Defenders of current restrictions on EU nationals’ access to welfare rights, intended as basic welfare rights such as social assistance benefits, in host member-states often invoke a principle of reciprocity among member-states to justify these policies. The general argument is that duties of reciprocity characteristic of welfare rights are triggered by membership to a system of social cooperation. For example, Richard Bellamy and Joseph Lacey (2018) have argued, also here on EuVisions, that newly arriving EU immigrants who look for work do not meet the relevant criteria of membership because they have not yet contributed enough to qualify as members. Therefore, current restrictions on their access to welfare rights are justified. The regulating assumption here is that the collective goods produced by cooperation among states at the level of the EU must be brought about in a way that does not undermine the ongoing production of collective goods by social cooperation within both host and sending member-states. Therefore, freedom of movement, whatever its merits, should not undermine the welfare systems of host member-states.

In this (relatively) short essay, I challenge this argument by showing how restrictions on EU immigrants’ access to welfare rights are inconsistent with duties of international reciprocity. There are different variations of this challenge, but my focus here will be on one that uses a veil of ignorance device to support this claim. What matters from a perspective concerned with international cooperation, I will argue, is what kind of policy EU member-states would choose if they were not to know whether they were net contributors or net beneficiaries to the relevant scheme of international cooperation. As I hope it will become more evident in the rest of this essay, I doubt a veil of ignorance device founded on a notion of international reciprocity could also be used to justify current restrictions on EU nationals’ access to welfare rights. More specifically, in this essay I show how a direct appeal to international reciprocity is sufficient for justifying immediate and continuous access to welfare rights for EU immigrants without the need for instituting a European federal welfare-state (Habermas 2001), a European Basic Income scheme (Van Parijs 2017; Viehoff 2017) or, for that matter, a European Super-state (Morgan 2007). In that sense, this essay provides a positive argument as to why reciprocity grounds immediate access to welfare rights for EU nationals. It does so by moving the level of the analysis from the transnational level (i.e. from the analysis of relationships between individuals of different nationalities within host member-states) to the international level (i.e. to an analysis of relationships between member-states). This change of perspective highlights how a focus on EU immigrants’ contribution at their host state...
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conveniently sidesteps the international dimension of welfare rights access as an upshot of human capital exchange among self-determining member-states who have opted to reciprocally lift physical restrictions on freedom of movement. If the arguments below are sound, then EU immigrants need not to meet criteria of social membership, or stakeholding, to the host society’s scheme of social cooperation to be granted access to welfare rights on grounds of reciprocity.

The idea of reciprocity

It is crucial for the development of the argument to explain what reciprocity entails when it is placed at the centre of a theory of international justice. Reciprocity-based views can be developed in a variety of ways but usually take a Rawlsian formulation. They are therefore informed by two general requirements of reciprocity. First, each agent participating in cooperation should benefit on terms that are fair as opposed to terms that are merely mutually advantageous. Second, that the proposed terms of cooperation must be reasonably acceptable to others as free and equal agents, and not as manipulated, dominated, or one-sidedly (Rawls 2005, 136-7).

To illustrate: imagine two societies A and B. Now imagine they agree to freedom of movement and to allow access to their labour markets. Assume further that A is richer, on average per capita terms, than B. It, therefore, experiences a higher influx of inward EU migration than B and that some of these immigrants apply for benefits. Should society A restrict access to welfare rights to those coming from society B? It seems that an answer can be given without looking (as some reciprocity views do) into a variety of different types and degrees of contribution to society A by an individual EU immigrant. Furthermore, this answer need not appeal to principles of transnational justice but merely to principles of international justice.
The relevant question that a reciprocity-based approach needs to ask head on to provide an answer is the following: what restrictions, if any, would (representative) member-states opt for with respect to access to their welfare systems if they were to opt for freedom of movement but didn’t know how the benefits and costs of freedom of movement would be distributed among them? I will argue that if freedom of movement is opted for, and therefore restrictions both to immigration and emigration are lifted, then the fair policy would be the one that would grant both high-skilled and low-skilled immigrants immediate access to welfare rights. We may call this, following Rawls, an example of fair terms of cooperation among presumably, or at least relatively, well-ordered liberal democratic member-states. It, therefore, renders the EU a particular case of international cooperation among liberal democratic states. Below I explain why this rule would have been opted for behind a veil of ignorance device, namely when member states do not know whether they will be on the sending or the receiving end of migration (VOI hereafter).

**Behind the Veil of Ignorance**

What are the relevant facts that we must allow behind the veil before we choose a principle
to regulate access to welfare rights as an aftermath of labour migration? First of all, there is evidence (Dustmann 2014) that opening borders allows for the creation of an economic surplus due to the more efficient allocation of human capital. It is also reasonable to assume that less well-off member-states would have an interest in restricting emigration of high-skilled workers to (more) better-off member-states whereas more better off member states would have an interest in restricting immigration of low-skilled workers from less well-off member-states. Furthermore, and due to current inequalities among member states, it is highly likely that high-skilled workers would move from worse-off member states to better-off states, and even more so in times of economic crisis and economic divergence. Thus, EU’s member states essentially have to choose between three options behind the VOI: immigration only for low-skilled, which is reasonably rejectable if they were to end up being better-off states, immigration only for high-skilled which is reasonably rejectable if they were to end up being worse-off states. Therefore, the best, and not reasonably rejectable option is immigration for both high-skilled and low-skilled.

If this is the case, then member-states behind the veil of ignorance would opt for a policy that would compensate them for losses of high-skilled labour, and that would not overburden their welfare systems with disproportionate numbers of low-skilled workers. EU immigrants’ access to welfare rights is linked then to the exchange of human capital across a region made possible by freedom of movement. It is an upshot of a form of economic cooperation with a significant impact on the welfare systems of both host and home states. It is these relations that trigger a need for justification. In this case, justice as reciprocity is a demand for fair terms of cooperation among member states that agree to open their labour markets to each other.
If these facts are generally known, what is the relevant normative baseline by which we could judge whether proposed and existing restrictions on access to welfare rights are justified? A good place to start is to recognise the fact that the significant inequalities in bargaining power found among EU’s member states could play a distorting role and suppress the price that worse-off states could reasonably demand for opening up their labour markets to migration. Therefore, any regulations concerning the movement of human capital across the EU calls for fair terms of cooperation that respect each party to the agreement as equal. A veil of ignorance device by bracketing inequalities of bargaining power helps us to tease out in more detail those fair terms of cooperation by modelling that concern for equal respect. The critical point here is that freedom of movement of human capital constitutes a sufficient condition for triggering duties of reciprocity as fair cooperation among participant states and that the further determination of those
terms must be carried out in a way that would ensure that those terms are reasonably acceptable to others as free and equal agents, and not as manipulated, dominated, or one-sidedly.

**What policy would suit best the discharge of these duties of reciprocity?**

There are five reasons to think that the fair sharing of these benefits and costs must primarily take the form of immediate access to welfare rights over alternatives. To begin with, **worse-off member-states must be compensated for the costs of training human capital and any opportunity costs they may have to face as a result of high-skilled emigration.** One potential problem here is that trained high-skilled labour, and talent, is not easily replaceable and hence directly compensable (Brock and Blake 2014). Investment of more resources to education and training does not necessarily result in equally good outcomes if the most talented and the most ambitious leave the country in significant numbers. A better policy, therefore, to opt for behind the VOI is a guarantee for open borders for all EU immigrants; not just for the high-skilled immigrants that every better-off state has reasons to want but also for the low-skilled that might need or want to follow them. **Seen from that light access to welfare rights serves as an enabling condition, in the form of welfare payments, that makes transition costs of immigration lower, not just for high-skilled but also for low-skilled EU immigration.** In this way, immediate access to welfare rights balances the outflow of high-skilled labour with a higher outflow of low-skilled workers and reduces the pressure on the welfare-system of sending member-states.

**A second reason is that immediate access to welfare rights could serve as a buffer both against social dumping and its consequences on migration.** In the context of a multilateral institution such as the EU, if EU-immigrants have immediate access to welfare rights than better-off states have an incentive to ensure that worse-off member-states observe welfare rights. Because non-compliance with such standards on the part of the latter will result in a more significant number of migrants accessing their welfare systems. At the same time, citizens of worse-off member-states are given an assurance mechanism by having their access to welfare rights protected against domestic social justices by other member-states.
Third, representatives of member-states behind a VOI device have reasons to prefer immediate access to welfare rights for all EU immigrants to a reparation fund or a similar policy. If member-states legitimately own some of the gross value of high-skilled human capital that emigrates to other member-states, then they are to decide whether they want compensation in the form of annuity payments or in terms of increased opportunities for immigration. Given that immediate access to welfare rights expands the range of choices all immigrants have over where to work and live, it looks like member-states, behind the VOI, have a good reason to demand that at least part (if not all) of their compensation is paid in that currency. More freedom of choice for a greater number of EU immigrants is surely a tie-breaker between two equally good policies from the perspective of fair terms of exchange. Even if most people prefer to stay where they are, there is still a good chance they are willing to trade-off some of their compensation for better terms of migration in the case they decide or need to exercise that option due to freedom of movement.

Fourth, moving to a state of affairs with immediate access to welfare rights entails
lower transition costs than establishing a fund for international transfers across EU members. Such a fund would require the founding of an EU body that would have to regularly process all the relevant info and determine the relevant annuities. Instead, immediate access requires only minor revisions to regulation 2004/38 in light of earlier decisions of the European Court of Justice (ECJ). Furthermore, the current political choice that we are facing in the EU is not between closed-borders with no compensation paid and closed-borders with compensation paid, but freedom of movement with or without (or with more or less) access to welfare rights. Both a closed-borders utopia and a utopian “Eurocosmopolis” with a federal transfer fund are off the institutional map of the EU. Therefore, freedom of movement with immediate access is more in line with the EU institutions that are already in place. In a world where significant international transfers are unlikely, freedom of movement with access to welfare rights seems like the best, even if second-best, approximation for realising justice as reciprocity at the international level. All of the above reasons suggest that immediate access is a comparatively effective policy that is not only normatively desirable but also both technically and politically more feasible than alternatives.

Finally, what speaks in favour of this proposal is its direct linkage to the criterion of justificatory reciprocity as an impartial standpoint that shows equal respect to all agents involved. This is, I recall, the requirement that terms of cooperation that are proposed must be reasonably acceptable to others as free and equal, and not as manipulated, dominated, or under pressure of being socially or politically inferior. It requires that EU citizens treat others as addressees of reason and not merely as means to self-enrichment that can be shovelled around like objects whenever that is convenient to the more advantaged. Within a given member-state, a policy meets this criterion of reciprocity by placing behind a veil of ignorance whether an individual within a society’s basic structure is a net-contributor or a net-beneficiary to the welfare system and therefore it treats everyone as an equal addressee of reasons. International reciprocity, among different member-states, meets the same criterion of reciprocity by placing behind a veil of ignorance whether an individual member-state is a net-contributor or a net-beneficiary of movements of human capital and therefore it treats every member-state as an equal addressee of reasons when it comes to choosing an appropriate EU policy concerning EU nationals’ access to welfare rights. And such equal concern is difficult to square with policies that restrict rather than secure equal access to basic welfare rights for all EU citizens, not just for the few and privileged ones.
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