

“Les riches vont où ils veulent, à tire-d’aile;  
les pauvres vont où ils peuvent, en ramant.”<sup>1</sup>

“Migration does not deliver the anticipated free lunch,  
or rather the free lunch comes at the price of indigestion.”<sup>2</sup>

**Abstract:** Most states apply selective admission policies with regard to migrants. The rationale is to attract “talent” and not to lose out on tax revenues. But generally these policies are applied simultaneously with more restrictions towards “untalented” normal migrants. Such differential treatment comes at the cost of a coherent and fair immigration strategy. To establish this conclusion I analyse how some states exempt candidates, who either make major investments there or who have certain skills, from the usual admission and integration requirements – such as passing tests necessary to be granted long-term residence. As the “usual” admission and integration procedures become increasingly insurmountable, such kind of policies – disguised as competitiveness-enhancing measures – replace an integral and just migration policy. And that latter, I argue further, should address all migrants alike on the basis of objective and fair criteria. The criterion discussed here is *voluntariness*. Endowment (e.g. wealth or education), I claim, grounds voluntariness and thus responsibility for our actions, e.g. accepting the integration requirements in the receiving state. In the upshot the voluntary “talented” or rich should be subject to integration policies whereas relatively involuntary “economic migrants” should not. But the political reality is just the opposite.

## **I. Introduction**

Nations states are delineated by borders. Nowadays, these borders are usually controlled in order to select who enters and monitor who leaves the country. Whereas state borders are, human migration is no new phenomenon in world history. But the extent to which it is steered by the very states is. What has not changed further is the motivation why people migrate: they strive for a better life. What is new, in turn, is the institutionalisation of different categories in which migrants fall – two kinds of migrants are distinguished in international law: refugees, who *have to* leave their home, and economic migrants, who *choose* to do so. This distinction allows states to draw the line between those in need of protection and assistance and the rest. It is ultimately based on the *voluntariness* of them migrating.

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<sup>1</sup> Debray (2010, p. 69).

<sup>2</sup> Collier (2013, p. 175).

But what does voluntariness mean? For sure, it has wide implications not only in migration policies but in political thought in general: “to take a voluntary action” means “to accept and know the implications of that action.” This term deserves obviously more discussion. But for the time being, consider the *normative force* of “voluntariness” in the present context: those who have migrated “voluntarily” know and accept the conditions of their stay in the host country as well as the expectations in terms of abiding the local law, adopting to predominant norms and customs, and satisfying the local requirements of integration.

Evidently, not all “voluntary” migrants are the same. If we focus on labour migration, it has become standard to differentiate between skilled and non-skilled migrants. This distinction – to the point that it is valid<sup>3</sup> – is based on the talent, education, and skills of the migrant as well as the necessities of the receiving state. The usage of this and similar dichotomies as well as its corresponding policies will be the object of a discussion on their own later-on. But focus for now on the terminology in which both groups are addressed in receiving countries: according to a market logic, there is competition for (scarce) talent while future unskilled migrants are dis-encouraged from entering the country by means of negative incentives<sup>4</sup> – competing as it were for minimal negative externalities of their migration.<sup>5</sup>

So what is the issue of using terms like competition and incentives with regard to migrants? Whereas the skilled are wooed, the unskilled are daunted. While it is up for discussion whether such policies are effective or efficient, I shall raise a more principled concern here, one based on equality. If the system of nation states is to be maintained and its current policies – notably in terms of migration and integration – to be based on equality, then the skilled cannot be privileged whereas the unskilled meet harder challenges.

In order to support this conclusion, I will elaborate on what this paper has started with: a normative analysis of the term voluntariness (section II). I will argue that voluntariness implies having a sufficient set of options, a condition that applies more likely to the wealthy or talented. However, the political reality is just the opposite, as I will lay out in section III.

<sup>3</sup> Being standard does not make this distinction uncontroversial. Moreover, dichotomies as the present convey value judgements. The term “expat”, for instance, is seen by some authors as to have racial connotations, cf. Koutonin (2015): “Why are white people expats when the rest of us are immigrants?”

<sup>4</sup> Note that in the context of the current migrant crisis in the Mediterranean several politicians have not hold back from addressing the plight of potential humanitarian migrants in terms of incentives, e.g. PM Cameron (2015): “[we need to] *dissuad[e]* people from taking those terrible risks – by fundamentally breaking the link between setting off in a boat and achieving settlement in Europe” (my italics).

<sup>5</sup> Ideal competition requires “a large number of buyers and sellers, comparable goods, and the absence of [both] informational asymmetries ... [and] unequal market powers” (Herzog 2013). These conditions would apply between states with regard to migrants with certain requested skills. However, those immigrants, once inside the country, do not compete under such conditions if the local labour force is privileged in national legislations, as it much is nowadays. In any case, these considerations apply even more to the unskilled, who often cannot choose where to go and tend to compete not only with (privileged) nationals but also with other migrant groups in certain sectors of employment (cf. Collier 2013, pp. 169ff.).

An analysis of “citizenship-for-cash” programmes and “integration exams” for migrants will show how competition for talent and externalities go at the expense of the “voluntariness” of moving agents. In section IV, I will argue against a strong dichotomy of the term. The anxiety of a growing and uncontrollable influx of migrants has led to a restrictive interpretation of what constitutes a refugee and hence what makes for “involuntary” migration. This fact, however, has blinded us for gradual differences in motivation and circumstances that underlie different migrants even above the threshold of who is now a refugee.

## **II. Voluntariness**

Most human beings are “inclined to stay where they are unless their life is very difficult there” (Walzer 1983, p. 38). Political philosopher Michael Walzer portrays migration as a mainly involuntary act. People thus do not generally leave their place of origin unless they are driven by basic deficiencies that make them migrating and adapting to a new society. However, if this was true we would need to consider the majority of immigrants as asylum seekers or refugees according to the UN definition: i.e. people who “have to move if they are to save their lives or preserve their freedom”.<sup>6</sup> But this seems to miss reality. Immigrants do quite commonly migrate voluntarily. That is, within the UN terminology and contrary to Walzer's statement, they are “economic migrants” who “*choose* to move in order to improve the future prospects of themselves and their families” (id., my italics).

But before entering the question of who migrates voluntarily and who doesn't, i.e. addressing the scope of voluntariness in section IV, let us take a step back and analyse the term itself in section II.1. This terminological dissection will allow for a clearer picture of the normative implications of an individual acting more or less voluntarily (section II.2). A special focus will fall on the role of talent and wealth in order to prepare the discussion of how political reality looks like with regard to the morality of voluntariness (section III).

### **II.1. *The nature of voluntariness***

Otonelli & Torresi (2013) are the first to have written a comprehensive conceptual analysis of the term voluntariness in the context of migration. They differentiate four conditions:

- 1) *Non-coercion*: no choice which is made under physical or psychological force is voluntary. This is also a criterion in the definition of human trafficking in international law.<sup>7</sup>
- 2) *Sufficiency*: the quality and structure of the choice options must be good enough for a decision to be justifiable and hence voluntary.

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<sup>6</sup> Cf. UN 1951 Refugee Convention, according to <http://www.unhcr.org/pages/49c3646c125.html>.

<sup>7</sup> Otonelli & Torresi (2013, p. 797) point out that trafficking is not to be mistaken for smuggling where migrants can voluntarily consent to be illegally smuggled into a certain territory as a part of their life plan.

3) *Information*: the individual must have adequate information and knowledge of the choice options and its implications in order to act voluntarily.<sup>8</sup>

4) *Exit options*: a decision is and remains voluntary as long as there are “viable alternatives” to the status quo (Otonelli & Torresi 2013, p. 801).

In the following, I concentrate on the fourth aspect – a criterion which is “often neglected in the literature” according to the authors (ibid.). It states that a decision (also in its consequences) is and remains voluntary if the agent has genuine alternative options to this decision or its later consequences. That is, for instance, Pablo's decision to migrate from Peru to Spain is voluntary only if staying in Peru has acceptable consequences, e.g. no primary deficiencies in terms of nutrition, housing, or economic security.

Most host societies, however, often assume an implicit exit option – namely, when stating officially or unofficially that immigrants can always go back to their home country (unless it is in extreme conditions like war). However, in many cases of “voluntary” immigration this exit option either vanishes over time or it is not genuine, i.e. exiting would lead to disproportionately negative consequences compared to not having left one's home country in the first place.<sup>9</sup> This does not mean that immigrants are better off not leaving at all. It rather underlines the time-dependent aspect of certain choices and that initially voluntary decisions can become involuntary over time with changing circumstances.

The question is thus how to handle and justify the expectations of receiving societies towards immigrants. To assume that immigrants can always go back if they disagree with the laws, values, etc. of the host states is only warranted if they reasonably be expected to go home. Only then is their stay “voluntary”. Before addressing the consequences and impositions that follow such from genuine voluntariness, I have to explain what *genuine* means.

Until now I have referred to voluntariness being based on external factors, which are – in accordance to the absence of basic deficiencies in terms of nutrition, shelter, economic security, etc. (cf. Otonelli & Torresi's sufficiency criterion). This stance has two implications:

(a) it does not matter for an act to be voluntary if the individual *says* or *plans* to take an action independently of the options at hand. Imagine that Olga decides to leave her native Be-

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<sup>8</sup> Otonelli & Torresi (2013, pp. 812ff.) insist, that “more” information is not necessarily “more adequate” information in view of forces of self-deception or over-estimation of potential gains, etc.

<sup>9</sup> Cf. Otonelli & Torresi (2013, p. 802): “...it should not be assumed that an exit option is obviously guaranteed by the mere possibility to return to one's original country [...] because while they are away, migrants have been uprooted from their culture, lost connection with the sending society, or have lost the capacity to procure for themselves the means for a decent life once back home. [...] [T]he existence of ‘exit option’ is to be understood not as the mere physical possibility to exit the host country.”

larus due to poverty and chronic unemployment (i.e. missing economic security). Her choice to migrate is involuntary according to the external understanding independently of whether she says or believes that she would have left anyway (i.e. were she not poor and unemployed). Her *internal* assessment is irrelevant to the voluntariness of the action.<sup>10</sup>

(b) The second aspect concerns the relation between voluntariness and sufficiency. What is *enough* is a comparative question and it depends on the social milieu. Moving to an affluent country leads thus most probably to an increase of what is considered enough in comparison to the less affluent country of origin. The assessment of what counts as voluntary and involuntary, of what counts as a genuine exit option and what not, will thus depend on the specific socio-economic context. This is of twofold importance: first, what can count as (in-)voluntary in context or country A does not have to count as (in-)voluntary in context or country B; second, if equality between individuals matters, voluntariness needs to be assessed and its implications applied uniformly within this society, i.e. independently where the respective individuals originally come from.<sup>11</sup> If we imagine Olga moving from Belarus to, say, Germany and working there for an insufficient wage (say, to sustain her family) this makes her situation no less involuntary even if that wage was enough in Belarus. Statements of the type “You cannot complain: you earn more here than you could back home” are thus not warranted on the basis of a contextual understanding of voluntariness.

## II.2. *The morality of voluntariness*

Voluntariness is key in our modern understanding of morality. To do something voluntary despite of an apparent harm to oneself, can be justified only because we value and protect the personal autonomy of an individual over her body and life. Consider, for instance, aspirants in some military units who go through drill. Normally, they have the option to quit and the whole military education seems to be conceived precisely as a test of their strength of will. And it is the possibility to exit this treatment which makes us morally accept or at least tolerate such practises – which are, by themselves, morally repelling.<sup>12</sup>

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<sup>10</sup> Note that here I differ with Otonelli & Torresi who insist on the importance of the agent's life plan independently of the external choice structure. Whereas most political theorists of migration would agree with this view, e.g. Kymlicka (1995), I disagree. Even if we described Olga's choice as – based on an external assessment – involuntary, this does not necessarily have to jeopardise her life plans. However, this debate is not central to the present discussion about the host societies' assessment of migrants' circumstances.

<sup>11</sup> This is not mutually exclusive with hedging clauses so as to exclude temporary residents. The claim here is rather that exit/return options vanish over time. Hence *settled* immigrants need to be treated equally to the nationals of the host society and not those of their original home state. Details follow in section IV.

<sup>12</sup> Based on my external account of voluntariness, it would be involuntary if the drilled soldier had no exit option (e.g. draft, or mandatory military service) even if she or he said to have done it anyway.

My point is that something structurally similar applies to immigrants. Unlike established nationals they are asked to learn a new language, adapt to new customs and values, and integrate into a different society. That's quite some work that requires determination. However, commonly we believe that it can be justified as long as the concerned individual can quit. Just as unsuccessful candidates in some military unit, immigrants too can decide to go home instead. However, in the previous paragraph I have already advanced some reservations to this view. So how is the voluntariness of migrants to be assessed?

In migration theory, degrees of voluntariness that motivate migrants are often referred to in terms of “push” and “pull” factors (cf. Everett, 1966). In this logic, “push” factors are e.g. the absence of opportunities in the origin country. “Pull” factors are, for instance, more political or religious freedoms in the destination country. In this logic, the more a migrant is motivated by “push” factors, the less it matters where she or he emigrates to as long as the situation there is better with regard to the pushing factor. If migration is determined primarily by push factors, we can only speak of a restricted and unqualified voluntariness that underlies the decision to migrate. By unqualified and restricted I understand that there are insufficient exit options putting migrants in a dilemmatic situation: the immigrant can either stay in the unsatisfactory or even deprived condition of his home country (which *push* him or her to consider to leave) or she or he can leave to a relatively unknown country.

If this dilemma is true, its upshot in terms of morality becomes apparent. Given their restricted voluntariness, these people cannot be expected to play completely by the rules of the host society. As they got here rather than there not out of an autonomous decision of theirs – there was no or only a limited “pull” factor–, it would be arbitrary to treat them as if they knew and accepted the specific expectations they would meet in the new host society. And such expectations concern the adaptation to local customs and norms, learning the language, accept their legal status, working conditions – in a word, to integrate.<sup>13</sup>

In contrast, there are migrants who are motivated mainly by “pull” factors. They effectively chose where to go and thus select one country over another. To this “voluntary” group belong the wealthy and, in some cases, the educated. Think of highly skilled and demanded professionals, managers, or millionaires. These are people who have the means that allow for a technically unlimited mobility. Even though they also might be limited by border control, most host societies treat this group in a more preferential manner as we will see in section III. To the extent that this preferential treatment implies more options and thus more voluntary decisions, this group of migrant can be hold (more) responsible for meeting the

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<sup>13</sup> What about guest workers or other temporary residents? Even though I indeed focus on settled migrants, or those willing to do so, I do not believe that my present analysis has to halt before guest workers. To the contrary, they face even more restraining conditions than settled or skilled migrants: they may not settle or naturalise, unite with their family, or change their employer (cf. Lenard 2014).

expectations of the host country. If immigrants have to integrate, this information is known, and the equality between immigrants matters, such “voluntary” groups should comply.

This analysis of voluntariness is not empirical – to wit, I do not aim at accounting exhaustively for whether immigrants decide freely to come or not. Or, how many and what kind of exit options they have. It is thus not my intention to argue that migration is necessarily involuntary. I merely analyse the conditions for an “objective” and sufficient set of (at least two) *choices* in contexts of migration. This external focus is motivated by the observation that in the social, political, and legal sphere migrants are assumed to have come voluntarily across-the-board (except for refugees, strictly understood). And the aim of the next section is to discuss a representative set of policies and legal texts in view of the present considerations. The upshot is that a strong dichotomy between involuntary refugees and voluntary economic migrants does not account for the circumstances migrants face in reality. This dichotomy nurtures a further neglect of the specific vulnerability of migrants.

### **III. Voluntariness in migration policies**

There is one major context in which the notion “voluntary” is systematically used in migration laws of host states: “assisted voluntary return and reintegration” programmes (AVRR). AVRR address “irregular migrants, unsuccessful asylum seekers, refugees, and others wishing to return from the host country ... [as well as] migrants stranded en route” (IOM 2011, p. 2) and facilitate and incentivise<sup>14</sup> their return to the countries of origin and, once there, their reintegration. AVRR programmes are generally considered the more “humane” and “cost-effective” alternative to enforced deportation (IOM 2012). This juxtaposition between voluntary and forced conditions suggests a strong dichotomy – however, ultimately the set up of these policies suggest that there is only one option: namely, to return.

Using the term “voluntary” in the present context is not appropriate if I am right with my prior elaboration on the conditions of the term voluntariness.<sup>15</sup> AVRR programmes are surely an alternative to forced deportation and an effective help to returnees. But the conceptual understanding of voluntariness is shallow – the presented strong dichotomy tricks us into believing that a morally legitimate choice has been taken. However, to nudge a candidate into an AVRR programme does not make her choice more “voluntary”.

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<sup>14</sup> Those incentives are usually cash grants or financial aids for business set-ups (IOM 2012, p. 20).

<sup>15</sup> Over and beyond it is questioned whether AVRR are efficient in their goal: empirical evidence shows that one main hindrance to a more successful implementation of AVRR programmes is that eligible candidates “often do not wish to return to their country of origin” (Thiel & Gillan 2010, p. iii).

If we do not want to stop here in the analysis of the political and legal application of “voluntariness” we must look for more *implicit* usages of the term. One instance thereof is when UNHCR Ruud Lubbers refers to “difference in motivation” that differentiates refugees from economic migrants. Given that a refugee has migrated due to a specific push factor – her own state has been hostile towards her, through war or persecution – “[t]here is no such thing as an ‘environmental refugee’ or an ‘economic refugee’” precisely because the government is sympathetic – or at least not hostile – towards its nationals who suffer from the consequences of climate change or poverty (Lubbers 2004).

However, the attitude of the state of origin alone does not seem determining of the voluntariness of migrants in view of the previous elaboration. Many states in the world *can* simply not provide for its nationals. This does not have to imply that they are *hostile* against its citizens. But by defining refugees on the basis of the attitude of their home country and by insisting on a strong dichotomy between “refugees” and other migrants, those who fall just under the threshold are excluded from what they are entitled to – namely, help and assistance. To push it: they are “unlucky” just not to be in a state of internationally recognised war or repression, even though their situation resembles it much. To abolish this dichotomy and to introduce a gradual account of voluntariness – without jettisoning this criterion altogether –, can alleviate the situation of those people (cf. section IV).

But let us turn aside this topic for the moment. Let us focus now on an analysis of two current kinds of domestic laws of several migration receiving countries. There we find more implicit and intertwined assumptions about the voluntariness of migrants.

### III.1. “Citizenship for cash”: money over voluntariness in agency

With the current economic crisis, fiscal authorities have explored more creative ways to generate additional sources of income. One of those is the trend to “sell” citizenships or residence permits. Foreign citizens who buy real estate for at least half a million Euros in Portugal or Spain are entitled to receive a residence permit there. Since this policy has been introduced in late 2012, some €817 mio. have been invested under this scheme in Portugal (Gratwohl 2014). In Spain, since October 2013 the investments taken under the “Entrepreneur Act” scheme are estimated to have reached €3 bn. until now. However, only some 10% of the total of 5.580 permits conceded were due to investments in real estate (with 70% from Russian and Chinese nationals). The majority of permits (3.120) went to “highly qualified professionals” who invested in a business project in Spain. The Spanish ministry of Economy attributes the creation of 12.585 direct and indirect jobs to this scheme.<sup>16</sup>

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<sup>16</sup> All the data is from: [http://www.elconfidencialdigital.com/dinero/millonarios-conseguido-residencia-Espana-millones\\_0\\_2486751315.html](http://www.elconfidencialdigital.com/dinero/millonarios-conseguido-residencia-Espana-millones_0_2486751315.html), last retrieved: 27/05/2015. Translations are mine.



The Maltese government went as far as granting its citizenship – and thus free residence in the EU – to candidates buying real estate or certain national stocks of a certain value and keeping them for five years at least (Gratwohl 2014). The EU commission, however, intervened so that candidates now need to have residence in Malta for at least 12 months before becoming Maltese citizens (Carrera 2014). Similar policies<sup>17</sup> are applied elsewhere too.<sup>18</sup>

Whether citizenships should be a commodity that can be traded and sold is a relevant question.<sup>19</sup> But let us focus instead on what “citizenship-for-cash” policies (alternatively also called: “golden passport scheme”, “immigrant investor programme – IIP”) imply in terms of voluntariness. It is evident that those with the necessary financial means are able choose where to apply for residence or citizenship – their ultimate choice can thus be considered voluntary along our above definition. Those without the necessary means, in turn, cannot apply for such schemes. They are excluded from this way of receiving a legal recognition.

Even though this fact already creates some (controversial) inequality, let us focus on another circumstance of those programmes: its applicants are usually exempted from the “normal” way to obtain their new permit or citizenship. And these standard procedures are quite demanding. For instance, all countries in the EU establish a minimum prior residence ranging from 3 to 10 years before being allowed to present an application for naturalisation. Candidates then usually need to show that they master the local language to some extent and, in some cases, prove that they are properly integrated in the host society.<sup>20</sup> That is, IIP and other such schemes do not only open the door for certain candidates (while it remains shut for the wide majority) but it puts them on a fast track for achieving naturalisation.<sup>21</sup> Specific differences between the concrete policies of different countries applying such programmes notwithstanding,<sup>22</sup> immigrants are treated preferentially if they are rich.

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<sup>17</sup> Such “residence planning” has become an alternative strategy of the well-off to optimise their tax burden in view of a certain global tendency towards fiscal transparency (Gratwohl 2014). Whereas the rich used to move their assets off-shore to save taxes, they now change their (fiscal) residence. It is in this spirit that citizenship-for-cash policies are under suspicion as a means of tax evasion (Abrahamian 2014).

<sup>18</sup> For a recent list of states of the EU with such policies, cf. Carrera (2014). Non-EU countries are mainly but not exclusively found in the Caribbean (cf. Noack, 2014). On a global level, “passport portfolio diversification” strategies are deemed to account for an annual turnover of \$2 bn. (Gittleston, 2014).

<sup>19</sup> For a documentation of how specialised private consulting agencies assess the credibility of candidates (e.g. opera divas, billionaires, or oligarchs) and eventually “sell” the citizenships of the states they are working for, cf. Zotter (2013). The need of further passports is due to a desire for safer and more flexible mobility, according to a lawyer of such an agency, e.g. “depending on where you are, from Turkey to Indonesia, it might be dangerous to check in at the hotel with an American passport” (ibid., my translation).

<sup>20</sup> Language proficiency is expected to go as high as, e.g., B2 (on a A1, A2, B1... scale and C2 corresponding to proficiency) in Croatia. Goodman (2010) provides a comparative legal analysis of legislation concerning citizenship of the EU member states with details of the expectations in terms of “integration”.

<sup>21</sup> In Malta, “the restrictive system for all other foreigners seeking naturalisation” stays in place whereas those who can afford the adequate investment are exempted from additional requirements (Debono 2013).

<sup>22</sup> Interestingly, Canada has stopped its “Immigrant Investor Scheme” in 2012 due to abuses of the system,

Those who can afford it choose between different countries where residence and citizenship requirements are lowered upon making (potentially profitable) investments. All the others depend on other factors that determine whether they can emigrate to, take residence or naturalise in a country other than theirs: being offered a job contract, having a spouse from there, being accepted as a refugee, or simple sheer luck as in the case of undocumented migrants. Those factors have in common that they lie to a varying degree outside the control of the concerned individuals. In contrast to the rich who choose *fully* voluntarily where to go or stay, the non-rich are conditioned in their choice acting *less* voluntary.

But critics might state that the rich can choose whereas the others cannot, this is just as with everything else in life. They might further insist that it is not the case that citizenships are given away for free and candidates are carefully selected, notably for criminal antecedents. Those migrants who can afford it are made to pay in order to alleviate the situation of the nationals who are in need, they might say. Without (yet) entering into the international dimension of this argument, note, however, that it subverts the morality of voluntariness: money subverts the role voluntariness plays in the way we normatively categorise and hence treat migrants. Citizenship-for-cash policies not only negate but antagonise the morality of voluntariness according to which the more voluntary need to assume more responsibility for their actions. The richer one is, the more voluntary decisions that person takes as a matter of the extended choice set. She or he will migrate due to pull factors, other things being equal, and thus be able to choose whether to migrate to one country or another. Being able to choose, they will also select for the expectations in place in terms of residence, language skills, or integration and can be assumed to take the responsibility of compliance. But the reality is just the opposite: the rich are exempted from integrating.

But to what extent do states have an obligation to serve the interests and respect the equality of immigrants, i.e. aliens and people who do not fall under its legislation? My argument relies on a universal concern for the equality of all humans or at least on the equality of aliens. I must show how such policies harm the countries of origin and its people. And this is an aspiration of mine in the following sub-section. There, I will elaborate on an analogous argument as the present but focus on how preferential migration policies actively select for the skilled and talented. The harm – analogously to the rich who extract capital and tax money from their (often poor) countries of origin – is that developing countries are deprived from its most promising talents and future elite.

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i.e. candidates bribed officials in order shorten or circumvent their mandatory residence in Canada. As a consequence, some 3100 fraudulent citizenships were revoked (Debono 2013). The Canadian government, however, has lately been experimenting with a scheme requiring a higher and longer lasting investment than earlier versions.

### III.2. *How integration tests favour the skilled*

Concerns about social cohesion, immigration and the integration of immigrants have grown in the last decade in several societies. One raising tendency of replying to this has been to impose integration and naturalisation exams on immigrants or candidates for permanent residence or naturalisation (Joppke 2007). The official goal of these tests is to make for a proper integration of immigrants in the dominant culture and their training in the local language in order to guarantee the peaceful coexistence within the same society. The Dutch parliament has been one of the first to enact a mandatory extensive and formal integration test some fifteen years ago. Let us analyse – without entering the debate of the legitimacy of integration tests *per se*<sup>23</sup> – how the notion of voluntariness is operationalised here.

The Dutch integration test contains several parts, amongst which language competence and knowledge of Dutch society. According to the actual version of the law (2013), candidates are supposed to take this test three years upon their arrival in the Netherlands, otherwise fines apply.<sup>24</sup> In terms of effects, the introduction of these tests has led to a significant reduction of demands for immigration, namely due to the drop in demands from Morocco and Turkey – the two major migration communities in the Netherlands (cf. HRW, 2008).<sup>25</sup> Note that citizens of Switzerland, Canada, US, Australia, New Zealand, South Korea, Japan, or member states of the EU or the EEA are exempted of the test. The divide between nationalities that are exempted from the test and those who are not follows roughly the divide between affluent Western societies and the rest.

Moreover, “foreign residents holding certain diplomas or certificates” (HRW 2008, p. 6) are also exempted from the test. What kind of diplomas and certificates qualify is determined by the Dutch ministry for external affairs. I have not been able to verify to what extent this exemption is made use of. However, it is evident that – in principle – it stands in stark contrast to how the previously mentioned exceptions can be justified: whereas the Western states can be exempted on the basis of “cultural” or economic similarity with the Netherlands, this is not the case with candidates having diplomas and skills which the Dutch ministry sees fit to exempt. That is, the Indian IT specialist cannot be exempted from the test on the same basis as an Australian artist. Additionally, candidates have to pay for each attempt

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<sup>23</sup> There is a debate on whether citizenship tests are liberal and necessary at all, cf. Bauböck & Joppke (eds.) (2010). Here, I take them as they are in order to analyse its implications in terms of voluntariness.

<sup>24</sup> What is particular is that a basic version of this test (“overseas integration test”) must already be taken at the respective Dutch embassies for people who apply for residence or working permits from abroad. This holds even for family members of Dutch nationals – i.e. parents (as long as they are less than 65 years old), spouses or children (if they are older than 18 years). It is for this reason that the integration test has been criticised to put a hurdle to family reunification (cf. Human Rights Watch report – HRW, 2008).

<sup>25</sup> In the meanwhile and since late 2013, Turkish nationals – in the context of its accession to the EU and probably its recent economic growth – are exempted from taking this test too (cf. <http://www.government.nl/issues/new-in-the-netherlands/integration-of-newcomers>, last retrieved: 15/10/2014).

of the exam (€350) and preparatory courses. That is, only those who can afford its expenses and those who are literate and have enjoyed already some education, can effectively take this test. All other potential candidates are naturally de-selected – their choices are less voluntary than those of their compatriots with the right diplomas who have been able to choose first to study in the first place and then where to work, e.g. as an IT specialist.<sup>26</sup>

It is evidently not new that affluent countries actively select for skilled working force (e.g. the “green card” policy by the US). Nor is it a secret that those states compete for those “talents” or “brains”.<sup>27</sup> The Dutch case is special, however, because the preferential treatment for the skilled is packed into a law on integration. And integration, I take it, should concern all migrants alike – “expats” and the “common”. The Dutch context is an ideal example where the two interests of attracting talent but integrating “migrants” clash in an obvious (and awkward) way. Any attempt to justify this clash, e.g. by reference to cultural or value-based similarity between the Dutch and nationals of the exempted Western states or the skilled, is doomed not to be compatible with equality. Why should a Japanese national speak less Dutch than a Moroccan if a concern for social cohesion and national identity is the concern? The upshot is that if integration tests are in place, they should be taken by all migrants – or, if exceptions are necessary they should apply to the less voluntarily first.<sup>28</sup>

Still, one might ask: what is bad about setting incentives that motivate nationals of poorer countries to get educated and receive so a “passport out”?<sup>29</sup> Even if this was true – and I have my doubts as the entrance or opportunity costs of university education reinforce the negative selection effect for the poor – it would still harm the countries of origin. Both policies discussed here deprive those countries of capital and talent – things they need to develop further and increase their wellbeing. After all, what brings migration receiving

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<sup>26</sup> Let me be clear that I do not argue that the skilled migrate as voluntary as the rich do. Lenard (2014) has pointed out that skilled migrants are subject to injustices such as “discrimination, the failure to recognize foreign credentials, and therefore, unmet expectations” (Lenard 2014, p. 3). However, she also states that skilled migrants have more agency than the unskilled, proving my analysis: Indian IT specialists supposedly responded more to the US rather than the German green card program, because in the latter case residence was limited to five years only (ibid., p. 9). They were thus able to choose and acted voluntarily.

<sup>27</sup> Dommernik et al. (2009) summarise how the EU has tried to imitate the selective migration procedures of states like the US. However, they conclude that not primarily policy designs determine how many skilled migrants will come but also an “interplay of larger economic trends, educational systems, research funding, recognition of professional qualifications, and other social factors” (Dommernik et al. 2009, p. 3).

<sup>28</sup> How should the involuntarily be treated if there were no such test or even no demands for integration at all? This is not considered here, given that the trend goes towards tests and, for sure, some form of integration. However, I would speculate that in such a scenario the involuntary would have, in principle, a *claim* to special treatment, e.g. in the form of group-specific cultural or political rights.

<sup>29</sup> Cf. (Collier 2013, p. 158). Another, but less convincing, variant of this argument could apply to “citizenship-for-cash” policies: individuals using such schemes might legitimately try to bring their legally earned money to a safe place due to corruption or instability back home. However, to amass the necessary amount for these schemes in a corrupt country is difficult without being corrupt oneself. And a concern of instability does not make it necessary to apply directly for a permanent residence permit or citizenship.

states to impose such tests is the concern for an unmanageable influx of newcomers – due to its economic prosperity respectively poverty in the country of origin. And this problem seems to be aggravated rather than solved if poor countries are taken away their capital and talents. And having talents, educated people, and social capital is an essential factor (next to money) to create stability and welfare in the long run.<sup>30</sup>

Such brain drain will of course reinforce the global inequalities and thus the very cause for increasing migration pressure. But this concept is not uncontested and often contrasted with its corresponding “brain gains” – immigrants send remittances (estimated at a global \$325 bn. in 2010), and might return with capital and experience rather than remain unemployed or underpaid back home. These are surely processes and considerations which should be considered. However, evidence is incomplete and net gains have been found so far only in a couple of countries and in limited contexts (e.g. India, Romania).<sup>31</sup> What we can infer with certainty is that migration policies of affluent countries are far from encompassing all relevant factors – rather, it seems, their policies are guided by short-sighted national interest. That voluntariness of the agents, understood in external sense, has fallen by the wayside should be no surprise. However, to give it the due credit would come with higher consistency, more fairness, and hence more credibility – towards both, nationals and foreigners. And this leads us to the concluding section of this paper which analyses the implications and solutions to the mismatch between normative theory and political reality.

#### **IV. Implications**

One central question needs to be answered still: why should we uphold equality at all?<sup>32</sup> Commonly, equality is defended by reference to individual rights or the dignity of the person. However, in this section, I will pursue to discuss the negative effects of unequal treatment in consequentialist terms. I do so because such an argumentation is a) compatible and even strengthening other justifications of equality such as rights or dignity based accounts, b) more intuitive and immediate in terms of impact, and c) it requires less theoretical baggage and elaboration. Before doing so, however, I will summarise what the conflict between the previous two sections – addressing the normative and political realm –

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<sup>30</sup> Could the Indian IT specialist not be allowed to leave his country on the basis of this argument? In some sense, this rather paternalistic consequence could follow. However, the point here is that a blunt and selective “all required talents in” policy probably reinforces, rather than alleviates, the causes of migration pressure due to push-factors. How more comprehensive and smarter migration policies should be designed is thus central. But before this question can be addressed, we need to get aware of how current migration policies are not comprehensive where they should – which is the aim of the present paper.

<sup>31</sup> Cf. <http://www.economist.com/node/18741763>, last retrieved: 29/05/2015.

<sup>32</sup> This seemingly rhetoric question contains a more serious critique according to which justice or equality should apply in the domestic sphere and thus not with regard to potential immigrants – a position defended seminally by Rawls (1999). To develop on this lies beyond the scope of this paper.

amounts to (section IV.1). The closing part (section IV.3) will address the implications and appeal of a non-dichotomous and gradual understanding of voluntariness.

#### **IV.1.**     *The clash between normative theory and political practise*

In section II.2. we have seen that voluntariness has a moral force which has to inform the assessment of the choices we take and hence the consequences that follow from it. If policies are supposed to reflect our moral understanding of social reality, then the importance of the central moral mechanism which voluntariness encompasses should not be excluded. This conclusion notwithstanding, voluntariness is underrated, instrumentalised or disregarded in the context of immigration. AVR policies are the only context where the concept of voluntariness is used explicitly – but unsatisfactorily as we have seen. However, voluntariness is implicit in the two representative kinds of policies discussed here: “citizenship-for-cash” and “integration tests”. Even if it is only implicit, it should nevertheless be given the conceptual clarity it deserves. And one implication thereof is that a dichotomous and illusionary clear-cut conception of when migration is voluntary and when it is involuntary cannot be uphold. With regard to the discusses policies, this implies the following:

a) “citizenship-for-cash policies”: I have argued that economic endowment increases the set of exit options and thus the voluntariness of actions a wealthy agent takes. Given that several states follow such policies an individual can apply and pay for residence permits or even citizenship in different countries. Those individuals fall thus clearly in the UN category of “economic migrants” who “choose” to migrate in order to improve their life. Being *genuinely* voluntary (recall the drilled soldier), they have to accept the expectations put on people in their situation, i.e. to integrate. They can be expected to do so if we agree that voluntariness is the main criterion for accepting certain burdens and responsibilities. However, in countries adopting such policies, it is precisely these voluntary migrants who are exempted from demands of integration. Moreover, those who come *less* voluntary have to respond to *higher* expectations in comparison to the affluent migrants. To the extent that equality among foreigners is important (cf. section IV.2), such kind of policies cannot be defended on the basis of the moral implications of voluntariness.

b) “integration test”: the Netherlands has a comprehensive system of integration exams for individuals who are expected to stay for an extended period on its territory. However, candidates from rich and developed countries are generally exempted just as individuals with certain diplomas. This is basically allows Dutch companies to recruit “talents” without scaring them off and loosing out in this competition for those profiles for which there is a demand in several comparable states. This kind of human capital increases thus the set of exit options for the concerned individual – but potentially to a lesser degree than economic

endowment as talent is not as universal as money. However, if the skills of certain immigrants determine the option set and if such voluntariness matters, then their preferential treatment – compared to their less educated counterpart – in admission and integration procedures cannot be maintained. Moreover, by favouring the talented, the brain drain effect is reinforced in the countries of origin leading to even more migration pressure.

**IV.2.**     *Do we need voluntariness altogether? Or, why equality matters...*

Now, what if voluntariness did not matter to the extent I claim it does? Critics could say, on the one hand, that giving due credit to immigrants' voluntariness would be possible only in an ideal world where major problems were solved – e.g. malnutrition, poverty, missing infrastructure, corruption, or failed institutions in the countries of origin. To talk of voluntariness is meaningless as it gives no hint of the root cause of what pushed those people to migrate, they might say. On the other hand, they could also claim that immigration has an impact in the receiving societies too. Local native people might feel alienated in their proper neighbourhood: they will not understand the language(s) spoken on the street or at the groceries. The claims of immigrants need to be compared to those of the native society. In this context, immigrants' voluntariness does not trump other considerations and has to be traded-off, amongst others, against the voluntariness of local individuals to accept newcomers amongst themselves or changes in their everyday surroundings.

Let me reply to those potential criticism by making three clarifying remarks:

(a) To talk in a meaningful manner of voluntariness makes only sense in a world that is already non-ideal in the first place – to wit, a world where people have to move to some degree. In an ideal world, all migration would be voluntary and my discussion pointless. In this chapter, I am thus merely providing *more* ideal concepts and normative considerations for a non-ideal world. The fact that voluntariness itself is no cause but merely a result or expression of what makes people move, does not change the morality of what the term codifies in my understanding: there need to be acceptable alternatives in order to be held responsible. For sure, I am not suggesting that the Western world has to immediately take up all immigrants who are without alternative according to our standard. Rather I am suggesting that we get closer to our ideal standards. This implies that we need to apply a more adequate and fairer account of what counts as voluntary and what not.

(b) But even in a non-ideal world, there is a fundamental difference between, first, taking certain reasons or considerations only partially into account; second, being indifferent towards them; or, third, acting against them. My analysis has shown that several policies go against the moral logic of (in-)voluntariness of migrants where at least taking them par-

tially into account would be necessary. In these cases a trade-off between voluntariness and other considerations is not only inexistent but acted against. To illustrate this: if a certain moral justification suggests *a*, but the contrary of *a* implies is done (i.e. non-*a*), then we need a moral justification for non-*a*. That is, critics need to prove why a higher voluntariness implies less responsibility (and vice-versa) and not merely why it can be disregarded.

(c) Lastly: to lament that the world is plagued by moral imperfections, while causing them partially oneself is morally untenable. The case of brain drain is most straightforward in this context. The future talent and promising elite is extracted from those countries in need of internal development. But also “citizenship-for-cash” policies cause harm, in that capital, taxable money, and thus potential investments are diverted into Western countries. Evidently, this policies are put in place to serve the economic interest of the affluent migration receiving countries – and, as a side-effect, the candidates – and not the sending ones. But, in view of all the money spent on development aid, it is ambivalent – to say the least – to uphold such kind of policies which nourish the migration pressure.

The present paper represents thus a call for a readjustment of the trade-off and a plea in favour of those with no leverage in the political processes of the host society: immigrants. However, to conclude that all immigrants should receive the same treatment as the rich – exceptions from integration policies, facilitated obtaining of residence permits, etc. – simply appears unrealistic given the current political convictions in most host societies. Should all be treated as the poor? If those political convictions are to be respected and applied consistently and fairly, there is no reason why they should not. However, the pretext of competition between states serves as a justification for this double standard. The rich are treated like the poor and vice-versa, where voluntariness would command the contrary.

But why should a state care about the equality among strangers? This question has special appeal if we take for granted – realistically, as I believe – that the rich tend to be separated from the poor already in their respective countries of origin. Bear at this point in mind that the status quo does not have to be indicative for what our moral standards prescribe us. Equality – also among foreigners – matters in order to avoid alienation and a missing sense of community among those to be equal (Cohen 2001).<sup>33</sup> Imagine that two co-nationals meet in the same host-society. Of those one has followed the normal procedure and the other a preferential scheme. How can the second justify his better treatment towards the first his or her preferential? Unequal treatment of immigrants might thus lead to a deterioration of the

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<sup>33</sup> A similar criterion that can justify our concern for equality can be found in international law. A common guideline and principle there is that individuals shall not be discriminated “on the basis of national origin” or “class” (art. 2 UN charter). However, discrimination so understood applies only to those cases that are set out in the UN charter or the respective national laws base on it. And migration control is a national matter even if it implies policies that ultimately boil down to infringements of this discrimination clause.



relationship between foreign co-nationals in the host society – moreover, such preferential treatment drives a wedge between *all* immigrants there. If they share common interests, e.g. being recognised or receive better salaries, a preferential treatment can indirectly undermine the efforts to have a united voice. This is in particular true if immigrants normally compete with each-another rather than with national workers (Collier 2013, pp. 169ff.).

The point is that the host society should care because both immigrant groups still represent members of their society. On the other hand, such obvious unequal treatment will make the immigrants lose trust in the host society's institutions and principles as those with money or valuable skills are obviously favoured. If these factors matter for the host society, if it does apply this kind of policies with foreigners, *a fortiori*, it will do so with its nationals – so or similar might be the perception of the immigrants who follow the normal admission and integration procedure. A further alienation on the part of those immigrants will be unavoidable: finding themselves unequal, not rich enough or not having the right skills, can lead to frustration or resignation.<sup>34</sup> And these justified psychological circumstances can undermine the productive and fair integration of those willing to form part of the host society, but who do not have proper and appropriate exit options. This leads me to my ultimate – and arguably most speculative – section: missing economic endowment and thus exit options qualifies for involuntariness on a par with refugees as understood in international law.

#### IV.3. *Money – a case for economic refugees*

According to Gerald A. Cohen, “lack of money, poverty, carries with it lack of freedom” (Cohen, 2001, p. 2). As “money structures freedom” (ibid., p. 12),<sup>35</sup> an agent cannot be considered truly free in her actions and choices if she is limited by money – e.g. a person who cannot afford the bus ticket (the bus being the cheapest available means of transport) is not free to visit a relative. Applied to migrants, those who cannot afford to leave or return are not free to migrate and thus involuntary in their decision to move, move further or stay. Nor were those who made it to the destination country necessarily free in their decision to get there or even to return. Quite commonly, they have indebted themselves to pay the expenditures of the journey under the obligation to send back remittances or the like. So, under such conditions, their mere presence in the host society is not necessarily voluntary – it is rather the case that return is no genuine option (Collier 2013, pp. 154ff.).

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<sup>34</sup> An experiment has investigated the longterm effects of migrating in terms of happiness: economists Spillman et al. (2012) have found a diversity of impacts with immigrants' happiness tending to fall (but, e.g., mental health increasing) compared to those staying home, the overall aggregate trade-off and conclusion being the following: “A tentative inference from these studies is that migrants incur substantial psychological costs that may be broadly commensurate with their large economic gains” Collier (2013, p. 175).

<sup>35</sup> Cf. Cohen (2001, p. 13): “Therefore money confers freedom, rather than merely the ability to use it, even if freedom is equated with absence of interference.”

To my knowledge, there is no data on who has migrated voluntarily or involuntarily on the basis of financial possibility only. On what there is data, is the reasons for not migrating at all: it shows that missing financial means is the main reason. According to a Gallup survey conducted in 2008, more than 40% of the population in the lowest quartile of countries in the world (in terms of GDP) express a wish to emigrate. This numbers are not conclusive, however, they give an idea of what it would imply to give all those who would want but are not free to emigrate the opportunity to do so.<sup>36</sup>

However, in this paper I am arguing against an artificial dichotomy of migrants' voluntariness and suggest a gradual understanding based on an external assessment of the available options. That is, my argument does not imply that all more or less poor immigrants find themselves in the same situation involuntarily just as refugees do – persons who have fled their home due to imminent danger of persecution or war. What it does suggest is a shift of orientation towards a more inclusive assessment where poverty might be just as urging in certain cases and cause involuntary migration.

The fact that in international law this circumstance is not recognised is unjust, I believe. One way to redress this injustice would be to extend the refugee status to (very) poor “economic migrants”. People driven by poverty, corruption, or missing perspectives – “economic refugees”<sup>37</sup> – deserve our recognition because it is not out of their own unconditional will that they need to leave or have already left their country. Two aspects require deeper scrutiny here: first, what is my threshold of being poor (enough) and, second, why will the extension of the refugee status not exacerbate the situation of refugees of war?

Poverty is a relative and contextual concept if extreme cases of malnutrition, chronic diseases, missing shelter, etc. are exempted. And so is voluntariness: what is voluntary in one context or country does not have to be voluntary in another. For the purpose of the present discussion, it is thus not necessary to give an absolute and universal criterion for what counts as poor. Moreover, if we accept that voluntariness is gradual and hence also the corresponding responsibility that has to be assumed, there is no need for a fixed conceptual threshold. What matters is that those who come more involuntary than others have the priority respectively need to assume less responsibility than others. That is, – in order of involuntariness – economic refugees lie behind refugees of war but before wealthy or educated migrants. The upshot being – as a matter of a humanitarian concern – that refugees of war and persecution would have to be taken up unconditionally immediately followed by

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<sup>36</sup> Data is from Torres & Pelham (2008). It also shows that candidates who have received remittances (estimated to be worldwide \$300 bn. per year) are twice as probable to wish to emigrate.

<sup>37</sup> I owe this metaphor to Lakoff & Fergusson (2006). In contrast to the UNHCR distinction mentioned earlier (voluntary “economic migrants” and involuntary “refugees”), I make a case for a more refined normative judgement of the situation of migrants and hence a revised assessment of their voluntariness.

involuntary economic refugees and finally rich economic migrants. However, if the concern is the national interest of the host society (both in terms of public finance as well as preservation of the local culture) so that rich and talented migrants are admitted simultaneously, then they should be expected to meet the whole spectrum of requirements determined by the host society (e.g. integration measures). At the same time the relatively less voluntary migrants should also have to meet, in principle, less of those requirements.

I say in principle, because in the long run these exceptions for the more involuntary might be said to make those migrants worse off. For instance, they might not speak the local language well enough to make their doctor understand them, communicate with neighbours, or negotiate their employment conditions. However, my argument does not imply their exclusion from the possibility to integrate if such measures are indispensable for their functioning in a society. However, why should the rich be excluded then? Starting from the implicit importance of voluntariness in international law, if measures of integration are taken they should apply foremost to the voluntary. And if exceptions are in place, they should apply to the more involuntary. From the point of view of a gradual account of voluntariness, this would be the moral thing to do – but surely not vice-versa.

Now, how will the recognition of economic refugees not make the refugees of war and persecution worse off? After all, refugees or asylum seekers are not necessarily better off in receiving states than their normal “immigrant” counterparts. There is a quasi-internment of refugees while their file is checked and their status proven, they live in seclusion in provisional buildings, without being allowed to work, etc. In view of this circumstances, it seems more rational for immigrants to live as clandestine day-workers rather than risking that their demand for asylum is rejected because they are no “proper” refugees. However, these are arguments based on the status quo – a status quo which is not close to our moral standards of helping those in need. And the present claim is a normative one, one of recognition of the status and biography of many migrants which goes beyond the status quo.

Finally and going further, note that a lot of the precariousness that concerns in particular undocumented immigrants is due precisely to overly restrictive policies that make a regulated admission and official recognition impossible. Somehow they are caught between the worlds: going back home is no option nor are they recognised in the host society. In terms of voluntariness, this an unacceptable no-man's land. By accepting poverty among the causes that justify asylum demands the interest of the host societies is served too. Instead of marginalising or actively expatriating such migrants, their recognition is the first step towards the integration of those who are already present and form part in the society.<sup>38</sup>

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<sup>38</sup> An argument that is sometimes hear in political debate is the one of deterrence, i.e. host societies have an interest in creating and upholding a reputation of being tough on asylum seekers and undocumented immigrants in order to lower its attractiveness for that kind of migration. However, numbers speak another

## V. Conclusion

The aim of this paper has been to discuss and assess the role and concept of voluntariness in decisions to migrate. Based on a reconstruction of the term in philosophical theory and international law, two representative sets of policies have been analysed: citizenship-for-cash and preferential treatment of the skilled in integration tests. It showed that an artificial and inconsistent understanding of voluntariness underlies these policies: the consequences which would follow from voluntary migration (e.g. to integrate) are imposed on the involuntary and vice-versa. A consistent and comprehensive migration policy in cases where measures of integration apply is incompatible with preferential admission and recognition of the rich and talented. To engage in the international competition for “talent” while upholding restrictive policies for the non-talented (or the poor, for that purpose) is unfair and shortsighted. In order to replace this inconsistency for a more just and comprehensive migration policy, I argue that the current dichotomous concept of voluntary (“economic migrants”) and involuntary (“refugees”) migration is better overcome and replaced by a gradual account with corresponding responsibilities such as to integrate.

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story and several countries with such kind of policies haven't seen its number of asylum demands sinking.

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