated within one coherent “immigration policy.”³ In sum, there can never be *one* policy of immigration, only “policies” in the plural, with differing (even opposite) legal infrastructures and political logics.

Example 2: legal vs. illegal immigration At the European Union (EU) level, one justification for a legal immigration policy (Canadian-style) has been to ward off illegal immigration pressure from the South. But considering the wide and growing wealth disparity between (sub-Saharan) Africa and Europe, it is more realistic to expect the opposite effect of legal immigration establishing the networks and pathways that facilitate illegal flows. This also has been the US-Mexican experience.⁴

Having questioned the possibility of a coherent immigration system, what *is* the European system, and what aspects of it are of positive or negative interest for the United States? I will focus on EU or Europeanized policies while following the conventional distinction between integration and control.

Immigrant integration This domain remains largely under national competence (especially nationality laws). The only supranationalized competence is in antidiscrimination policy (since 2000); the latter recognizes indirect discrimination in a large variety of sectors (employment, housing, and services), but stops short of “affirmative action” (dubbed “positive discrimination” in Europe), with the United States as the regularly cited negative contrast case.⁵

Overall, in terms of integration, the European reality is increasingly inclusive citizenship (with some recent setbacks in naturalization) and moderately aggressive antidiscrimination, along with a celebration of diversity (code word for the “multiculturalism” that remains despite its nominal retreat).⁶ This part of the European system looks very American, and increasingly so.

The one difference is with respect to civic integration policies for newcomers, which have proliferated across Europe since the late 1990s. These policies have repressive connotations, and their indirect purpose is restricting unwanted family migration. The fusion of integration and control agendas is largely unknown in the United States, where family migration has remained surprisingly uncontested.⁷

Immigration control The making of a European (EU) immigration policy has been on the agenda since the Amsterdam Treaty (1997),⁸ and significant advances have been made in this direction. What drives the supranationalization of controls? At the domestic level, it helps undercut overly “liberal” rules, which are protected by higher courts. (There is no “plenary power” in Europe.)⁹ However, member states’ desires for control notoriously underestimate the rights-focused interventionism by the European Court of Justice (ECJ).

By now, with the exception of labor migration, almost all aspects of immigration policy—distribution of visas, asylum determination, long-term residence status, family reunification, and entry and residence of students and researchers—are under supranational competence (in terms of European Council Directives). In addition, there have been a host of operational measures at the EU level: sophisticated information and identification systems and a multinational border control that does not replace but complements, in advisory function, national border guards.

By now the last bastion of still-nationalized immigration control is economic migration. Why this laggardness of supranationalizing economic as against other kinds of migration? Because decisions about economic migration are always discretionary; there is no need here to undercut overly generous rights on the part of immigrants through the European Union route.

The one Council Directive that has so far been issued on economic migration is on high-skilled immigration (the so-called Blue Card directive of May 2009).¹⁰ However, the Blue Card will not make the Green Card fear and tremble: It is only temporary (for a maximum of four years, though renewable), and national discretion has been left fully in place. The EU scheme does not overrule existing or still-to-be-created national schemes of high-skilled migration. National sovereignty is left in place even with respect to nominally free movement of high-skilled immigrants after an initial eighteen-month

period: A second member state can always say no if a high-skilled migrant wishes to move after eighteen months from the member state of first acceptance. This destroys the *one* competitive advantage of Europe: simultaneous access to twenty-seven national labor markets, which had been the promise and impetus of the entire Blue Card initiative.

What Can the United States Learn from Europe, Positively and Negatively?

Positively Courts, with their individual-rights agenda, are central to the European immigration system; there is nothing akin to “plenary power” in Europe. If any immigration system has to balance the interests of immigrants with those of the (various actors and sectors of the) receiving society, immigrant interests are, in principle, better protected in Europe than in the United States (though this European advantage on the legal side is offset by the much lesser institutionalization of immigrant and minority interests in the party and political system).

Negatively The European immigration system is still premised on the exceptional and temporary nature of migration. In other words, it is still a guest worker system of sorts. The logic is one of gradual status consolidation. There is no routine trajectory from legal permanent resident status *at entry* to citizenship. The only country where legal permanent residency is available at entry is, curiously, Germany, but only for a trickle of high-skilled immigrants. This is still (and will remain) a continent in which immigration is extraneous and exceptional, not central to nation-building.

NOTES

1. For an overview of the contemporary European scene, see Christian Joppke, “European Immigration Policies: Still Between Stemming and Soliciting,” in *Developments in European Politics 2*, ed. Paul Heywood et al. (forthcoming).

2. See Jagdish Bhagwati, *In Defense of Globalization* (New York, 2004): 214.

3. See Christian Joppke, “European Immigration Policies at the Crossroads,” in *Developments in West European Politics 2*, ed. Paul Heywood et al., 2002.

4. A standard work on the theory and reality of immigration flows around the world is Douglas Massey et al., *Worlds in Motion* (Oxford, 2005).

5. See Christian Joppke, “Transformation of Immigrant Integration,” in *World Politics 59* (2007): 243–73.

6. For the best and most up-to-date overview of European nationality laws, see Marc Morjé Howard, *The Politics of Citizenship in Europe* (New York, 2009).

7. See Christian Joppke, “Beyond National Models: Civic Integration Policies for Immigrants in Western Europe,” *West European Politics 30* (2007): 1–22; and Sara Wallace Goodman, “Integration Before Entry? Immigration Control through Language and Country Knowledge Requirements,” <http://ssrn.com> (posted August 27, 2009).

8. The Amsterdam Treaty is one of the periodic revisions of the Treaty of Rome, the founding treaty of the European Community of 1958.

9. Adam Luedtke, “Why a European Union Immigration Policy?” (paper presented at the Forty-Ninth Annual Meeting of the International Studies Association, San Francisco, CA, March 26–29, 2008).

10. Council Directive 2009/50/EC of May 25, 2008, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, in *Official Journal of the European Union*, June 18, 2009.