



NORMS AND VALUES IN THE  
EUROPEAN MIGRATION AND REFUGEE CRISIS

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## A New Idea(I) for Europe

### Report on the Future of Cosmopolitanism in Europe

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## Executive summary

While designing its migration policy, the European Union must carefully weigh two conflicting considerations. On the one hand, the Union has explicitly set some normative standards for itself in its *Charter of Fundamental Rights*. On the other hand, after the sudden influx of asylum seekers over the summer of 2015, several member states signalled that their reception facilities could not cope with the tide of new arrivals, while some populations voted into power or confirmed national governments committed to restricting immigration into Europe.

This report aims to offer some constructive criticisms and to present various solutions that would reconcile the Union's normative commitments with its migration practices. To that end, we will proceed in four major steps.

We will start by presenting a more thorough diagnostic of the current situation of the Union's migration policies and of its adequation to its self-assigned values and norms. After having introduced our perspective on the European norms and values, we will take the *New Pact on Migration and Asylum* as an illustration of the many practical and political hurdles the Union must overcome to align its migration policies with its normative commitments.

Next, we will introduce three possible scenarios for the future of the Union's migration policies. In our first scenario, we will suggest that the current *status quo* is unstable and that its perpetuation is likely to come at a political cost. We will then sketch two alternative options.

In the second scenario, the Union takes a step back in the management of its external borders, hands over most of the operational responsibilities to its member states and limits itself to a supervisory function. From a normative point of view, the Union would acknowledge that the European norms and values are open to distinct contextual interpretations in each member state and would endorse the idea that local migration policies should be tailored to those varying interpretations, so long as the core principle of human dignity is unconditionally respected. The European Union would thus commit to a form of moral cosmopolitanism. A context-sensitive approach to migration may boost their acceptability for the larger public and prevent the gut rejection currently witnessed in some of the member states. But we will argue that it could also generate a lack of general coordination in migration policies and ultimately prove self-defeating.

Or, in the third scenario, the European Union could double down on the idea that what makes it stand out as a transnational polity is the fact that it is driven by a political cosmopolitanism. It would argue that the exact content of its norms and values is open to discussion but that it cannot allow their egalitarian and universalist core to be compromised. Consequently, it would adopt a more proactive stance in the management of migration emphasize the need for European solidarity and assert its authority over the issue. A more centralized migration policy would spark some lively debates in several member states and should be handled cautiously to prevent it from backfiring politically. But the benefit of a clarified and internally coherent position could justify taking this risk.

The third part of this report will build upon this last scenario and recommend three possible and complementary political innovations, along with a normative justification for their introduction. It will make the case that, to reconcile the political concerns of several of its member states with its normative commitments, the European Union needs to think outside the box in migration matters and consider some original new policies. We will thus conclude by exploring (1) the proposal to grant a universal right to hospitality within the European Union, which would require revising the Union's foreign policy to roll back the outsourcing of its border controls to third countries, (2) a revised flexible mandatory scheme that would scrap the possibility for member states to discharge their duties by sponsoring the return of migrants and (3) the possibility of granting European citizenship to asylum seekers to empower migrant voices and fuel a critical and civic form of cosmopolitanism.

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## Abstract

While designing its migration policies, the European Union must carefully weigh two conflicting considerations. On the one hand, the Union has set some normative standards for itself in its Charter of Fundamental Rights. On the other hand, after the sudden influx of asylum seekers over the summer of 2015, several member states signalled that their reception facilities could not cope with the tide of new arrivals, while some populations voted into power or confirmed national governments committed to restricting immigration into Europe.

This report aims to offer some constructive criticisms and to present various solutions that would reconcile the Union's normative commitments with its migration practices. To that end, we will proceed in four major steps. To begin with, we present a thorough diagnostic of the current situation of the Union's migration policies and of its adequation to its self-assigned values and norms. Then, we introduce three possible scenarios for the future of the Union's migration policies.

In our first scenario, we suggest that the current status quo is unstable and that its perpetuation is likely to come at a political cost. We then sketch two alternative options.

In the second scenario, the Union takes a step back in the management of its external borders, hands over most of the operational responsibilities to its member states and limits itself to a supervisory function. From a normative point of view, the Union would acknowledge that the European norms and values are open to distinct contextual interpretations in each member state and would endorse the idea that local migration policies should be tailored to those varying interpretations, so long as the core principle of human dignity is unconditionally respected.

In the third scenario, the European Union doubles down on the idea that what makes it stand out as a transnational polity is the fact that it is driven by a political cosmopolitanism. It would argue that the exact content of its norms and values is open to discussion but that it cannot allow their egalitarian and universalist core to be compromised. Consequently, it would adopt a more proactive stance in the management of migrations, emphasize the need for European solidarity and assert its authority over the issue.

## Introduction

Virginie Guiraudon, a highly regarded scholar of European migration, provocatively titled a recent scientific article “The 2015 refugee crisis was not a turning point” (Guiraudon 2018). She rightly observes that, though many predicted that the European project was on the brink of disaster and that its migration crisis may finally push it over the edge (Krastev 2020), none of those gloomy forecasts came true. What strikes the careful observer is rather the continuity of the European project in general and its migration policies in particular. The Dublin and the Schengen agreements may have experienced some disruptions in their routinized functioning; however, they have not undergone any significant change since 2015, while most of the new solutions put forward in the aftermath of the crisis amounted, in fact, to advocating that the European Union should do more of the same. Frontex’s budget may have tripled and the scope of its responsibilities expanded but it is nevertheless still the same agency, whose agenda and approach remain unchanged (Lavenex 2015). How do we account for this relative stability? According to Guiraudon, this is due to the path dependency of policy making in the field of European migration management. The choice made in the 1990s to frame migration as a security issue (Huysmans 2006) was offset by the administrative complexity of the European Union. The supranational polity was initially geared to deal with the technical topic of low political salience. Confronted with the very salient and highly divisive topic of migration (Hooghe and Marks 2018), its usually smooth policy-making process ground to a halt and prevented it from engaging in any large-scale reform to its approach (Geddes 2018). As a result, political inertia dominated throughout the crisis.

This assessment could be contested on empirical grounds. One may point out, for instance, that the agreement between the European Union and Turkey brought the strategy of border externalization to an unprecedented scale (Haferlach and Kurban 2017) or highlight the rapid and severe erosion of the asylum regime across the European Union (United Nations High Commissioner for Refugees 2021). But, most importantly, its pivotal claim ought in our view to be challenged. For 2015 was a turning point, at least from a normative perspective. It may not have dramatically altered migration policies, but it shattered the perception that the European Union had of itself (Stierl 2020), and of its commitment to universal norms and fundamental values. The significant uptick in the number of migrants and refugees crossing the Mediterranean Sea to land on the shores of its southern member states presented the Union with more than a tough policy-making decision. Beneath it lay a difficult normative question: how should those newcomers be received? This question would prove both intricate and urgent. It eventually cast a long shadow over the Union’s inner functioning as well as its political identity (Lavenex 2019). More specifically, it challenged the idea that the European Union would be a political project fuelled by a cosmopolitan agenda (Beck and Grande 2007).

Schematically, two conflicting considerations needed to be carefully weighed. On the one hand, the European Union had explicitly set some normative standards for itself in its Charter of Fundamental Rights, including, notably, a commitment to guarantee the right to asylum in its Article 18 and, in its subsequent Article 19, a set of legal protections designed specifically for when an individual is removed, expelled or extradited. On the other hand, several member states signalled that their reception facilities could not cope with the tide of new arrivals, while some populations voted into power or confirmed national governments committed to restricting immigration into Europe. Several member states were thus unable and/or unwilling to take in more immigrants.

This sketch of the European political dilemma has the merit of presenting the stakes as a simple choice between two alternatives: the ethics of conviction is pitted against the ethics of responsibility (Van Middelaar 2019). The EU could either stick to its normative commitment despite a mounting resistance to it, or it could adopt a *realpolitik* approach and make its migration policies more restrictive, putting it uncomfortably at odds with its self-proclaimed European values. In the first case, the aim is to make justice prevail, be it at the expense of the real world. In the second, the imperatives of the empirical world justify taking some liberties with Europe's presumed norms and values.

What makes this narrative compelling is its sheer simplicity. It reads more like a moral tale than a multi-faceted appraisal of the unfolding of this chain of events. But this strength is also an obvious weakness. Over the last few years, and upon closer inspection, the EU has been confronted not with one but with several difficult choices. The binary opposition between popular demands for restrictive migration policies and normative commitments to offer protection to refugees overlooks many complexities. First, the European Union is not a unified actor. It is both a multi-level and a decentralized organization, with a limited agency in the field of migration policy and responsibilities shared with its member states (Ripoll Servent and Zaun 2020). The debate about whether to adopt protective or protectionist migration policies did not occur on a single political scene but was rather played across distinct public spheres and institutions, infused with a vast array of distinctive public norms and values. Second, European migration policies do not have an on/off switch, but rather constitute a sophisticated policy programme, intertwining several political instruments. Reducing this to a choice between hosting or rejecting migrants is misleading. Furthermore, assessing whether a specific set of migration policies is liberal or restrictive is a question of degree and requires consideration of the interplay between several norms and legal mechanisms (Deleixhe 2016). Third, European public opinion with regards to migration presents a contrasting landscape. Variations in the appraisal of the issue vary wildly from one member state to the next, but a general trend signals that the main repercussion of the 2015 reception crisis has been the polarization of public opinion, strengthening both positive and negative opinions with regards to migrants and leaving few citizens undecided (Ambrosini et al. 2019). It would thus be equally wrong to assume that there is any form of solidified public consensus on the issue.

This plea for complexity runs against any judgemental approach of the Union's migration policy. Our theoretical intention is to offer some constructive criticisms and to present various solutions that would reconcile the Union's normative commitments with its migration practices. To that end, we will proceed in three major steps. First, we will present a more thorough diagnostic of the current situation of the Union's migration policies and of its adequation to its self-assigned values and norms. After having introduced our perspective on the European norms and values, we will take the New Pact on Migration and Asylum as an illustration of the many practical and political hurdles the Union must overcome to align its migration policies with its normative commitments. Second, we will introduce three possible scenarios for the future of the Union's migration policies.

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Or, in the third scenario, the European Union could double down on the idea that what makes it stand out as a transnational polity is the fact that it is normatively driven. It would argue that the exact content of its norms and values is open to discussion but that it cannot allow their egalitarian and universalist core to be compromised. Consequently, it would adopt a more proactive stance in the management of migrations, emphasize the need for European solidarity and assert its authority over the issue. A more centralized migration policy would spark some lively debates in several member states and should be handled cautiously to prevent it from backfiring politically. But the benefit of a clarified and internally coherent position could justify taking this risk.

The third part of this report will build upon this last scenario and recommend three possible and complementary political innovations, along with a normative justification for their introduction. It will make the case that, to reconcile the political concerns of several of its member states with its normative commitments, the European Union needs to think outside the box in migration matters and consider some original new policies. We will thus conclude by exploring (1) the proposal to grant a universal right to hospitality within the European Union, which would require the revision of the Union's foreign policy to roll back the outsourcing of border controls to third countries, (2) a revised, flexible, mandatory scheme that would scrap the possibility for member states to discharge their duties by sponsoring the return of migrants and (3) the possibility of granting European citizenship to asylum seekers to empower migrant voices and fuel a critical and civic form of cosmopolitanism.

## 1. Introducing our methodological approach

### a. European norms and values and the European Charter of Fundamental Rights

The European project was initially designed as a form of economic cooperation. As such, its founding treaties did not require any reference to fundamental norms or values (Dinan 2004). However, as the integration process deepened and took a more political turn, the European Court of Justice insisted that there was a black hole at the centre of the Community Law (later, the EU Law).<sup>2</sup> The fundamental principles of the Union law implied that European individuals enjoyed some basic rights and freedoms while failing to spell them out in any meaningful or systematic fashion in the European *acquis*. This legal shortcoming was redressed when the European Council, Commission and Parliament solemnly

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<sup>2</sup> CJEU, *Stauder v. Stadt Ulm*, 1969 (C-26/69)

proclaimed in 2000 the *EU Charter of Fundamental Rights*. Originally introduced as a form of soft law, the Charter was recognized in 2007 as a primary source of EU law through Article 6 of the Treaty of Lisbon.

By proclaiming this Charter, the European Union did more than just provide itself with a legal instrument to conduct internal human rights reviews. The drafting of the Charter was also a political exercise, an opportunity to make explicit the EU's most fundamental norms and values. European leaders had grown keenly aware that the new roles fulfilled by the European Union after the Maastricht treaty had eroded the pre-existing permissive consensus amongst the general European public (Hooghe and Marks 2009). The functionalist argument – that had long been used to justify the integration process – had apparently run its course. Being a slick transnational administration able to deliver substantial material results was no longer sufficient; the European Union had to clarify what it stood for – what sorts of norms and values provided the general orientation of its political action (Van Middelaar 2013).

In a previous report the NOVAMIGRA research project scrutinized closely the content of those norms, paying particular attention to their legal consequences for migrants' rights (Facchi, Parolari and Riva 2019). That report concluded that the Charter is, from a philosophical viewpoint, a rather ambiguous text. First, it appears to use the terms “values”, “principles” and “norms” interchangeably, while legal and political philosophers insist that those terms give rise to different duties and obligations for the political community. Values refer to a desirable goal that one has a duty to achieve. Political values therefore imply a public decision as to what the political community should strive to accomplish collectively. They shape political agendas and platforms. Norms are principled obligations designed to allow a peaceful coexistence of different lifestyles. They do not indicate what should be considered as “good” (or politically desirable) but rather point to a fair and just way to discuss and accommodate peacefully conflicting worldviews (Ferry 2002). However, the Charter never explains why it uses those different terms or how each one is meant to be understood individually. It is thus unclear whether it aims to chart a possible political future for the European Union or restricts itself to setting out the normative conditions of a just coexistence between distinct lifestyles and political orientations (Düwell and Philips 2018).

Second, the Charter draws its inspiration from a wide range of political traditions, themselves shaped by their commitments to distinct values. A concise list of the European values, inserted in the preamble of the Charter, showcases this heterogeneity: “the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law.” (European Union 2012). One would be hard pressed to come up with a set of criteria that presided over the selection of these European values. Their inclusion is more likely the result of a compromise between divergent political families than the product of an academic exercise aiming to unearth systematically the normative foundations of the European Union. A closer inspection of the Charter's different articles reveals that, amongst the distinct political traditions vying to influence it, four are particularly prominent. The influence of Christianity is palpable behind the emphasis on human dignity. The articles guaranteeing citizens' political participation owe their presence in the Charter to the long history of republican tradition in Europe. The Charter inherits from liberalism its attention to the impartiality of the law, private freedoms, and tolerance, while the socialist tradition played an obvious role in the inclusion of equality and solidarity amongst the European values. As a result, the

Charter presents itself more as a patchwork of those different traditions – diplomatically making some room for each of them – than as an internally consistent political statement, articulating cogently its norms and values (Facchi, Parolari and Riva 2019: 24-34).

### **b. Basic rights: neither policy recommendations, nor empty signifiers**

Our position, however, is that there is no reason to lament this lack of internal consistency in the Charter. To be sure, the Charter is not cloaked in the mantle of a philosophical treaty. It is not as eloquent as some of its illustrious predecessors (think of the *Déclaration des droits de l'homme et du citoyen* or the *United States Declaration of Independence*), it fails to be explicit of its underlying conceptual foundations, it does not acknowledge the heterogeneity of its normative sources and it stops short of explaining how some of its conflicting principles are supposed to be reconciled. But there is no reason to assume that a proclamation of basic rights should be unambiguous, that its meaning should be straightforward or that its purpose should be framed by a single political tradition.

To substantiate that claim, allow us to take a little detour and explain in more detail the background to our own theoretical approach. Our methodological perspective takes its cues from the work of two French political philosophers, Claude Lefort and Étienne Balibar. The former wrote extensively on the connection between human rights and the democratic regime (Lefort 1994). He made the provocative claim that the exact content of a declaration of human rights was of little interest and had a limited impact on the shape and functioning of a democratic society. At first sight, this claim may seem outrageous. Our primary instinct would be that, given their foundational nature, the wording of the different articles laying down and protecting human rights is of the utmost relevance for the future development of any given political community.

However, Lefort contends that a too narrow focus on the letter of the text of a declaration of human rights (such as the European Charter) misses the larger picture, for, in his view, the very act of proclaiming some human rights trumps the content of those rights. According to Lefort, human rights amount to a *speech act* and are, as such, a powerful political symbol. It is no accident that, historically, the first declarations of human rights have been pivotal political moments in the two major liberal democratic revolutions of the 18<sup>th</sup> century, in France and in the emerging United States of America. They imply that individuals acknowledge each other as equals in virtue of their shared belonging to humankind and that this mutual recognition was constitutive of a sovereign body politic: the people. This represented a major break with the previous conceptions of polity, in which the king embodied the political community and rigid hierarchies were deemed necessary to sustain social cohesion (Kantorowicz 1957). Declarations of human rights are thus era-defining political acts, and in more ways than one.

The exact nature of this common humanity, however, is never defined substantially in those proclamations. As a concept, humanity is left deliberately underdetermined. The category of those who benefit from those rights thus escapes any analytical definition or firm conceptual grounding. As a result, the legitimating principle on which the political community is founded remains constantly open to debate and contestation. In other words, it is not *in spite* of their vagueness and ambiguous wording

that human rights promote the democratic debate but *because* of it. In virtue of their intrinsic indeterminacy, human rights turn out to be, as a source of authority, beyond the reach and control of political power. No public authority can ever prevent dissenters from appealing to an inchoate human nature to make their case and contest its domination. By the same token, no public authority can ever pretend to offer a non-controversial and definitive version of what human nature entails and what rights should derive from it. Because it is a shapeshifting concept, human nature turns out to be an ever-available instrument of contestation. As a result, human rights turn out to be “essentially contested concepts” (Gallie 1956) in the sense that they cannot be provided with an ultimate definition, yet political actors feel that circumscribing their content is of crucial importance and compete to inject their own meaning into them.

This perspective shows, in hindsight, that human rights can only be effective if they amount to a *collective* speech act. Since the prerequisite to human rights is the mutual recognition that citizens are the equal co-constituents of the political community, human rights rely by necessity on the minimal public engagement of individuals. This needs to be pointed out because human rights are sometimes depicted as a sort of self-defeating paradox. Though they contributed to laying down the modern foundations of liberal societies, they also allow – or even encourage – individuals to adopt selfish behaviour. Since they protect and defend the private sphere against possible abuses from public authorities, they make it possible for individuals to pursue private interests and disregard the public good, leading to an atomistic society in which the fabric of the social world is torn apart (Gauchet 1980). But this construal overlooks the fact that human rights are *relational* in nature. Freedom of speech is meaningless in the absence of an audience. Freedom of association would be nonsensical in a world of free-floating individuals. Even ostentatiously selfish rights, such as the right to private property, prove upon closer inspection to have been designed to regulate social interactions.

Last but not least, the political meaning of fundamental rights is bound to exceed their exact wording. Because basic rights are rooted in a concept of humanity that lacks a firm theoretical foundation, their interpretation cannot be straightforward. According to the philosophical perspective adopted, their formulaic expression – often couched in rather equivocal terms – will be read differently. What is one to make, for instance, of the first article of the Charter: “Human dignity is inviolable. It must be respected and protected”? (EU 2012: 9) It could be dismissed as a grandiloquent but empty formula. Claude Lefort would beg to differ, however. In his view, human rights are indeed not a recipe for full-fledged public policies, but that is not what they were meant to be. Their role is rather to act as normative resources that can be seized by political activists and reinterpreted to maintain the possibility to challenge the *status quo* or to contest the legitimacy of the public authorities, hence their symbiotic relationship with the democratic regime. Because they are themselves one of the privileged sites of the democratic debates, their vague and imprecise wording sets the stage nicely for ceaseless reappraisal of a political community’s relation to its founding values.

It is a common mistake to assume that, since human rights are the political expression of universalism, their meaning should be straightforward. Étienne Balibar (2016a) aptly points out that universalism is, counter-intuitively perhaps, an equivocal concept. Received wisdom opposes universalism to particularism. While universalism would advocate for an inclusive and egalitarian embrace of all human beings

under a set of shared cosmopolitan norms, particularism would defend a parochial, or even inegalitarian, viewpoint in a fragmented political world. However, this Manichean introduction of the two concepts fails to convince. Indeed, particularism in politics amounts to the selective defence of a peculiar community, identity, or social group. It is therefore, by definition, exclusive. But it does not imply that universalism, by the simple virtue of being the conceptual flipside of particularism, is *per se* inclusive, for universalism cannot exist as a pure abstraction. To be turned into a lived reality, it must be expressed and institutionalized. And this expression will always be – to a certain extent – particular, for it will unavoidably be uttered by a specific subject in a contextualized time and place. The real conceptual and political conflict is thus not between universalism and particularism but rather between various *particularized universals*. At any given time, there will therefore be various competing claims to embody the universal in circulation. Consequently, our world is best described as a pluriverse: that is, the conflictual coexistence of various universals. Human rights are one such expression, but they are challenged by other claims to embody the universal put forward, for instance, by the nation (controversially, the civic nation can be defined as universal inclusion of all citizens within a single political community, going beyond local attachments, religious communities and social classes (Schnapper 2017)), or various religions (establishing a worldwide community of faith). Furthermore, each expression of the universal, including human rights, must grapple with the fact that it has a specific origin, that this particularity taints and ultimately biases its own expression of the universal and that it is therefore likely to reproduce – unwittingly perhaps – some forms of exclusion.

As far as the European Union is concerned, this description of fundamental values as open-ended principles whose precise meaning is subjected to an ongoing political debate fits nicely with its institutional setup, for the Union did not specify what those foundational principles entail practically through a set of secondary laws. As a result, there is no unambiguous benchmark or relevant standard to enforce the compliance of member states with European norms and values or, alternatively, that though such a benchmark exists on paper, its enforcement is currently lacking (Möllers and Schneider 2018). Potential infringements are not subject to a juridical evaluation by the Court. A tailor-made legal provision exists, however. Article 7 of the *Consolidated Version of Treaty on the European Union* allows the Council to strip a member state of some of its political privileges if “there is a clear risk of a serious breach by a Member State of the values referred to in Article 2.” (EU 2002: 7). But, besides the fact that bureaucratic hurdles have rendered this article largely ineffective, it sets the stage for a political debate on the dominant understanding of the European values and cannot be compared to a judicial review. Thus, judging from its institutional architecture, the European Union endorses the view that its fundamental values and norms should be (re)defined through a political debate between member states rather than assessed judicially by the Court.

To sum up, human rights invite – according to our methodological approach – conflicting interpretations. As such, the question of how to translate them appropriately into laws and public policies is constitutive of a pluralistic democratic debate. But does it imply that human rights can mean virtually *anything*? As the ultimate reference to our political framework, can we bend their interpretations as we wish? Our contention is that this cannot be the case. In our view, the *EU Charter of Fundamental Rights* should be conflated neither with a set of policy recommendations, nor with empty signifiers. In the very act of proclaiming rights to each other, we establish right-bearers as *at the very least* individuals worthy of moral and political consideration. Though the exact meaning of basic rights and their

political consequences should remain subject to ceaseless contestation, we argue that some of their interpretations are more plausible than others or, at the very least, that some interpretations are wholly incompatible with the core principles enunciated in the basic rights.

As far as migrants' rights are concerned, the issue is further compounded by the fact that the Charter is extremely modest in this respect and leaves many questions unanswered. As mentioned above, the Charter includes a clear pledge to respect the right to asylum and sets up some minimal safeguards in case of forced returns. One may also infer from the commitment to protect human dignity, or the prohibition of degrading treatment, a duty to treat all individuals, regardless of their origins or nationality, with a minimum of decency. However, the Charter remains mostly silent on the right to migrate. Its Article 45 grants unconditional freedom of movement but only to European citizens. Third-country nationals may also enjoy this freedom to move but on the condition that they reside legally in the territory of a European member state. Given this provision, there is no general and principled norm dealing with migrants irregularly crossing to or residing in the European territory. And indeed, the European Union has steadily denied that there would be anything like a universal right to migrate and has thus denied the right of entry to many migrants since 2015. Empirically, there is now a large population of third-country nationals that have accessed the European territory irregularly and whose fate may hang on the way the European Union interprets its own statement of norms and values, hence the importance of exploring what the most plausible interpretation of European norms and values may look like.

### **c. The “New Pact for Refugees and Migration” and the European values**

Migration policy is a normatively loaded field (Lavenex 2018). Any political decision in this domain is liable to spark some passionate debates. And, given the unacceptable human costs resulting from botched migration policies, how could it be any different? The questions raised by migration issues run deep and compel us to interrogate our commitment to our most cherished values. Who deserves to be a member of our polity? By virtue of which quality? How do we justify to an individual that his or her claim to membership has been rejected? Can we ever turn down a humanitarian claim to shelter and protection? Is there a humane way to return a person to a country (s)he has willingly left? Moreover, in a multi-level political community, what would be a fair distribution of the costs associated with the temporary reception of the newcomers? Is it legitimate for some member states to defect from some obligations on cultural or political grounds? And does it create a duty for the others to pick up the slack?

This complexity is what makes it a crucial entry point into the exploration of the European Union's relationship to its norms and values. Migration, from that standpoint, acts as a revealing catalyst: its intricacies shed light on simmering tensions – unspoken and often unacknowledged – or even outright contradictions between the Union's distinct normative commitments. Given those tensions, it is no surprise that there coexist many different interpretations of the European norms and values, articulating and hierarchizing the latter according to a variety of guiding principles.

In our view, the *New Pact on Migration and Asylum*, presented to the public in September 2020 by the commissioners Margaritis Schinas and Ylva Johansson, displays the normative conundrums affecting the governance of migration within the European Union.<sup>3</sup> In the following section, we explore the New Pact's policy recommendations and show that, though innovative and pragmatic, its policies betray the current lack of political consensus at the European level that impedes all attempts at policy reform.

Arguably, the Pact looks for a compromise between approaches to migration that are difficult to square together. Not only do the European Union and its member states have different views and interests in this regard, but the member states themselves hold diametrically opposed views, partly informed by diverging interpretations of European norms and values (Neidhardt and Diez 2020). In the aftermath of the 2015 reception crisis, while Germany promoted a national "Welcome Culture" (Fleischmann and Steinhilper 2017) and the southern states bordering the Mediterranean Sea repeatedly called for help in the management of the crisis, the Visegrád bloc staunchly refused to partake in any asylum seeker relocation schemes. This led to an uncoordinated and chaotic response to the sudden influx of migrants. Learning from those past mistakes and from the failed attempt to strongarm the Central European member states into a solidarity scheme to which they had not formally subscribed, the European Commission adopted a different tack when drafting the New Pact. The two commissioners in charge of reforming the dysfunctional governance of European migration toured the different capitals to collect, document and look for possible compromises between the varied political preferences of the member states. In short, the European Commission did what it does best: it acted as a coalition-builder and a powerbroker (Hodson and Peterson 2017).

The result is a Pact that acknowledges the complexity and the multi-faceted nature of migration and has subsequently been lauded by several commentators for its effort to provide the European Union with a balanced and comprehensive approach to the issue (De Brouwer and Vignon 2020). Rather than offering piecemeal solutions to isolated aspects of the many migration challenges, it addresses the question simultaneously at three distinct but interrelated levels: the relationship of the EU to its external partners; the internal solidarity between member states; and the Europeanization of the border control procedures. On each of these levels, the Pact offers a pragmatic solution.

First, it suggests that the Union could renew its diplomatic partnerships with sending and transit countries and foster mutually beneficial relations by stepping up their coordinated management of irregular migrant flows and of returns, as well as their struggle against migrant smuggling. Enhanced international cooperation would see the sending and transit states take a more proactive approach to the containment of irregular migration while also being more flexible in accepting returns, in exchange for a commitment by the EU to assist those countries in providing their citizens with more economic opportunities.

Second, it urges the member states to adopt a mandatory but flexible solidarity scheme. If a member state experienced some distress due to intensified migratory pressure, it could call on the European Union to step in and provide some help. Other member states would then be required to provide a

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<sup>3</sup> Communication on a New Pact on Migration and Asylum, COM (2020) 609.

fair share of support, but this aid could take different forms. The other member state would have the option to relocate some asylum seekers on its territory, ‘sponsor’ the return of migrants to their countries of origin or provide operational assistance. In contrast to the 2015 relocation scheme, this new solidarity mechanism introduces the possibility for a member state to discharge its duties without having to admit migrants onto its soil. It makes thus plain that the complaints of the Central European member states have been not only heard but also taken into consideration.

Third, it calls for the modernization of the pre-entry screening procedures at the borders of the Union, and for faster asylum procedures to prevent the dramatic overcrowding currently witnessed in the Greek reception facilities, for instance. It suggests that the asylum procedures could be sped up, notably by including early triage of migrants and redirecting those less likely to obtain refugee status to a fast-track procedure. The hope is that a streamlined asylum procedure coupled with swift returns could work against the creation of administrative bottlenecks that lead to deteriorating living conditions in the reception centres.

Though innovative, many of the Pact’s pragmatic solutions attempt to sidestep the root cause of the problem, rather than tackle it. The key problem at the heart of the European migration governance is not the lack of innovative and effective solutions available. One could fill an entire library with policy papers published by European think tanks offering alternative solutions to the migration conundrum (Witold de Wenden 2019). The real problem is that member states hold views that are so polarized that there remains no middle ground on which to build even a minimalistic consensus. The conspicuous absence in the New Pact of any proposal for substantial reform of the much-decried Dublin Regulation is testament to that. Though the Dublin Regulation is known to exacerbate the imbalances between the European member states and is thus in dire need of an overhaul (Maiani 2017), it also proved too sensitive a topic to be revised significantly in the Pact.

As a result, and as we have briefly shown, the Pact is driven by a search for technical solutions that would be palatable to all parties by virtue of their presumed effectiveness and problem-solving qualities. This depoliticized approach to the problem does not engage or argue with the different national preferences. It is understandable that an administration, even a supranational one with a lot of political clout such as the European Commission, would be reluctant to confront the political views of democratically elected national representatives. But, barring an effort to start a transnational political conversation on the question of migration in light of Europe’s normative commitments, and a subsequent effort to invite national political actors to reconsider their preferences, one worries that all the efforts of the European Commission may have been in vain, for it is impossible to find a compromise between radically distinct views if none of the key political actors is ready to revise its position.

Indeed, the Pact was not met with universal praise upon its public release. The negative reactions coming from both sides highlighted the tremendous difficulties in trying to bridge fiercely opposed normative views on a divisive issue. Two antagonistic reactions ought to be singled out. First, the countries of the Visegrád group swiftly expressed their discontent with the Pact. Though they acknowledged the diplomatic efforts of the Commission, stating that “the tone of the proposal itself sounds better”, (Brzozowski 2020) they reiterated their refusal to cooperate with any Europe-wide effort to tackle the

issue. Hungary's prime minister, Viktor Orbán, bluntly summarized the underlying motive of their opposition to the Pact: "The basic approach remains the same as the EU would like to manage migration, not stop migrants." (Brzozowski 2020). Their alternative proposition was to fully externalize the management of migration by building hotspots in and delegating migration responsibilities to neighbouring countries, while focusing on completely sealing external borders at the Union level to prevent any irregular arrivals. Any solidarity scheme, be it flexible or not, would thus be irrelevant since there would be no migrant to relocate or take care of.

At the other end of the political spectrum, human rights organizations and trade unions also condemned the Pact, but for diametrically opposed reasons. According to them, its main flaw was its lack of concern for the fundamental rights of migrants (*EU: Migration Pact Is Not a Fresh Start but a False Start*, 2020, *ETUC Statement on the New Pact on Migration and Asylum*, 2020). Though the Pact mentions the need to sustain legal pathways into Europe, aims at better coordination of search and rescue operations and includes new provisions to protect the right to a united family, it was also noted that it relies heavily on curtailing the migrants' rights of appeal throughout the different judicial procedures (Peers 2020). Furthermore, the Pact is presented as a fresh start in migration governance, but substantive parts of its policy package are hardly new. The partnerships with sending and transit countries look very similar to the current scheme of international cooperation, while streamlined screenings and faster asylum procedures in reception facilities appear to be an invitation to expand the hotspot approach adopted in Greece (Karageorgiou 2020). Additionally, tasking states reluctant to accept asylum seekers on their territory with returning them to their countries of origin also strikes as a ham-handed approach to a very sensitive procedure that could jeopardize migrants' rights to decent treatment (Carrera 2020). Taken as a whole, those policies lean towards a repressive approach to migration governance, which explains the discontent of civil society actors focused on rights protection.

Squeezed between anti-immigration hardliners and rights protection groups, the European Commission had virtually no margin of manoeuvre and little chance of drafting a consensual reform plan for European migration governance (Dimitriadi 2020). As a result, negotiations about the Pact are now at a virtual standstill. The German presidency was unable to achieve any breakthrough and the original optimism surrounding the New Pact upon its public release appears to have subsided. Our analysis is that this political gridlock is the result of a widening gap in the interpretations of the European norms and values, and in particular of the duties they entail for the member states in their relationship to migrants. If this assumption is correct, there will be no pragmatic solution to this problem. No migration policy, regardless of how practical and efficient it may be, will be able to bridge this political and normative gap. The only way out of this dead end is to open a public deliberation in which political actors, in spite of their differences, acknowledge the need to restore some agreement as to what the European norms and values commit them to. With the New Pact, the European Commission had the merit of putting a first proposal on the negotiating table and igniting the debate with some concrete proposals. However, as an institution it is ill-suited to conduct the kind of transnational public debate the situation requires. To break the deadlock, it would be best for the European Parliament and the European Council to step in more forcefully in this debate and to fulfil their role as forums for transnational deliberations. If they offer opportunities to transnational partisan voices as well as national interests to make their normative stances more explicit and to exchange reasoned arguments, one may hope that this could bring some of the political actors closer.

In the four following sections, we will thus pivot from this policy discussion to a more normative discussion, aiming to provide European policymakers with some substantial ground on which to debate the duties of the Union and its member states towards migrants. Relying on the theoretical framework developed above, we will contend that, though European norms and values are open to discussion and constant reinterpretation, some interpretations are more plausible than others. We will first make the case that one of those interpretations is implausible and should be abandoned. Afterwards, we will present three plausible interpretations of the European norms and values, leading to three distinctive reforms of migration governance.

## 2. An implausible interpretation of European values

As we argued above, European norms and values are ambiguous and thus open to contestation. But does this mean that they are infinitely malleable? If that were the case, they could no longer constrain the behaviour of political actors, for there would be no actions that could not be justified. They could perhaps serve as a focal point for political debates, but they would have no ability to regulate socio-political interactions. Interestingly, some political actors within the European Union have endeavoured to put this very question to the test and have challenged the plasticity of the European values. We will briefly inspect this thorny issue of the possible boundaries to freedom of interpretation. We will argue that some understandings of European norms and values are indeed normatively inconsistent and ought to be discarded on those grounds. Consequently, though their meaning is undeniably vague, European values do prohibit certain political actions and constrain the field of possibilities with regards to migration policies.

Viktor Orbán prides himself in being a norm-breaker. His xenophobic campaigns, authoritarian governance and aggressive public speeches put him repeatedly at loggerheads with the European authorities. His tenure at the head of the Hungarian government has been so damaging to political pluralism of his country and to checks and balances of its political system that it has been variously described by political science scholars as “democratic backsliding” (Sedelmeier 2014), an “illiberal turn” (Bánkuti, Halmai, Scheppele 2015) or “national authoritarianism” (Kelemen 2017). It also propelled him as the leading figure of the Visegrád group and the main spokesperson for the far right within the European Union. A self-proclaimed “illiberal democrat” (The Budapest Beacon 2014), Orbán despises the rule of law and migrants in equal measure. He called migrants a poison, claimed that multiculturalism would be the death knell of the Hungarian national identity, assimilated Muslim immigrants to terrorists, and insinuated that respecting its international obligations towards asylum seekers would deprive Hungary of its sovereignty (Bocskor 2018, Bajomi-Lázár 2019). But, interestingly for our purpose, he never disparaged European values. Quite the opposite. He portrays himself as being the last staunch defender of “traditional values” (Orbán 2013) as well as “Christian values” at the core of European civilization (Downs 2018, Enyedi 2020). In this regard, Orbán is not alone. Though this section focuses, for the sake of clarity, on the Hungarian case, a similar line of argument could be developed for several other member states.

The political science scholar Martijn Mos argues that Orbán is engaged in what he calls “interpretive politics” (Mos 2020). In other words, Orbán makes strategic use of the ambiguity of European norms to paint them as compatible with his own policies. A quick reconstruction of his argument allows us to better understand his underlying reasoning. Orbán promotes a political model he explicitly labels “illiberal democracy”. This model rests on the assumption that democracy properly understood is incompatible with liberalism. From an historical perspective, such a notion is not devoid of theoretical merit. Originally, liberalism is a distinct political philosophy from the more radical democratic tradition. While the first is driven by its defence of individual rights and, consequently, advocates that the activity of government should have a limited scope and be constrained by some legal safeguards, the second transfers the absolute sovereignty from the king to the people, turns the state into the instrument of

the people's emancipation and, in the process, endows it with virtually unlimited authority (Rosanvalon 2000).

As a result, both traditions approach the relation between collective decision-making and individual rights very differently. While liberalism is wary of the majority abusing its powers and encroaching on individual rights, democratic tradition considers that popular decision-making is geared towards building a collective political project, which can only be undertaken if a majority decision can trump any private legal claims. Political actors led various historical experiments in search of the adequate articulation between liberalism and democracy throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries in Europe. The eventful history of the shift from government by a small elite of elected representatives to mass democracy is testament to the very real tension between the two worldviews (Manin 1997). But eventually both traditions came to be reconciled within the model of liberal democracy. While the people becomes the master of its own fate through the regular, free and fair elections of its representatives, political authorities can only act within the boundaries of a constitutional framework meant both to defend the inalienable rights of each and every individual and protect the political system against potential abuses. As we argued above while discussing Lefort's approach, human rights should not be regarded primarily as legal constraints (though they do indeed restrict the scope of possible political actions) but as a constitutive part of the democratic regime.

The model of illiberal democracy rests, obviously, on a distinct assumption. Its premise cannot be that liberal democracy is the outcome of a long historical process of reconciliation between two equally important political traditions. It must justify its rejection of liberalism while explaining how a stand-alone democratic model would be a viable option. This argument needs first to disqualify liberalism, and second to promote a revamped model of democracy that would be more appealing and satisfactory than the liberal model. Orbán shows little interest in the historical argument regarding the intertwining of political traditions presented above. His own reasoning is blunter. During a speech delivered in 2014 he endeavoured to explain the theoretical foundations of his own political approach and to justify the superiority of his illiberal democratic model. Following a well-established conservative trope, he condemned liberalism for its presumed inability to foster social cohesion (Lacroix and Pranchère 2018). The primacy it grants to individual freedom would promote competition over solidarity, create incentives to adopt selfish behaviour, prioritize private over public interests and, as a result, make it impossible to cement a national community. And since liberalism can only prove detrimental to the fabric of the nation, the logical conclusion is that:

“[the] Hungarian nation is not a simple sum of individuals, but a community that needs to be organized, strengthened, and developed, and in this sense, the new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, as freedom, etc. But it does not make this ideology a central element of state organization. It applies a specific, national, particular approach in its stead.” (The Budapest Beacon 2014).

Democracy is thus redefined as an exercise in national self-assertion. It is no longer regarded as an ongoing process of public deliberation in a pluralist context. If the principle of self-determination located at the core of democracy is construed as an invitation for the constitutive members of the people to convince and persuade other citizens of the rightness of their arguments in a conflicting exchange of views, it entails that the national community is diverse and divided (Müller 2017). Furthermore, it

calls for liberal norms to regulate those democratic interactions in a manner respectful of each individual's inalienable rights. But, to Orbán, democracy is first and foremost national. Its undivided community of citizens is guided by a widely shared set of uncontroversial values. As a result, the exercise of democratic freedoms can only be plebiscitary. It should allow a reconciled community to choose between a variety of collective projects for its own future.

Therefore, democracy is turned into the assertion of sovereignty on the international stage. The focus is on the external dimension of the principle of self-determination. The goal of the latter is purportedly to make a political community autonomous, free from the sort of external authority and influence that would encroach on its ability to decide for itself. In the process, two key liberal tenets are swept aside. Political pluralism is deliberately overlooked (and thus the political opposition silenced), while international legal norms are depicted as a foreign intrusion into the realm of national democratic prerogatives. For instance, in the very same 2014 speech in which he defines his political regime as a form of illiberal democracy, Orbán goes on to condemn non-governmental organizations, including human rights associations, as “political activists paid by foreigners [...] attempting to promote foreign interests” (The Budapest Beacon 2014) and calls for their activities to be strictly regulated – a policy he would eventually put in place a few years later. This is unsurprising given the type of critical work conducted by NGOs, for they embody the two political tenets considered illegitimate in an illiberal democracy. First, they give a voice to dissenting and minority opinions, and second, they submit national policies to a critical assessment that draws on international norms and standards.

Two conclusions ought to be drawn from this succinct sketch. First, Orbán is keen to emphasize that Hungary “will of course still respect the values of Christianity, freedom, and human rights” (The Budapest Beacon 2014) and he is most likely genuine when he asserts it. His intention is not to get rid of those concepts, but rather to bend the interpretation of European values up to the point where he can claim that they are aligned with the political practice of the current Hungarian government. Second, European values may be malleable and flexible, but some of their interpretations are nonetheless demonstrably implausible. In the case at hand, regardless of how often Orbán pays homage to European values, it seems highly unlikely that civic or political freedom is one of his main concerns. Multiple reports from credible sources all point in the same direction: in Hungary, political competition has been stifled (Scheiring and Szombati 2020), media freedom has been systematically dismantled (World Press Freedom Index 2020), and civil society is closely monitored by the regime (Buyse 2018).

Civic and political freedoms are not the only European values being trampled by Orbán's regime. The *EU Charter of Fundamental Rights* further specifies that: “[The European Union] is based on the principles of democracy and the rule of law.” (EU 2012). It is worth noting, for the purpose of our discussion, that these two principles are closely associated in the Charter. This specification calls for two final observations, one empirical, the other more theoretical. Careful observers have been ringing the alarm bell for some time. Laurent Pech, a respected legal scholar and an expert in the monitoring of the rule of law, has warned time and again that Orbán's regime has crossed many red lines with regards to the independence of the judiciary and the respect of constitutional norms (Kelemen and Pech 2019). The European Union has opened an Article 7 procedure against Hungary, but so far, and due in large part to Poland withholding its support for the procedure, it has yielded no tangible result. Furthermore, from a theoretical perspective, one could easily make the case that it is no accident that both principles are associated in the Charter, for illiberal democracy is obviously a contradiction in terms (Mineur

2019). Its plebiscitary nature, its assumption of a monolithic and unanimous political community, its disregard for universal principles and its uncritical praise of all things national are impossible to reconcile with what makes democracy a distinctive political regime. They hollow out its content and render its agonistic procedures ineffective. In our view, this point ought to be emphasized. Though Orbán likes to argue that he disregards the rule of law to better enhance democracy, there appears to be no such trade-off. On the contrary, when the rule of law is damaged beyond repair, democratic procedures are equally broken.

As explained above, European values are general norms constitutive of a European polity in the making. Indeed, their abstract nature and open-ended wording call for further specifications. In order to be turned into practical principles, they need to be “contextualized” (Benhabib 2004). In other words, they need to be reinterpreted in the light of local values and principles. It is thus only fair that Hungary should wish to look for ways to align European values and principles with its own national normative commitments. But this contextualization cannot be arbitrary. First, it must acknowledge that national normative commitments are themselves subject to contestation and that their content cannot be taken for granted. Second, this contextualization aims to embed abstract general principles in specific normative and political contexts. Allowing the core normative commitments of these abstract principles to be relevant in a variety of situations calls for a certain degree of flexibility in their interpretation and application, but it cannot amount to the conclusion that local values trump general principles. Two prior pieces of research conducted within the framework of the NOVAMIGRA project emphasized the need to confront head-on far-right discourses on the topic of values and migration (Jaksa and Nagy 2020, Heins 2020). A strict respect for freedom of the press is instrumental in achieving this goal, for it allows dissonant and critical voices to be heard and it contests the government’s attempt to establish a monopoly over public values.

This argument remains speculative. Let us return to migration policy to flesh it out. In this regard too, it can be shown that Orbán’s interpretive politics is not just a playful and idiosyncratic interpretation of European norms in a national context that would strongly endorse conservative values. It is rather an implausible reconstruction of the duties attached to those European norms, made possible by the previous dismantling of the freedom of the press. An in-depth analysis of the evolution of Hungarian migration policy since 2015 would make for an intriguing journey but it is beyond the remit of this article. Let us just summarize Hungarian migration governance to a few signature policies. Orbán had been known for his harsh rhetoric towards migrants long before 2015. However, he seized 2015 as an opportunity to put his rhetoric into practice and torpedoed the mandatory relocation scheme for asylum seekers (designed and promoted by the European Commission with the support of several overburdened member states). The relocation scheme, dubbed “mad and unfair” by Orbán (*Hungary’s PM Orban Calls EU Refugee Quota Plan ‘Mad’* 2015), was an attempt to bring some justice to the distribution of asylum seekers across the Union, but the suggestion to introduce mandatory quotas irked several member states and led to the eventual demise of the whole scheme. Soon after, Hungary stopped accepting migrants sent by other member states under the Dublin Regulation, thereby *de facto* suspending the regulation. Additionally, it started building a 175km-long fence at the border with Serbia (Szalai and Göbl 2015). Having framed migrants as a threat, Hungary’s policies have become progressively more restrictive. It gradually stopped registering asylum claims. In the exceptional cases in which

it did allow migrants to lodge asylum claims, it accommodated those asylum seekers in squalid conditions and severely restricted their civic rights, more often than not parking them in camps described by Felipe Gonzalez Morales, the UN special rapporteur for the human rights of migrants, as a “carceral environment”, therefore equating the treatment of asylum seekers with “detention” (*OHCHR | End of Visit Statement of the UN Special Rapporteur on the Human Rights of Migrants, Felipe González Morales* 2019). Furthermore, Hungary engaged in the large-scale, government-backed practice of pushbacks carried out by the national police (that is, physically – and often violently – turning migrants away at the border without giving them the opportunity to lodge an asylum claim). This practice is now so widespread that in January 2021 the Frontex agency withdrew its operational support in Hungary and has suspended its operations (Nielsen 2021).

This cursory look at Hungarian migration policy is too succinct to paint a comprehensive picture, but it suffices to show that illiberal migration practices disrespect several normative principles listed as European values in the *EU Charter of Fundamental Rights*. The aggression towards and systematic dehumanization of migrants embedded within those migration policies fail to uphold the right to dignity to which every human being is entitled according to the first article of this Charter. The dismal carceral conditions in which migrants are accommodated go against the prohibition of degrading treatment, specified in its Article 4, and its countrywide practice of pushbacks render void any attempt to exercise the right to asylum specified in Article 18.

Given what is said above regarding the interpretation of European values, none of this is surprising. Despite its best effort, Orbán’s regime remains unconvincing when asserting that its actions are meant to protect and promote European values, for it rests on a fundamentally misleading interpretation of what those values entail. According to Orbán’s illiberal democratic regime, democracy properly understood amounts to a plebiscitary expression of shared values, be they European or national (Orbán sidesteps this issue by conflating them both under the banner of Christianity and overlooking the potentially thorny question of a mismatch between them). This illiberal and national form of democracy assumes that collective decisions override liberal legal standards of protection granted to individuals, regardless of their origins or nationality. In our view, this constitutes the main flaw in the illiberal democratic argument, for if our core values are expressed in terms of fundamental rights, regardless of how indeterminate and malleable those rights are, the bottom line is that those rights can only make sense if they are proclaimed between individuals that recognize each other as worthy of moral and political consideration. A dehumanizing and degrading migration policy may be conducted under the pretence of protecting the values at the heart of European civilization, but it still strikes us as a highly implausible interpretation of those values, and one that ought to be discarded.

### 3. The impossibility of maintaining the *status quo*

When discussing the *New Pact on Migration and Asylum* unveiled by the European Commission in September 2020, we emphasized that, though the Pact had been drafted as a broad compromise between distinct interpretations of what European values entail in terms of duties towards migrants, its negotiations quickly collapsed. Our conclusion was that the Pact had attempted to pull off the impossible feat of reconciling diametrically opposed normative views. Though laudable, the efforts of the European Commission were doomed from the start, given the width of the political gap to be bridged. Squeezed between its commitment to its values and its inability to translate them into the field of migration policy, given some structural resistances, such as the reluctance of some member states to make any opening gesture towards looking for a European solution to this issue, the European Union appears to be confronted with a choice. It must go beyond looking for a compromise and clarify its political stance towards the issue of migration.

However, given the complexity of intergovernmental discussions, the administrative inertia intrinsic to a large supranational organization like the European Union, and the high salience and divisive nature of the issue of migration, the *status quo* could still prevail for some time. As a matter of fact, even though there is talk of the European Union going through a major “migration crisis” since 2015, we opened our introduction by noting that little had actually changed in terms of European migration policies in the meantime. We would like, however, to argue that this *status quo* is detrimental to the European Union. Consequently, we argue that though it may appear that doing more of the same in terms of migration policies is a safer and more comfortable option, this course of action should be abandoned.

In that regard, the work of Sandra Lavenex is invaluable. She has tracked and critically assessed the construction of a Common European Asylum System over the last 20 years (Lavenex 2001). Her analyses are particularly important to us because they mix an institutional perspective with a normative approach. According to this dual theoretical commitment, institutions are shaped and influenced over the long term by dominant frames and ideas in circulation in their policy field, while ideas rely on policies and institutions to bring them into existence. To understand the institutional development of European migration policies, one must thus pay attention to their dialectic interaction with the European normative commitments.

This dual perspective sheds an interesting light on the current predicament of the European Union. According to Lavenex, the continued integration process brought the Union to the brink of an identity crisis (2019). At its inception, the European project was first and foremost an economic affair and the Union could thus look at itself as a “regulatory state” (Majone 1994) mainly concerned with market issues, but as the integration process deepened and as an increasing number of policy fields got Europeanized, including “core state powers” (Genschel and Jachtenfuchs 2018), questions were raised regarding the political status of the European Union. This debate had been previously structured along the lines of a theoretical challenge between intergovernmentalism and neofunctionalism. Its main concern was then to unearth the conditions and limits to the transfer of power at a supranational level. Its guiding question was, in a nutshell, “*How much* Europe will the member states agree to?” When it

dawned upon the community of scholars that the Union was on course to become much more than a market power, the question pivoted to “Which Union are member states constructing?”

Two different (and conflicting) answers have then been put forward. The Union has been variously described as a “normative power” (Manners 2002) or, according to a “statist” approach, as a supranational polity in the making. The tension between both approaches is particularly apparent in the fields of migration and asylum policy. If the Union aspires to be a normative power, living up to the universal liberal ideals it claims to embody would be of the utmost importance. If, on the other hand, the Union regards itself as a statist community in the making, its key concerns are to build a Europe-wide community and to ensure its internal security. While normative power Europe advocates for liberal migration and asylum policies in line with the universalist provisions of the Charter, statist Europe frames immigration as a problem, or even a threat, and, consequently, calls for restrictive migration measures and a tightened control of Europe’s external borders (Lavenex 2019). One could say that the Union is faced with the classic “liberal paradox” highlighted by Hollifield (1992): while it needs to maintain open borders for economic and normative reasons, there is a strong political demand that states maintain a certain degree of control over their borders. This liberal paradox is further compounded by the indeterminate nature of the European Union.

Given this mismatch between the normative commitments of a “Union of values” and the functional requirements that confront its administration, Lavenex suggests describing the situation as a form of “organized hypocrisy” (2018). One should not read this as a judgemental statement. It is rather an attempt to provide an apt description of the current predicament the Union must face. Because it is a multi-level and polycentric organization, distinct European institutions push in different political directions, resulting in this intricate paradox. While the European Parliament sees its role as to remind the other European actors of their normative commitments (and is supported in fulfilling this task by European civil society), the member states sitting on the European Council insist on the very real practical problem it must urgently solve, leaving the Commission to iron out a compromise deal which – as we have seen above – is likely to be frowned upon by all the parties to this discussion. This dilemma between abstract norms and empirical crises is not just an abstract meta-issue affecting the general arch of the integration process of the European Union; it also has real-world consequences. It reverberates throughout the Frontex agency, for instance. Though Frontex is usually assumed to be a single and rational actor, the coexistence of different rationalities within it (due to the attempt to please different stakeholders) makes it a fragmented organization. There are major discrepancies in the perception of the agency’s mission between its operational staff on the ground, its administrative staff in the headquarters and its management board (Perkowski 2019). This results in a disconnection between the agency’s formal responses to migration issues and its informal activities. This mismatch makes it complicated to hold the institution to account since the agency does not practise what it preaches, leading to repeated breaches of the rights of migrants throughout Europe.

All this means that the European Union does not have the luxury of falling back on a pragmatic solution. The solution does not lie in tweaking and engineering new migration policies, no matter how inventive and efficient those may be, for the problem runs deeper. It derives from the fact that the European Union is torn between incompatible normative visions promoted by member states with a distinct ideological agenda as well as conflicting interests in the matter. For that reason, we suggest that the

most likely scenario for the future of migration policies, e.g. the *status quo*, should be avoided. We have already stated that European migration policies are particularly difficult to reform for a number of reasons. They touch upon a salient and divisive topic in a decision-making environment that is so large, decentralized and complex that forming a coalition willing to engage in a reform process is a daunting task. But if the European Union contents itself with the current dysfunctional migration and asylum system, if it does not attempt to tackle the dilemma that confronts it, it will be weakened on all counts. Its image abroad as a normative power has already been severely eroded. A continuation of its current policies could tarnish it irremediably, and will further fuel the sort of nationalist discontent stemming from its unclear messaging regarding border controls. When the European Union pretends to be a supranational state in the making, it creates some expectations in terms of border controls that it is bound to disappoint. Since the design of migration policies remains very much an inter-governmental process in which European institutions, and especially the institution tasked with the representation of properly European interests, do not enjoy a wide margin of manoeuvre in the process and must constantly balance their demands with diverse national interests.

For all these reasons, we thus contend that, though the scenario of the *status quo* is likely, it is crucial for European institutions to have at their disposal some alternatives. In what follows, we will present two such scenarios, sketching a functional governance of migration and asylum in Europe while attempting to align it with European normative commitments. However, these scenarios rely on a prerequisite. Their premise is that it is impossible to build a compromise between the current political views of the member states. The illiberal democratic model promoted by the Visegrád group fails to meet the (admittedly flexible and open to interpretation) normative threshold set by the *EU Charter of Fundamental Rights*. Given the malleable nature of European values, any consensus between member states will be minimalistic. But normative conversation between member states and European institutions must have as a foundation a genuine concern for normative principles located at the core of European values, regardless of how they are construed.

## 4. A morally cosmopolitan Europe

What could be a possible path forward for the European Union with regards to migration policies? The European Union cannot satisfy itself with a sustained *status quo*. However, any attempt to reform the European migration and asylum system has been met with fierce rebuttals by some member states. One of the key reasons behind this current political gridlock is the deep discrepancy in the interpretation of European values across various member states (as well as within member states, for it would be misguided to assume that national opinions are homogeneous). As we have argued, this discrepancy is – to a certain extent – unavoidable, and even encouraging. It is the hallmark of lively democratic deliberation. The plasticity of European values is, in this regard, both a blessing and curse. On the one hand, European values are an ever-available resource to contest and challenge political authorities. In their names, rights can be defended or claimed, and political institutions can be held to account. On the other hand, it allows for a principled rejection of a Europeanized migration policy under the guise of an implausible interpretation of European values as “illiberal”, rendering any effort of the European institutions (the Commission chief amongst them) to reform the current asylum and migration policies void.

As far as its migration and asylum policies are concerned, the European Union finds itself currently at a dead end. The swift rejection by several Eastern European capitals of the *New Pact of Migration and Asylum* drafted by the European Commission, in spite of the many and very substantial concessions made to their demands (such as a flexible solidarity scheme), shows that there will be no breakthrough on this issue without first rebuilding a minimalistic consensus on a plausible interpretation of European values. But, given the ever-contestable nature of human rights, this consensus cannot be substantial. European values are and will remain of a kaleidoscopic nature. Different nations, cultures and political traditions will attach to them different moral obligations and political injunctions. However, a minimalistic overlapping consensus could be achieved. This consensus would be limited in scope, focusing exclusively on some foundational normative principles, while making room for a variety of contextualized interpretations of European values in distinct member states. It would nevertheless make clear that illiberalism is incompatible with European values.

According to Habermas (2012b), the concept of human dignity could be the cornerstone on which to build such a normative consensus. The German philosopher points out that the notion of human dignity is a late but capital addition to the list of fundamental values. It was entirely absent from various declarations of human rights proclaimed during the 18<sup>th</sup> and 19<sup>th</sup> century and only introduced as a fundamental legal claim in the *Universal Declaration of Human Rights* adopted by the United Nations in 1948 (“Article 1. All human beings are born free and equal in dignity and rights.”) This introduction was clearly intended as a response to the mass crimes committed during the Second World War, and more specifically to the genocide carried out by the Nazi regime. It would thus be tempting to interpret human dignity as a contextual response to the worst kind of atrocities. Habermas disagrees and argues that, in fact, this late addition only makes explicit a concept that had always been implicitly present in the declaration of human rights, namely the idea that every human being is worthy of moral concern.

The association between dignity and universal equality is far from straightforward. Jeremy Waldron (Waldron and Dan-Cohen 2012) traces the history of the concept back to traditional hierarchic societies in which dignity was conflated with honour and therefore attached to some privileged social status in the higher societal ranks. In such societies, dignity was the result of a social distinction and the preserve of knights, priests or aristocrats. Originally, it was thus a highly inegalitarian concept. In this light, the concept of “human dignity” is an oxymoron, for it universalizes a particularity. What makes the concept of “human dignity” innovative is that it turns a distinction into an unanimously shared feature, blunting its exclusiveness in the process. It entails that all human beings belong – unconditionally – to a high rank, worthy of social respect and moral consideration. The first meaning of the concept is thus turned upside down.

From an historical perspective, it is the violation of this principle through mass crimes and genocide that made it necessary to spell it out in human rights declarations, but the principle that each individual is worthy of moral concern was always latent. Acknowledging this newfound meaning, Habermas claims that human dignity now fulfils a key normative function: “The idea of human dignity is the conceptual hinge which connects the morality of equal respect for everyone to positive law and democratic lawmaking [...]” He adds, more strikingly perhaps: “Human dignity forms the ‘portal’ through which the egalitarian and universalistic substance of morality is imported into law.” (Habermas 2012a: 81)

This function of human dignity, as a “conceptual hinge” or a “portal”, lays bare a tension intrinsic to human rights. Fundamental human rights have moral content but legal form. In other words, they turn universal and abstract moral obligations into legally enforceable subjective rights. From an institutional perspective, it means that human dignity (a notion that is, incidentally, also enshrined in the first article of the *EU Charter of Fundamental Rights*) needs a constituted political community to be turned into a positive law while also expressing a universal obligation to challenge the boundaries of this political community. In less speculative terms, Habermas states: “Whenever an asylum seeker is deported at an airport behind closed doors, whenever a ship carrying refugees capsizes on the crossing from Libya to the Italian island of Lampedusa, [...] we, the citizens of the West, confront one more troubling question. The first human rights declaration set a standard which inspires refugees, [...] a standard which can give them the assurance that their suffering is not their natural destiny. The translation of the first human right into positive law gave rise to a *legal duty* to realize exacting moral requirements.” (Habermas 2012a: 94-95)

A normative consensus could start from this very minimalistic acknowledgement, namely that the concept of human dignity confronts Europe with a political question: “How should European institutions and member states transpose their moral commitment to defend and protect human dignity into democratic legislation?” Framed as a question, it may invite a wide array of different responses, but it nevertheless recognizes that the principle of human dignity, this foundational normative commitment that paves the way to other European values, has a cosmopolitan dimension. This intrinsic moral cosmopolitanism challenges in turn the boundaries of established political communities. Minimalistic and open-ended as it is, such a consensus would nevertheless run counter to an illiberal interpretation of European values that turns those values into a civilizational legacy to be protected against foreigners, be it at the expense of their human dignity.

Given that migration and asylum policies are a normatively loaded policy field, this minimalistic consensus around the concept of human dignity would have practical consequences. European institutions as well as member states would be reminded of their commitment to treat any individual, including migrants (since the issue of belonging would be recognized as irrelevant), with due respect. Obviously, this basic requirement would fall short of a blueprint for a full-fledged asylum and migration policy, but it would provide states and supranational institutions with a clear moral standard. This renewed commitment would constrain member states and European institutions alike to consider their moral duties towards non-citizens, and would accordingly condemn degrading or dehumanizing practices, including towards third-country nationals. This may appear to be a very low bar to clear. However, some European agencies (e.g. Frontex) as well as several member states are currently implementing migration policies that are demonstrably failing to meet this low moral threshold. The widespread practice of pushbacks in some member states, in which Frontex may have been complicit, the detention of asylum seekers in carceral conditions and the general erosion of the international regime of asylum law are cases in point.

But human dignity would amount – deliberately – to no more than a minimalistic moral consensus. While the European Commission and the Court of Justice of the European Union could oversee that member states comply with this moral obligation turned into a positive right, the autonomy of the member states would be respected. As long as the latter abide by this principle to treat migrants with due respect and process asylum demands fairly, their sovereignty in migration matters would be left untouched. They would be free to adapt their migration policies to their own contextualized understanding of European values. This is not to say that asylum and migration policies could not continue to be coordinated at the European level, if member states desired to do so, but this coordination would adopt a strictly intergovernmental method and no transfer of authority at the European level would occur.

There is, however, a flipside to this recognition of sovereign autonomy of the member states over their migration and asylum policies. Though it allows for a flexibility that accommodates the varying national understandings of European values, it will unavoidably result in increasingly diverse migration policies. However, the current shortcomings in the migration regime of Europe are often the consequences of a discrepancy in approach. It is indeed a lack of European coordination that leads to imbalances in sharing the burden of hosting asylum seekers, or to vastly diverging rates of recognition of refugee status across member states. It is also in the name of a respect for this policy diversity and for national autonomy in migration matters that European institutions have turned a blind eye to some of the most obvious violations of migrants' rights.

If migration and asylum policy were to remain a decentralized competence, the current imbalances would persist or, worse, be exacerbated. Member states would be left to decide to what degree they would like their borders to be open, what kind of coercive measures they would apply at their borders and on which criteria they allow migrants to join their political community. Furthermore, this diversity in migration policies would be complicated to reconcile with sustained freedom of movement within the Schengen area as well as with the uniform European citizenship guaranteed by the Maastricht treaty. Many of the migration issues that the European Union currently faces are transnational in nature and, at least, continental in scale. A loose intergovernmental coordination, even though it may be

buttressed by a minimalistic commitment towards moral cosmopolitanism, may not be up to this task. It would allow national migration policies to drift further apart, compounding rather than solving several of the key issues facing the current European migration regime. It would make it impossible to pursue some much-needed reforms, such as the revision of the Dublin Regulation or the long-awaited solidarity scheme between member states over migration issues.

This scenario thus has the merit of being palatable to member states, for it requires only a thin, overlapping normative consensus and allows for flexible intergovernmental cooperation, but it may also fall short of meeting its goals. Our suggestion is that it could be usefully complemented by a more demanding scenario, in which cosmopolitanism is considered as requiring more than recognition by the states of a moral duty towards the foreigner. In this last scenario, cosmopolitanism would also entail a set of political obligations for states and call for some reforms of European institutions.

## 5. A politically cosmopolitan Europe

Cosmopolitanism is, however, not just a moral principle, that is the universal and unconditional assertion of the principle of human dignity. It is already a lived social reality. As Ulrich Beck (2004) has convincingly argued, cosmopolitanism has long been a philosophical ideal but technological and social developments have recently and rather abruptly turned cosmopolitanism into a concrete fact. Beck argues that social sciences have for too long been blind to the growing transnationalization and cosmopolitanization of social lives due to a cognitive bias, namely their “methodological nationalism”. In other words, social sciences have internalized and naturalized a vision of the world as being divided into distinct social and political “containers”, namely the nation states. Social scientists have adapted their data collection and the construction of their explanations and analyses accordingly. The social scientists’ perspective would thus have remained stubbornly national while our social lives would have undergone a thorough and dramatic change (Sager 2017). Another assumption would cloud their analytical judgement. They would still work under the assumption that *stasis* (a state of stability) is the norm while movement is the exception, when the opposite would now be closer to the truth (Nail 2015). Those methodological biases would push them to downplay the internal diversity of nation states as well as the constant flux of exchanges between them while overemphasizing the distinction between nation states. Meanwhile, cosmopolitanism has become a daily experience for many, not only because new communication technologies, increased international trade, proliferating cross-boundary cultural exchanges, and strengthened diasporas converge to overcome the fragmentation of the world into airtight social containers, but also because the risks faced by social communities are now interconnected, span the entire planet (be it global warming, terrorism or pandemics) and call for coordinated responses (Beck 2009).

According to Beck, cosmopolitanism is thus a social reality. However, because we still relegate cosmopolitanism to the category of daydreaming utopias, most political communities fail to grasp what is at stake. They are in denial of the cosmopolitanization of their social life and maintain firmly national institutions. This creates a growing mismatch between social realities and political institutions. The current unease and political wrangling around the issue of asylum and migration is a case in point. The absolute number of migrants across the world slowly but steadily rose from 2.3% of the world population in 1970 to 3.5% in 2020 (McAuliffe and Khadria 2020: 21), but states have never been busier erecting walls and fences along their national borders (Foucher 2007) despite the optimistic forecast that the fall of the Berlin Wall was the beginning of the end for such coercive and divisive political instruments.

This discrepancy has been a source of political discomfort and has triggered some coordinated efforts to rise to this new cosmopolitan challenge. In fact, the European Union itself may be regarded as such an attempt. Beck (2004) makes no mystery of the fact that, in his opinion, the European Union – though still a work in progress – is a promising attempt to take seriously the revolution that our social lives have gone through and to provide a political framework adapted to the pitfalls of a cosmopolitan society. Because the European Union has turned the principle of intertwined economic interests into its driving force, because it has reined in and ultimately pooled the national sovereignties of its member states, because it grants a uniform political status (European citizenship) as well as near total freedom

of movement over its territory to its subjects, it is undoubtedly the best example of a “cosmopolitanized” polity large enough to deal with globalized risks and confront modern challenges on the right scale.

The merit of Beck’s approach is to present unequivocally the European Union as a *political* cosmopolitanism. In a previous report entitled *Approaches to Cosmopolitanism* (Boucher, Aubert, Guérard de Latour 2019) we highlighted that cosmopolitanism could be broken down into four distinct dimensions, constitutive of its definition. According to those four approaches, cosmopolitanism can be regarded as either moral, cultural, political, or civic. *Moral* cosmopolitanism is firstly concerned with universal moral obligations and claims that each human being is worthy of ethical consideration. Cosmopolitanism can be said to be *cultural* when it focuses on the diversity of lifestyles, worldviews, and cultural outlooks now coexisting within a same political space. It highlights the fact that political modernity is synonymous with multiculturalism and therefore needs to find ways to accommodate cultural differences. One can talk of *political* cosmopolitanism when it is associated with the project to build supranational or transnational political institutions mirroring the globalization and transnationalization of social life. Finally, *civic* cosmopolitanism draws our attention to the fact that some political *practices* (rather than institutions) are now supra- or transnational, therefore scaling up the political stage and the democratic debate.

The European Union is avowedly a form of *political* cosmopolitanism, for it is an effort to construct a polity tailored to the new cosmopolitan reality. Of course, the four dimensions of cosmopolitanism do not exist in isolation and are empirically intertwined. Admittedly, the European Union must deal with cultural differences and it offers many opportunities for citizens to exercise their political rights beyond the nation state. In the previous section, we also argued that it cannot afford to overlook the moral content of its normative foundations. But, as a political project, it relies first and foremost on its ability to create and manage new transnational and supranational institutions.

We will use this diagnostic as our starting point, but we will introduce a major caveat. Beck claims that – since cosmopolitanism is about reforming political institutions and public policies to ensure that they mirror a cosmopolitanized social life – there is no contradiction in having a bounded cosmopolitanism. A ‘cosmopolitan Europe’ would not be an oxymoron (Beck and Grande 2007: 12), but would rather imply proceeding to a horizontal redistribution of political authority across European institutions and member states to make them more responsive to a globalized social life.

We believe that the current discrepancy between the stated European values and the migration policies of the European Union and its member states tell a different story. It shows that if cosmopolitanism limits itself to being a programme for institutional reforms, then it also cuts itself off from its normative commitments – including its moral duties towards foreigners. Such cosmopolitanism runs the risk of proving to be just enlarged nationalism or continental chauvinism. This is not to say that there can be no “cosmopolitan Europe”, but to assert that, if Europe claims to be truly cosmopolitan, it cannot close its eyes to the problems and challenges that its boundaries create for non-Europeans (Balibar 2016b). This leads to a double challenge. First, rather than sweeping the question of the European Union’s external borders under the carpet and downplaying their normative significance, it is of the utmost importance to confront head-on the difficult political, practical, and normative issues they

raise. Second, and as argued above, this cannot be reduced to a question of practicalities. European migration governance is not simply dysfunctional; it may also rest on a misguided or confused interpretation of European values. Alongside some much-needed policy reforms, European institutions must thus propose their own reconstruction of those values and build a valid normative justification for the revision of European migration governance. Arguably, building a normative consensus amongst member states in order to demand the reform of European migration governance is a tall order. But, given the risks inherent to the lack of comprehensive reforms and the broad agreement that current governance is dysfunctional, we believe that it is in the European Union's best interests to set such ambitious goals for itself.

In what follows, we will explore a scenario in which the European Union goes beyond a mere moral commitment to respect unconditionally human dignity and considers cosmopolitanism as a full-fledged political project. We will draw attention to the fact that a continental cosmopolitanism is an internal contradiction. Strictly monitored borders, be they cosmopolitan or not, have real and damaging consequences for those who wish to cross them. This scenario is broken down into three possible policy reforms, presented alongside their normative justification with reference to European values.

### a. A European path towards a universal right to hospitality

How could the paradox of the "cosmopolitan boundaries" of the European Union be overcome? The first answer to that question is provided by a body of work that sees in the European integration process a Kantian political project. Jürgen Habermas (1998, 2012a) in Germany and Jean-Marc Ferry (2006) in France suggest that the building of the European Union followed closely the cosmopolitan model laid out by the Prussian Enlightenment philosopher.

Kant famously argued that for a cosmopolitan peace to be established, three conditions need to be met. First, the constitution of the various states must be republican, rather than despotic. In other words, individuals must willingly place themselves under the authority of a publicly accountable political power. This not only restores peace but also ensures that citizens treat each other lawfully (Kant and Humphrey 1983 [1795]).

Second, Kant suggests that these republican states should enter a permanent transnational association: a federation of free states in which their sovereignty would be respected but nevertheless curbed by their voluntary submission to the authority of international law. However, if states retain their sovereignty, the possibility of a member of the association turning rogue and behaving aggressively cannot be excluded, since no higher authority would be entitled to sanction them.

Thus, the need to introduce a third condition in the format of a social contract between states and foreign individuals, granting the latter a universal right to hospitality. In Kant's view, this right of hospitality amounts to a right to visit, but not to a more substantial right to residence. So, it allows individuals to travel freely between states and to establish some cross-border contractual relations but not to settle permanently in a foreign state. Kant believed the asylum seeker's call for help to be beyond the remit of its cosmopolitan right to hospitality, for this right was born out of a cosmopolitan

social contract. Such a contract requires all parties to join the agreement on their own volition. In the case of a forcibly displaced person asking for protection and shelter, this condition can obviously not be met. For refugees, Kant thus lifted the restriction of hospitality to a simple right of visit and asserted that states had an imperative duty to receive them in order to preserve the refugees' physical integrity. According to Kant, the constant transnational flow of individuals made possible by the right to hospitality would ultimately contribute to the resilience of the permanent association of states because the different civil societies would become so closely interwoven that states would have no remaining incentive to engage in any bellicose behaviour on the international scene.

If Habermas and Ferry are to be believed, the European Union is in the process of fulfilling the three conditions set by Kant to achieve a cosmopolitan polity. First, the Union conforms to the idea that the original core of a cosmopolitan league of states will be made up of an exclusive club of republican states. The Copenhagen criteria explicated the political conditions for joining the European Union in the context of the eastern enlargement. Those criteria state that access to the club of European member states is conditioned by the nature of a country's political regime and its willingness to conform itself to liberal democratic principles. It rests on the assumption, already present in Kant's text, that a small club of liberal democracies (or republics) should act as a cosmopolitan vanguard and prove to the rest of the world that sustaining pacific international relations is not only an achievable prospect, but also an appealing one.

Second, the Union rests on an idiosyncratic institutional architecture, mixing elements of intergovernmental and supranational governance, respectively embodied by the European Council and the Council of Ministers on one hand, and the European Commission and the European Parliament on the other. As a result, it turns out to be a *sui generis* political organization that is neither a confederation (or an international organization) in which the constitutive parties retain their full sovereignty, nor a federation in which federated entities have abdicated their sovereignty to a higher federal authority (Magnet 2005).

As far as the third condition is concerned – the granting of a universal right to hospitality – it is noteworthy that the Union's internal borders have been largely dissolved by the creation of the Schengen area, allowing the free movement of goods and persons across most of the European continent. The 1992 Maastricht Treaty materialized the shift from an *economic* to a *political* union by granting European citizenship to all nationals of member states. This new kind of citizenship, which supplements but does not supersede their national citizenship, allows them not only to travel across the Union but also to settle, work, enjoy social benefits and even participate in local and European elections in another member state than their own (Delanty 2007). Both provisions would go further than Kant's limited right to hospitality and pave the way for the sort of transnational network of intermingling private interests that Kant thought would bring a much-needed robustness to the free federation of states.

However, one perspective is missing in this description of a generous right to hospitality, for it refers exclusively to *European* foreign individuals and fails to take into consideration the migrants referred to in the European legislation as *third-country nationals* (foreign individuals from outside of Europe) (Brown 2014). The perspective of these individuals on mobility and access to European territory offers a stark contrast. The limited requirement of a universal but temporary right to sojourn cannot be met

if a battery of protectionist and exclusive policies, ranging from illegal pushbacks to diplomatic efforts aimed at the externalization of border controls and increasingly restricted and more demanding access to visas, continue to be applied at the European Union's external borders. Even introducing an asylum claim is made impossible by several of these measures, thus weakening the special protection that refugee status is supposed to offer.

How could the European Union be consistently cosmopolitan in this perspective? Our suggestion is that it would have to recognize the universality of this right to hospitality and revise its asylum and migration policies accordingly. It could not restrict this right to hospitality solely to European citizens but would have to apply it equally to third-country nationals. In policy terms, this would require, at the very least, a reiteration of an *unconditional* commitment to observe the international refugee regime enshrined in the Geneva convention. To reach this objective, Frontex should first significantly improve its capacity to report on the fundamental rights violations committed by member states. Currently, the Frontex department tasked with this monitoring is drastically understaffed and unable to operate effectively.

But the European Union would also need to revise its current foreign policy, for it puts a lot of diplomatic effort into enrolling its neighbouring countries into its migration governance and ensuring that they cooperate in the monitoring and control of migrant flows (Liguori 2019). This results in an externalization of European border controls, with the effect of preventing economic migrants from exercising their right to visit. The development of a much more stringent visa policy, as part of the Schengen regulations, follows the same logic. It allows the European Union to police migration remotely, maintaining migrants at a distance from European territory (Guild and Bigo 2005). To align European values with its practices, this emphasis on the “remote control” (FitzGerald 2020) of migrants would need to be – at the very least – mitigated by granting due weight to the recognition of a universal right to visit.

More generally, the European Union would need to acknowledge that, though it aims to be a cosmopolitan polity, its scope remains continental. It is therefore embedded in a larger international context. Since its cosmopolitanism has boundaries, it must find a cosmopolitan way to regulate its relationship to its surroundings. With regards to migration policy, a stepping stone towards global governance of migration has been placed through the adoption in 2018 by the United Nations of the *Global Compact for Migration*. This Compact expresses the view that all migrants are right holders who should be treated appropriately and provides guidelines on how to regulate migration globally in a manner respectful of both state sovereignty and migrant rights. One way to make this right to hospitality universal would be to move away from the European conception that asylum provision relies on the logic of voluntary humanitarian assistance and turn its rights-based approach to migration into binding legal obligations for European states (Boucher and Gördemann 2020).

## **b. A realist cosmopolitan project for Europe**

A school of thought labelled “cosmopolitanism realism” approaches the same issue from a different angle. If indeed we have failed so far to grasp the full extent of the revolution in our social lives by the cosmopolitanization of the world (mostly because we cling to outdated analytical lenses), it follows

from that premise that the classic accusation of utopianism must be turned around. Cosmopolitanism is now our default social condition while nationalism is expected to fade into the background (though it has noticeably failed to vanish from the political stage so far). Cosmopolitans would thus offer a lucid and candid assessment of our current predicaments while nationalists would turn out to be the modern daydreamers. In contrast with the approach introduced above, the European Union is not depicted as struggling to conform itself to a philosophical model. Here, cosmopolitanism is rather a social reality that political institutions need to embrace, adapt and respond to.

Interestingly, two empirical investigations conducted within the NOVAMIGRA project concur with this line of argument. They document the fact that cosmopolitan values and practices are widespread amongst social actors, and that their condemnation as utopian rather come from European political institutions. It also reveals that those cosmopolitan normative commitments are still mostly regarded as “national values” rather than “European values”. One such investigation focused on “value agents” (social actors who play a role in transmitting or conveying the European values) involved in public and civil society organizations, whose role is to promote the social integration of migrants and refugees (Goździak and Main 2019). Its primary focus was on social value agents who work directly and practically with value transmission: civil servants, civil society leaders, educators, social workers and language teachers. The investigated countries include Sweden, Germany, Poland, Hungary, Greece and, to a lesser extent, Italy, France and the Netherlands. Its findings show, firstly, that explicit invocations of European values are quite rare. The pushed values are usually construed as either national, Christian, or more abstractly universal/humanitarian. Secondly, the findings also show, as expected, significant differences in how integration is organized in the eight countries. The older immigration countries in the north and west have more developed state/administrative capacity and policies to manage refugee immigration, while countries in the south and east do not, which places much more responsibility on civil society organizations and grassroots initiatives. Such differences are of course exacerbated by stark ideological differences between the relatively liberal immigration policies of Germany and Sweden on the one hand, and the anti-immigration populist governments of Poland and Hungary on the other. Still, all the cases showcase strong humanitarian mobilization from below in favour of refugee reception, especially in the initial stages of the refugee crisis.

A second investigation focused on social perception as well as the social practices developed in the name of the value of hospitality (Dimitriadi and Malamidis 2020). Hospitality has for obvious reasons been a key value during and since the refugee crisis. This empirical investigation distinguished between two levels of hospitality. The first is administered by the state as a legal obligation (to grant asylum), while the second is offered by society as an ethical responsibility based on humanitarianism. With a focus on the latter, the researchers unearthed the meanings value agents attribute to hospitality. They found that, interestingly, many of them view hospitality as a national characteristic and source of collective pride – even when state policies run counter to it – that resonate with established (historical, mythical, Christian) narratives of “good Samaritanism”. The findings also show that hospitality usually takes on very concrete and practical meanings such as the provision of food, shelter, health care and other basic needs. In many cases, social actors saw it as a moral imperative to pick up the slack and to remediate the lack of involvement from public authorities in providing hospitality.

Those two empirical investigations thus go on to show that cosmopolitan values are already widespread and acted upon within the European Union, though they are rarely equated with “European values” *per se*. Two further conclusions can be drawn from this global assessment. First, the European Union could tap into this existing trend to justify further migration reforms, enacting those cosmopolitan values. There is, in fact, a growing demand amongst civil society actors for European authorities to step up and take more responsibility in providing humanitarian support to non-European migrants. Second, the fact that cosmopolitan values are often reinterpreted by social actors as local or national values, and that this reinterpretation can take many shapes and forms may come as a surprise. But cosmopolitanism is indeed born out of the dialectic encounter between two competing normative assertions: the claim that all human beings are equal *and* the simultaneous recognition of their differences. Consequently, cosmopolitanism needs to find a way to balance these two requirements. In other words, and counter-intuitively perhaps, cosmopolitanism is not universal; or rather, materializing cosmopolitan values cannot be achieved through a uniform and standardized set of policies.

This is precisely the kind of dialectic that the European Union is grappling with. A universal commitment to equality is impossible to reconcile with a discretionary and highly repressive migration regime, for it is bound to endanger the fundamental rights of non-European migrants. *But* the European Union must also acknowledge its internal diversity, which means recognizing that its member states hold conflicting views regarding migration and that cosmopolitan values can be declined in various ways in local contexts.

As far as migration policies are concerned, one instrument may strike precisely that sort of balance and prove helpful in enforcing cosmopolitan values. The flexible and yet mandatory solidarity scheme envisioned by the European Commission in its *New Pact for Migration and Asylum* had the merit of being driven by a moral concern for migrants while also accommodating national sensibilities of member states. This solidarity scheme rises to the challenge of global migration and aims to organize at an appropriate level – the European level – a fair division of the burden of humanitarian assistance provision. Properly implemented, such a solidarity scheme could lead to a more even distribution of migrants and asylum seekers across the Union while also enhancing the quality of the hosting facilities through financial and material support from other member states. We would, however, suggest that one of the provisions of the flexible solidarity scheme is bound to endanger the fundamental rights of migrants and therefore dents its cosmopolitan credentials: the possibility for certain states to “sponsor” the return of migrants. Not only does this not provide any meaningful solution to the issue at stake – the provision of humanitarian support – but it also puts the fundamental rights of migrants at risk, as it delegates the highly sensitive duty of returning them to the member states who, by definition, have shown the least interest in their welfare. Furthermore, if the flexible solidarity scheme wants to meet its goals, it needs to create stronger incentives for the member states to abide by their pledges. This could be done, for instance, by tying compliance with the scheme to the allocation of structural funds.

### c. The necessary challenge of a critical cosmopolitanism

It would be tempting to dismiss cosmopolitanism as a towering worldview that proves upon closer inspection to be as ethically demanding as it is politically toothless. Cosmopolitanism has lofty ambitions, but none of the means to meet them. To avoid falling into this trap, more radical theories suggest a shift in our practical approach to cosmopolitanism. The latter should be redefined as *cosmopolitics*, that is, as a localized and contextualized political disruption aiming at overcoming the inherited and often arbitrary boundaries that limit the scope of our moral concern (Ingram 2013, Tassin 2003). Within the categories we used earlier, cosmopolitanism would thus prove to be first and foremost *civic*. It would be anchored in an activist practice of transnational citizenship that irrigates and challenges the existing European institutions and their embedded inequalities (Isin and Saward 2013) rather than a process of engineering integrated and supranational political institutions.

This radical cosmopolitanism is critical. Its primary aim is not to build new supranational institutions. It rather contends that cosmopolitanism is a daily challenge, a political practice of contesting local boundaries and their subsequent inequalities and discriminations. It pins its hopes on social movements, activist citizens and actors in civil society to question the legitimacy of some of the political boundaries we have come to naturalize and internalize, such as state borders. As we have discussed above, the practice of providing hospitality can be regarded as an instance of this form of civic cosmopolitanism. By supplementing the state and coming to the help of asylum seekers in the name of a higher humanitarian duty, the social actors that took it upon themselves to host, feed and accommodate some foreigners in need also tacitly condemned the scope of the states' moral concerns. They proved true to the tenets of their European citizenship by enacting its transnational dimension (Bauböck 2007) while making a full use of their political rights.

This cosmopolitanism may be better suited to the European Union for at least two reasons. First, its horizon does not need to be global since its action is rooted in local contexts. Its aim is to challenge unjust and unnecessary political boundaries, but this critical work can only be achieved through some contextualized and local struggles. Consequently, it is compatible with the integration process conducted within the European Union, despite its continental scope. Second, this critical cosmopolitanism can prove a powerful instrument for deconstructing some misjudged translations of universalism into the political realm. Critical cosmopolitan thinkers have often pointed out that imperialism and colonialism were two political ideologies that expressed their very *raison d'être* through reference to a universal civilizing mission. Given the historical responsibilities of many European member states, these past experiences should make the European member states extremely wary of claiming to be the vanguard of cosmopolitanism (Bhabra 2016, 2017); when they pretend to embody universalism, they run the risk of turning a specific definition of the universal into a hegemonic one, marginalizing or downgrading other approaches to the universal in the process (Balibar 2016a). Thus, the need to remind the European Union constantly that cosmopolitanism is the name of an open question, rather than the label of a political recipe. Enquiring, for instance, about the pushbacks allegedly committed by Frontex in the Aegean Sea is not an exaggerated politicization of a sensitive issue, it is just an instance of this critical cosmopolitanism in action. Investigating whether migrants and asylum seekers may be subject to a structural form of racism is another way to question the mismatch between the

alleged universalism of European values and the differentiated treatment of non-European migrants at the margins of the European territory (De Genova 2018).

This criticism is required if the European Union really wants to be true to its cosmopolitan promise. Without the constant probing of civil society actors and activist citizens, member states may be content to leave some unjust boundaries untouched. But this critical cosmopolitanism is, of course, more complicated to translate immediately into public policy. One state cannot order its citizens by decree to be active and critical. However, we contend that this critical cosmopolitanism is driven first and foremost by its ability to listen (and respond) to marginalized voices, shedding a different light on the dominant understanding of the universal. To allow cosmopolitanism to be more than a mere moral commitment and turn it into civic practice, we contend that the European Union could grant European citizenship to holders of refugee status.

Refugeehood is sometimes regarded as a purely humanitarian provision. From that perspective, it would be a moral duty – discharged by states – to help a person in a situation of dire need. But refugeehood is more than a modern take on the parable of the good Samaritan. Refugeehood is also, by definition, a suppletive political status. It is an instrument meant to redress the harm caused to individuals unjustly deprived of their ability to be part of political community (Owen 2020). By granting European citizenship to its refugees, the European Union would not only tacitly recognize the political nature of refugeehood, but it would also empower some of the most relevant stakeholders in European migration governance (Lendaro, Rodier, Vertongen 2019) and boost its own cosmopolitan credentials. Finally, it would create a precedent by uncoupling European citizenship from national citizenship of a member state. This would remind political actors of the radical novelty introduced by European citizenship, namely the ability to be politically active in a member state other than its own and legitimizing a transnational form of civic activism (Balibar 2009). Granting European citizenship to refugees residing in Europe would undeniably push this logic one step further, but it would nevertheless be consistent with its underlying political principle.

## 6. Conclusion

The political choices the European Union makes with regards to its asylum and migration policies are not strictly practical. It must go beyond finding an effective way to solve logistical problems, though this is also part of the challenge. A cursory glance at the turmoil generated by the sudden influx of asylum seekers during the summer of 2015, and its still-unfolding aftermath, shows that several political traditions compete to influence and shape European migration governance in a way that would mirror their own beliefs and normative commitments. This struggle does not play on a single dimension, in the simplistic opposition between closed or open borders. It is refracted into several more specific issues that need to be articulated cogently. Is the distinction between political refugees and economic migrants still relevant? How do we articulate the Union's foreign policy with its treatment of non-European foreigners at its borders? Can a restrictive migration policy be combined with a liberal and free-trade approach to the circulation of goods, capital, and services?

The key to articulating our answers to those multiple questions is to be found in a certain idea of Europe. What sort of polity does the European Union aspire to be? What kind of ideal drives it? Consequently, Europe's perception of itself cannot be dissociated from its interpretation of its values. The *New Pact on Asylum and Migration*, we argued, fell prey to the pragmatic delusion that it would be possible to reach a compromise between wildly diverging political views on migration through clever engineering of flexible migration policies. This report has made clear that we disagree. If the European Union is keen to achieve any breakthrough on this topic, it will need to move beyond this assumption and propose a normative basis on which to build at least a minimalistic political consensus.

Cosmopolitanism is not one of the European values listed in the *EU Charter of Fundamental Rights*. Those values are, however, not cast in stone. As we have argued, they are rather a site for political conflict, an invitation to sustain the ongoing debate on their content and their political implications. Seizing this opportunity, this report contends that cosmopolitanism, though only implicitly present in European values, is the key to a plausible and philosophically consistent reconstruction of their core normative content. Of course, we are not urging the European Union to silence its internal debate. Far from it. But we claim that European institutions, and most importantly the European Parliament and the Council of the European Union, are endowed respectively with a transnational and an intergovernmental legitimacy and that they should make strategic use of the latter to pave the way for a Europeanized migration governance. First, they should point out that the political behaviour, migration policies, and the public rhetoric of some of its member states are incompatible with a plausible interpretation of European values. Second, they should assert that several European values, chiefly the concept of human dignity, commit the European Union to at least a form of moral cosmopolitanism. The European Union cannot restrict the scope of its concern solely to its citizens. Turning a blind eye to the sufferings and needs of those that come knocking on its door would be a severe betrayal of its ethical duties. Finally, the European Union is a unique political experiment, an attempt to bring member states ever closer into an innovative cosmopolitan association. This dynamic ought not to be restricted to European member states. Some policy revisions could go a long way towards allowing the European Union to live up to its cosmopolitan promise. A revision of the Union's foreign policy to roll back the

externalization of its borders, a more robust solidarity amongst member states in the provision of humanitarian assistance to asylum seekers or the granting of European citizenship to refugees could be small but meaningful steps into this direction.

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## About NOVAMIGRA

Several, partly interconnected crises have profoundly challenged the European project in recent years. In particular, reactions to the arrival of 1.25 million refugees in 2015 called into question the idea(l) of a unified Europe. What is the impact of the so-called migration and refugee crisis on the normative foundations and values of the European Union? And what will the EU stand for in the future?

NOVAMIGRA studies these questions with a unique combination of social scientific analysis, legal and philosophical normative reconstruction and theory.

This project:

- Develops a precise descriptive and normative understanding of the current “value crisis”;
- Assesses possible evolutions of European values; and
- Considers Europe’s future in light of rights, norms and values that could contribute to overcoming the crises.

The project is funded with around 2.5 million Euros under the European Union’s Horizon 2020 research and innovation programme for a period of three years.

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