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**What the United States Can Learn from Europe as it
Contemplates Circular Migration**

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Imagine a country, which its new inhabitants have reached since their first settlement in the 17th century by sea as if it was an island. Furthermore, imagine that the country from which these inhabitants inherited and borrowed their laws was an island. In the latter, borders were controlled at the ports of entry and freedom of circulation was guaranteed and cherished once within the territory. Then, imagine that suddenly in the middle of the 20th century, the former is less and less reached by sea and become aware of its significant land border.

From the point of view of immigration policy, geography and politics do not always correspond. Australia and New Zealand are geographically and politically islands; Canada is not geographically an island, but politically and in the management of its immigration policy, it is a de facto one: immigrants cannot travel very easily to Canada via its northern land border. From the south, i.e. from the United States, there are not many immigrants who wish to leave the land of opportunity and forfeit their easy access to the labor market.

From the point of view of its immigration flows and policy, the United States was an island until the middle of the 20th century, as a large majority of immigrants and visitors arrived by boat. Moreover, the United States inherited a number of its legal traditions and structures from the island ways of Great Britain.

No other country has experienced such a dramatic shift in the political geography of its immigration policy.² Despite all these new developments and the growth in immigration from neighboring countries, the legal culture and the framework of U.S. immigration legislation have remained structurally similar to what they were before World War II. When the Mexican border became an increasing source of immigration, the old system became less efficient. However, the political reaction has not been to change the immigration system but to tinker with it in order to recover its lost efficiency.

Legislators have not rethought either the most-entrenched (legal customs and the right to freely circulate on US territory) or even the least-entrenched aspects of the system (the quota system. It also reduced the power of the Executive Branch to legalize undocumented immigrants³ The possibilities for suspending deportation in hardship cases “were virtually eliminated by Congress in 1996.”⁴ Since that time, the right to detain asylum seekers or deportable aliens indefinitely has also expanded. Nevertheless, the system remains broken

² The only other examples are Germany and Austria when the Iron Curtain fell. But, the Iron Curtain lasted 40 years and the legal culture of Austria and Germany was built over centuries so the change was not as drastic as in the United States.

³ Cf. Adam B. Cox and Cristina M. Rodriguez, *The President and Immigration Law*, Yale Law Journal, 119:101 2009.

⁴ Mae N. Ngai, *We Need a Deportation Deadline*, *Washington Post*, June 14, 2005, p. A2.

and is felt as such: every year, the number of foreign migrants who get a legal residence permit equals the number of migrants who remain in the US illegally.

What to do? In the field of immigration policy, there are no easy answers and no scientific study that can tell you how to perfectly manage the flow of immigrants. Comparative studies between countries with similar immigration experiences are often the best approach in such contexts.

Similar to the United States, the four most populous countries in Western Continental Europe⁵ - France, Germany, Italy and Spain - have significant land borders. Like the United States, many European countries are developed states in close proximity to developing countries with a lower GDP. In addition, most European countries and the United States share a trend towards the increase by courts of the legal protections of migrants⁶

With these features in mind, there are a number of possible and interesting actions based on the European experience.

1. Sedentary Immigration vs. Circulatory Migration

Among the numerous reasons for undocumented migration are the poorly-designed regulations for circulatory migration, which nevertheless represent the desires and needs of some migrants. The lack of flexibility in granting circular residence status forces many migrants, both unskilled and skilled, to remain against their personal inclination. The modern 21st century state must learn to manage circulatory migration and adapt policies to address the legal rights and status of migrants in movement.

The possibility of circulating and re-circulating on a permanent basis should be offered to seasonal workers.⁷

Such measures would benefit the worker, his or her family, the home country and the receiving country with economic sectors (e.g. agriculture and construction) dependent upon seasonal migrant labor. It will reduce the number of illegal migrants.. In addition, it could also address a problem that has divided many policy makers: should the United States admit temporary workers again s seasonal workers are the opposite of temporary workers.

Not all unskilled workers want to settle in the U.S. with their families. If given the option, many would return to their home country after having worked in the United States for six to

⁵In, 2007, 8.8% (7.2 million) of residents in Germany had a foreign citizenship. In 2004, 8.1% of the total population of France are immigrants (4,9 millions). Italy now has an estimated 4 million to 5 million immigrants — about 7 percent of the population. Since 2000, Spain has absorbed more than three million immigrants, growing its population by almost 10%. Immigrant population is now over 4.5 million.

⁶Cf. Peter Schuck, "The Transformation of Immigration Law," 84 *Col. L. Rev.* 1-90 (1984).

⁷ Seasonal workers are needed for seasonal jobs that are by nature temporary while temporary workers are hired for a fixed term contract in which the temporal character comes from the nature of the contract and not of the job. Cf. Booth, A.L., Dolado, J.J. & Frank, J., 2002, "Symposium on temporary work, Introduction, *The Economic Journal*, Vol.112, 182.

ten months. With the wages they had earned, their purchasing power would be much higher in their home country than in the United States.

With the internet, Skype, and further advancements in communication technology, it is easier to for a seasonal worker to stay in touch with his or her family at home.⁸ But seasonal workers will only return to their home country and leave the United States if they have a guarantee that they will be able to return. . Otherwise, there is a strong incentive to remain in the country as an undocumented worker. Both previous and existing seasonal workers' programs have shown that in the absence of this kind of guarantee, seasonal workers tend to remain illegally in the receiving country. However, the choice is not between a failed seasonal worker program and no program at all. Following a Franco-German initiative⁹, since 2007 the European Commission has encouraged circular migration between the member states and third countries.¹⁰ In addition, Italy, Spain, and France have developed new approaches to the management of seasonal workers.¹¹

In Italy, a quota of seasonal workers is fixed every year. The following year, the seasonal worker who has returned to his or her country of origin at the end of his or her contract, has priority for returning in the next year's quota. Since 2009, there is no longer a quota on permanent foreign workers, but a specific quota remains set for seasonal workers at 80,000 for 2010.

In Spain, a program has been negotiated with the Moroccan Government permitting an increased number of Moroccans to come and work temporarily. They are guaranteed the same level of salary and social protection as permanent residents and natives. In exchange for returning to Morocco, they are offered the possibility of coming back to Spain the following year. The fact that Spanish authorities give priority for the workforce to women with children remaining at home contributes to the 95% rate of return reached every year.¹²

The European Commission has suggested that member states develop multiannual permits for seasonal workers.¹³ In France, the Immigration and Integration Act of July 24,

⁸ Cf. DIMINESCU, Dana, (2005), Le migrant connecté : pour un manifeste épistémologique, in Migrations Société, vol.XVII, n°102, novembre-décembre , pp. 275-293

⁹ On the initiative of Wolfgang Schauble and Nicholas Sarkozy, October 26, 2006, cf. Stefan Angenendt, Circular Migration, a Sustainable Concept for Migration policy? http://www.swp-berlin.org/common/get_document.php?asset_id=4058

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions On circular migration and mobility partnerships between the European Union and third countries /* COM/2007/0248 final */ 05. 16. 2007.

¹¹ Cf. for example <http://www.caritas-europa.org/module/FileLib/080407Stakeholderquestionnaireseasonalworkers-CEreply.pdf>

¹² http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/01/19/feature-02

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions On circular migration and mobility partnerships between the European Union and third countries /* COM/2007/0248 final */ 05. 16. 2007.

2006 created a multi-annual permit of three years. Implemented in the summer of 2008, the permit has been offered to 6,500 seasonal workers. The government has recently emphasized “its adaptation to the targeted public” (public visé).¹⁴

For the United States, one could imagine a multi-annual permit of five or ten years, or even a green card for seasonal workers. These permits could be offered to citizens of all countries or negotiated with select ones such as Mexico. In exchange for the granting of seasonal green cards to thousands or tens of thousands of Mexican workers, Mexico could cooperate with the United States in the control of its southern and northern borders.¹⁵ These workers – in some way permanent - should have the right to unionize and to be protected by branch agreements between employers and unions.¹⁶

¹⁴ French Senate, Finances Committee, Parliamentary Question, n°36 of Pierre Bernard Reymond, 2010 Budget.

¹⁵ Similar cooperation exists between the countries who have entered the Schengen zone of free circulation and their border countries like Romania or Bulgaria.

¹⁶ At some stage, for example at the end of the first 5 or ten years period they should be also able to transform their status.