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Europe Has Never Been Modern: Recasting Historical Narratives of Migration Control

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Our understanding of contemporary international relations rests on flawed images of the past. One of the most problematic dimensions of this history is the idea that the core institutions and practices of modern territorial sovereignty originated in Europe before being gradually extended to other parts of the globe. A key dimension of this Euro-centric historiography is the story that the territorial sovereignty norm was invented in Europe in the seventeenth century, before Europeans honed it into a standard technique of state practice in the twentieth. This paper uses original archival research to critically interrogate the consensus position. The paper demonstrates that the dominant narrative significantly misconstrues the way rulers and governments sought to control migration across the *longue durée*. European rulers were more collectively seeking to transnationally promote migration at the same time as they individually acquired territorial sovereign control over it. Extra-European states were the first to deploy territorial immigration controls, and non-Europeans shaped the forms of mobility promotion Europeans would adopt. The paper uses these findings to make the case for a new chronology of European migration governance and for a critical institutionalist approach to the way we write the history of the global migration regime.

We can develop better ways of telling the history of international migration control. At present, we commonly tell a linear story in which Europe creates a territorial sovereignty norm and then forges the world's first international migration regime. This narrative begins with two stories we commonly tell about the past. The first story says that the foundations of a territorial sovereignty norm were laid in Europe in 1648 at the Peace of Westphalia. The second story suggests that this norm became deeply institutionalized in Europe and North America, as states “monopolized the means of legitimate movement” in the interwar years. This narrative has helped to cultivate an image of Europe as the inventor or precocious adopter of global migration control norms, while inaccurately downplaying the role of extra-European actors and the significance of *transnational mobility norms*—shared expectations that states will permit and/or promote the migration of people between jurisdictions and territories—in shaping migration control practices and outcomes in Europe and beyond over the *longue durée*.

International political sociologists have questioned the idea of European precociousness by drawing attention to the continent's embeddedness in global mobility regimes. Meanwhile, postcolonial historians have questioned whether Europe invented or institutionalized territorial sovereignty norms in the past. This study builds on these critiques by demonstrating that European norms of sovereign territoriality have always been defined and mitigated by transnational mobility norms

and that contemporary European transnational mobility norms are considerably less global in orientation than their previous imperial forms.

This article uses a historical institutionalist approach to (a) question dominant narratives of the past; (b) demonstrate how these narratives limit our understanding of the present; and (c) suggest alternate ways of relating past events to contemporary phenomena. I apply this approach to the analysis of three potential moments of major historical change: Westphalia (1648), the interwar years (1919–1939), and postwar decolonization (1957–1960). This analysis demonstrates, first, that there was limited change in migration governance at Westphalia and that the changes occurring in Europe during the interwar years were presaged by developments occurring beyond Europe itself. From this perspective, it becomes difficult to sustain a narrative in which dramatic events in Europe give birth to contemporary global norms. Second, the study shows that norms of sovereign territoriality have been consistently limited and defined by *different* transnational mobility norms (religious, imperial, and regional). This finding suggests that contemporary European migration control practices ought to be understood in relation to changes that occurred between 1957 and 1960, when the norm of promoting mobility between metropole and colony began to be superseded by a norm of promoting free movement within Europe itself. Finally, I note that extra-European actors played a significant role in both originating and defining the nature of European sovereign territorial and transnational mobility norms. This finding suggests the need to further explore the role that extra-European actors have played in shaping the character and content of contemporary global migration-control norms.

The paper develops this argument in five sections. First, I explain how historical narratives can help to structure social scientific inquiry. Second, I describe the manner in which the history of migration control has been commonly narrated. Third, I briefly describe the methods and sources I have used to critique and reconstruct this narrative. Fourth, I critically analyze the transformative moments in the dominant narrative: Westphalia (1648) and the interwar years (1919–1939). Fifth, I make the case for considering 1957–1960 as an alternate transformative moment in our understanding of Europe's migration-governance past. The concluding remarks then consider the implications of this alternative chronology for the study of European and global migration governance.

Extending the Critical History of Migration Control

Most accounts of international migration governance identify the importance of two types of norms. First, they identify the importance of the territorial sovereignty norm. There are at least three dimensions to this norm, including: (a) the use of states' territorial jurisdictions to problematize practices of movement and settlement, specifically elevating the status of cross-border emigration and immigration as objects of concern; (b) territorial states' exclusive prerogative to determine what forms of migration are legitimate; and (c) the physical location of control over migration at the border.

This norm has been widely recognized as having originated in Europe at or around the Peace of Westphalia and having matured in Europe during the interwar years. This narrative is a central feature of two separate stories that have been told about important moments in the past. The first story defines Westphalia as its origin. Despite repeated critiques ([Krasner 1993](#); [Oslander 2001](#); [Teschke 2003](#); [De Carvalho, Leira, and Hobson 2011](#)), the idea that the gatherings at the conclusion of the Thirty Years War at Münster and Osnabrück enshrined the core principles of modern politics remains a cherished notion in the discipline of international relations. Seemingly taking a cue from this ingrained, research on migration has often identified 1648 as the point of origin for sovereign, territorial forms of migration control. For example, Alexander [Betts \(2010, 15\)](#) has argued

that “the sovereign state system defined by the seventeenth century Peace of Westphalia shaped the nature of how states perceive international migration by defining the nation-state structure that constitutes the very idea of international migration.” Galina Cornelli (2010, 318) wrote that “the Peace of Westphalia . . . ascribed to each territorial state the exclusive government of the population within its territory.” Also in this vein, David Jacobson (1996, 20) noted “the peace of Westphalia of 1648, widely viewed as the institutional beginning of the states system, is remarkable . . . Not only was a system of states, most led by monarchs, established, but states with unified and coherent populations (in the national sense) were promoted.” While somewhat more equivocal on the precise timing, Malcolm Anderson (2000, 18) also saw Westphalia as setting the path for what would follow: “clearly demarcated and militarized frontiers have been known since antiquity. But what happened in the nineteenth century was new, although it was the almost inevitable outcome of the Westphalian state. The broad acceptance of the doctrine of national sovereignty implied a particular kind of frontier and border control.” These authors constitute a sample of a larger group of authors that see territorial sovereignty norms as having originated at Westphalia (e.g., Guiraudon and Lahav 2000; Benhabib 2004; Cornelli 2010; Paoletti 2010; Vietti and Scribner 2013; Gabaccia 2014; Hollifield and Wong 2015; Jones 2016).

The second story suggests that European—and to a lesser extent North American—states were the first to “monopolize legitimate movement.” This idea differs from the first story in important respects. First, instead of being primarily based on secondary sources, the story harkens back to a specific treatise that is grounded in primary research: John Torpey’s “Invention of the Passport” (2018). The story commonly takes the form of various authors’ recitals of some of the central ideas contained in Torpey’s book but has also taken on a life of its own.

Authors have identified a linear historical process at work, leading from a European past to a global present. More specifically, almost all accounts speak of a series of changes taking place in Europe—and to a lesser extent, North America—which subsequently resulted in nation-states throughout the world monopolizing control over international migration. For example, Monica Varsanyi (2011, 300) wrote that “the modern nation-state has been defined and constituted by, among other things, the monopolization of the power to regulate the cross-border movement of people.” Michael Bommers and Giuseppe Sciortino (2011, 215) wrote that “nation-states have effectively monopolized the legitimate means of spatial mobility across the world.” Didier Fassin (2011, 217) more cautiously endorsed this trajectory: “the state has progressively expanded its empire over individual mobility as well as collective displacement, following irregular cycles that alternate liberal and repressive moments depending on the economy and on the variations in ideology.” Others have been less equivocal, particularly in casting Europe as a key point of origin for this expanding phenomenon. For example, David Lyon wrote that “what began in Western Europe and the United States has been extended to cover all modern states” (Lyon 2005, 74).

This story continues to emphasize Europe as having set the pathway toward a territorial sovereignty norm. Recitals of the second story are less unanimous regarding *when* this change happened. Nonetheless, Torpey himself identified the interwar period as the transitional moment. He explicitly referred to “the successful state monopolization of the legitimate means of movement in the post-First World War era” (Torpey 2000, 112). Perhaps more famously, he captured the suddenness of this change by recounting a Rip-van-Winkle style narrative of a man who goes to sleep around the turn of the century and wakes up in the interwar period to find himself trapped in a newly bordered world.

What these two stories share are ideas of Europeans’ precociousness in developing—and the European origins of—the basic norms of contemporary migration governance. These ideas not only inform the understanding of the

development of the norm of sovereign territoriality but the depiction of emerging global migration-governance institutions as well. IR scholars have been primarily interested in institutions that result from multilateral cooperation amongst sovereign territorial states. This research has been consistently dissatisfied with what they observe to be a strange absence of a global regime for the management of international migration (Bhagwati 2003; Betts 2010; Koslowski 2011; Sachs 2016). In this context, James Hollifield (2004, 903) has singled out the European free movement regime as a potential precursor of global regime formation:

Some type of multilateral/regional regime is required, similar to what the EU has constructed for nationals of the member states. The EU model, as it has evolved from Rome to Maastricht to Amsterdam and beyond, points the way to future migration regimes because it is not based purely on *homo economicus*, but incorporates rights for individual migrants and even a rudimentary citizenship, which continues to evolve.¹

International political sociology (IPS) researchers have approached institutions in a different way and arrived at different conclusions regarding the relationship between Europe and international migration regimes. This body of literature has drawn inspiration from the Foucauldian image of migration politics as defined by the matter of “organizing circulation, eliminating its dangerous elements, making a division between good circulation and bad circulation, and maximizing the good circulation by diminishing the bad” (Foucault, Senellart, and Ewald 2007, 18).² These authors have tended to see regimes as being generated through the dynamic interrelationship between fixed political spaces—principally territorial states—and efforts to promote human mobility.

These works have—contrary to conventional IR work—seen powerful international migration regimes at the global scale. This is evident in Barry Hindess’ concept of an “international regime of population management” (Hindess 2000, 1496); William Walters’ discussion of “a global police of population” (Walters 2002, 282); Mark Salter’s (2006) idea of a “global mobility regime”; Nicholas DeGenova and Natalie Peutz’s notion of a “deportation regime” (De Genova and Peutz 2010); Ronen Shamir’s idea of a “global mobility regime, oriented to closure and to the blocking of access” (Shamir 2005, 199); and Noel Salazar and Nina Glick-Schiller’s use of the term “mobility regimes” to denote “the role both of individual states and of changing international regulatory and surveillance administrations that affect individual mobility” (Glick Schiller and Salazar 2013, 7).

The IPS literature has been critical of the idea that Europe is somehow unique and precocious, and instead, sees it as bound up with the rest of the world in the constitution of a profoundly unequal regime. This theme is evident in Henk van Houtum’s idea of Europe’s blacklisting of populations at its the borders (Van Houtum 2010), Mark Salter’s assessment of European integration as tied up with the extension of its borders abroad (Salter 2006, 175), and Alison Mountz and Jennifer Hyndman’s concept of neo-refoulement, which links European policies on asylum seekers with a carceral archipelago that stretches across the globe (Hyndman and Mountz 2008).

The IPS critique of the idea of European uniqueness and precociousness has been enriched by historical research. IPS researchers have primarily adopted a genealogical orientation toward the past, wherein analysis of past periods and moments primarily serves the purpose of rendering dimensions of contemporary international migration politics as the products of contingent historical and social processes. While parts of this literature have chosen a relatively familiar

¹ See also Hollifield 1992, 2012.

² See also Adey 2006; Cresswell 2010; Salter 2013.

set of European and North American sources for this genealogical work (Hindess 2000; Walters 2010), other work has revealed how adopting a wider geographical lens can further disrupt and renovate our understandings of international migration institutions. Examples of this sort of work include Mark Salter's work, which specifically locates the origins of the contemporary passport regime in the practices of European Empires in the colonial world (Salter 2003), and the recent volume by Vigneswaran and Quirk (2015), which demonstrates that the changing relationship between efforts to prevent and promote human mobility have shaped the development of political institutions in Africa over the *longue durée*.

IPS research could benefit from more sustained dialogue with historical research that seeks to integrate our understanding of European and non-European pasts. Postcolonial research has explored Europe's enduring history of embeddedness in international—and specifically imperial—migration regimes. This work emphasizes the manner in which the colonial encounter offered the metropole a political “laboratory” and demonstrated how colonial migration norms were transported “home” to define the manner in which metropolitan governments problematized and regulated migration from abroad.³ Laura Tabili's (1994) work is exemplary in this respect. Her study of the governance of nonwhite sailors' efforts to take up residence in the British metropole demonstrates how racially prejudiced colonial norms were literally transported by boat from imperial periphery to core, as the same ideas used to govern colonial labor provided the constitutive foundations for laws regulating early postcolonial immigration to the United Kingdom. Adam McKeown (2008) adopts a similar approach to suggest that the origins of contemporary immigration control norms may lie in the Pacific rather than the Atlantic. Alison Bashford (2014) suggests that when we pay attention to immigration laws in both settler and nonsettler states, our chronological parameters need to be shifted away from their standard European framings, to include mid-nineteenth century colonial laws and the immigration laws passed by many newly minted states after the Second World War.

Postcolonial research has further interrogated the idea of European origins and precociousness by asking which historical moments and world regions ought to feature in our telling of the history of contemporary migration governance. My work seeks to extend this line of critical analysis, and infuse historical research with the insights of contemporary work in IPS, by elevating the significance of transnational mobility norms in the way we narrate the past. “Transnational mobility norms” are shared expectations that actors will permit and/or promote specific types of migration between jurisdictions and territories. Transnational mobility norms can be framed as an exception to the principle of sovereign territoriality, or a principle that defines the scope of territorial sovereignty norms. In other contexts, sovereign territoriality may be framed as an exception to a norm of transnational mobility, as is the case with European states' prerogative to control the migration of certain categories of European citizens within the free movement regime.

By paying attention to the evolving relationship between transnational mobility norms and norms of sovereign territoriality, we can develop the critique of Europe's precociousness in two ways. On the one hand, by illustrating the stark differences in the relationship between transnational mobility norms and norms of sovereign territoriality in Europe's past, we can further challenge the idea of a linear historical pathway linking Europe's distant history with a global present. On the other hand, by demonstrating that contemporary intra-European regional norms on mobility promotion arose at precisely the same moment when European states were turning away from norms of mobility promotion that were more global in reach (specifically imperial norms), we can critically interrogate the idea that

³ See, for example, Cohen 1994; Cesarani 2002.

European regional cooperation constitutes a step toward the construction of a global migration regime.

The Study of Critical Junctures

How can we improve the way we narrate the history of migration control? While drawing inspiration from genealogical and critical modes of historical research, my own critical endeavor draws more directly on historical institutionalist research. Historical institutionalists offer ways of developing narratives that simplify the past and structure social scientific historical inquiry, without necessarily engendering teleological fallacies. Historical institutionalists divide historical time into relatively short periods in which change in prevailing institutional forms are a significant possibility, followed by comparatively long periods of continuity or stasis (Mahoney 2000; Pierson 2000). From this perspective, human agency is powerfully constrained for relatively long periods of stasis but then enabled during relatively brief moments when institutions may be destroyed, redesigned, and remade—or simply reinforced. These “critical junctures” help us understand the reasons why institutions were originally created and why they take a particular form (Capoccia and Kelemen 2007; Capoccia 2015). Crucially, critical junctures are moments of *potential* change and not necessarily moments of transformation. Indeed, a key finding in a study of critical junctures may be that the outcome of important events or moments was to reinforce the status quo ante. Such “null hypotheses” are helpful because they allow us to differentiate between those moments in the past that hold a privileged place in history due merely to disciplinary tradition or memory and those moments when consequential changes actually occurred. The overall goal of the study of critical junctures is not to develop the “best” narrative of the present but to critically evaluate received wisdom regarding the nature and historical origins of political institutions and suggest appropriate lines of inquiry for historically grounded institutional research.

At which historical junctures might states have had the power to choose between dominant norms and historical competitors? My selection of cases was specifically informed by the literature. Here, I began by identifying the key moments identified in the dominant narrative: Westphalia and—utilizing Torpey’s rendition of the monopolization story—the interwar years. These inquiries then revealed both the endurance of transnational mobility norms and their evolution over time. I selected the moment of 1957–1960 as an alternate focal point for the study, as this stood out as a potential locus of substantial change in transnational mobility norms in Europe, as well as a moment that had been identified in previous work on the international political system as a crucial point of transition (Krasner 1999; Reus-Smit 1999; Spruyt 2000; Philpott 2001).

The large expanse of history included in this inquiry imposed limits on the degree to which I could maximize the empirical depth of my portrayals of the past. I could not adequately cover intervening periods but focused primarily on the examination of the three critical junctures. Nevertheless, I was able to take some important steps beyond the brief recital of secondary sources. This began by selecting the domestic and international legal texts that scholars have identified as representing decisive moments of change. The key empirical focal points for this account are the treaties establishing the Peace of Westphalia (1648) and the United Kingdom Aliens Order (1920). I sought to weigh the transformative significance of these documents by interpreting them in the light of a more expansive set of legal texts. More specifically, I examined Westphalia in the light of the Peace of Augsburg, and the UK Aliens Order in light of the UK Aliens Act (1905) and immigration laws passed by the British Colonial Dominions. I then interpreted the UN Declaration on the Granting of Independence to Colonial Peoples (1960) in relation to the UK

Commonwealth and Immigrants Act (1962), and the Treaty of Rome (1957) in relation to the Treaty of Paris (1951).

While my interpretations of the Peace of Westphalia rely largely on the texts themselves, and secondary material on the politics of exile in seventeenth century Europe, my interpretations of more recent texts draw on more extensive and original archival work, including reports, minutes, proceedings, and personal communications relating to conferences, parliaments, and assemblies. More specifically, my research into: (a) laws in the United Kingdom and Dominions included: UK parliamentary debates, transcripts of Imperial and Commonwealth Conferences and Colonial Office reports on migration and settlement; (b) European Union treaties included: minutes of intergovernmental meetings, communications between governments, position papers prepared by individual states, reports prepared by European Community commissions, and lobbying papers prepared by business and union representatives; and (c) the United Nations declaration included transcripts of General Assembly debates. While this approach stops short of the ideal formula espoused in the classical statements of a contextualist history of ideas (Tully 1988), I have sought to replicate one important dimension of that approach in the way I interpret the meaning of the syntax of declarations, rules, and principles of the texts: by reading it against the discursive milieu of the time.

Finally, I made some case-selection decisions in order to make the empirical exercise more manageable. I use the British case as the exemplar for the manner in which international norms and developments have shaped the practices of European states. The UK was a crucial case for the story about the interwar years, as it constituted—along with the case of Germany—a key component of Torpey's narrative identifying the interwar years as a period of major transition. The UK has also been a crucial site for the advancement of postcolonial research into migration control and, therefore, offered a greater wealth of secondary material to guide my effort to critically interrogate the relationship between Europe and its outside. This choice has some obvious limitations. It defers the question of whether developments in the UK were mirrored on the continent and also forgoes the opportunity to explore whether the processes of decolonization and integration were more tightly entwined in decision-making about migration in states like France and the Netherlands.

Reexamining Key Moments and Resurrecting the History of Transnational Mobility

The Peace of Westphalia and Promoting Religious Minority Flight

My survey of critical junctures begins in 1648. Can we meaningfully understand Westphalia as having inaugurated or presaged a form of movement control based on the principle of sovereign territoriality? In endorsing the long-standing principle of *ius reformandi*—of rulers' right to choose which religion could be practiced within their territory—the Peace of Westphalia validated a form of sovereignty over spatially defined jurisdictions and the people in those jurisdictions. However, the treaty was not particularly original or path breaking in this respect, merely endorsing an idea that had been formulated in the Peace of Augsburg some one hundred years earlier (Krasner 1993; Asch 2000). Furthermore, the idea of a fit between population, territory and rule has a much deeper and varied genealogy in multiple European concepts of rule, each of which have their own histories and defining moments (e.g., *ligeance*, *heimat*, *civitas*). So, it is unclear why this story ought to begin with Westphalia.

The problems inherent in considering Westphalia as a turning point are made more evident when we recognize that the *ius reformandi* prerogative was expressed through, and also conditioned by, a very different type of control over migration to

that which we see today. Both Augsburg and Westphalia spoke of the principle of *ius emigrandi* or the right to emigrate. We find this principle in section 24 of the [Peace of Augsburg \(2004\)](#):

It may happen that Our subjects or those of the electors, princes, and other estates, either of the old faith or the Confession of Augsburg, wish to leave Our lands or those of the electors, princes, and estates of the Holy Roman Empire, together their wives and children, and settle elsewhere. They shall be permitted and allowed to do so, to sell their goods and possessions, after having paid a reasonable sum for freedom from servile obligations and for taxes in arrears, such as has everywhere been customary for ages. Their honorary posts and their obligations, however, shall be uncompensated. Their lords, however, shall not be deprived thereby of their customary right to demand recompense for granting freedom from servility.

A similar defense of both the prerogative of rulers to expel religious minorities and a defense of the right of minorities to flee appeared in section 36 of the Treaty of Osnabrück ([Peace Treaties of Westphalia 2009](#)), which declared that if a practitioner of a minority religion

is willing to change his abode or be ordered by the lord of the manor to emigrate, then he shall be free to sell his properties or to have them administered by his relations, to visit them freely without any letters of passport, and to do this as often as is required to prosecute his affairs, conduct legal business, and pay his debts.

Reading Westphalia as the launchpad for a sovereign territorial migration norm prevents us from seeing the manner in which early ideas of sovereign territoriality were limited and constituted by this transnational mobility norm. Here, it is important to point out that rather than a multiplicity of national sovereigns, the parties at the table in Münster and Osnabrück constituted multinational coalitions of competing religious groupings, principally Catholic and Protestant—which by and large had fought on opposite sides in the preceding decades of conflict (cf. [Preece 1997](#), 76–78). After the conversion processes of the previous two centuries, significant swathes of European territory could not be regarded as beholden to any one denomination ([Zulehner 2014](#)). Instead, we find an increasingly disparate series of multiterritorial and overlapping churches, each consisting of a multinational grouping seeking religious freedom in some places and religious dominance in others. Augsburg had attempted to temporarily fix these problems through a policy of peace through segregation: by allowing rulers to cleanse their territories of dissenters, while simultaneously giving dissenters a realistic option of flight (one that did not necessarily entail personal ruin or outstanding personal obligations to a hostile lord).

This final measure—flight—was perhaps the most powerful and transformative dimension of the right of *ius emigrandi*. In a premodern world, the mobility of the vast majority of people was not shaped by early intimations of a connection between sovereigns, national territory, and national populations but by enduring and much more localized relationships. People struggled to migrate because of their condition of bondage/fealty to a specific person—and by extension the realm—of a Lord, and the right to flee constituted a specific type of freedom: the opportunity to escape servitude ([Cresswell 2006](#); [Janssen 2011](#)). Religious groupings' exercise of this right would provide for an extensive period of exile-fueled migration, helping to create a multireligious communal patchwork across the continent in the coming years, rather than a group of spatially coherent and denominationally unified nation-states. Based on this reading, it seems more appropriate to see Westphalia as having endorsed an existing consensus on the relationships between territorial forms of jurisdiction over populations and transnational mobility-promotion norms rather than as having presaged a purist model of sovereign territoriality.

Identifying Westphalia as transformative unnecessarily extends the pedigree of contemporary global movement control norms back into Europe's past. This line

of critique acquires salience as we move forward to consider the second story that has defined the study of contemporary migration control and realize that it also downplays the importance of historical actors' commitments to promote specific forms of mobility and overplays the significance of events and actors in Europe.

The Interwar Years and Promotion of Intra-imperial Mobility

The next task for this inquiry is to gauge to what extent it makes sense to think of the monopolization of legitimate movement as having been initiated in Europe during the interwar years. I explore these themes by considering the British case. Torpey identifies the 1920 Aliens Orders as a signal moment when the United Kingdom made its prerogative to control immigration permanent. These regulations compelled all "aliens" seeking work in the United Kingdom to register with the Home Office and gave the Home Office the prerogative to deport those aliens whose presence was deemed to be detrimental to the public good (Torpey 2000, 116). However, these laws were not the most substantial leap forward in the United Kingdom's efforts to monopolize migration. The Aliens Act of 1905 (5 Edw. 7, ch. 13) was far more significant. After a long nineteenth century of liberal approaches to immigration, this act gave the Home Office powers to prevent the entry—and deportation—of several categories of alien nationals. However, and more importantly, neither the 1905 act nor the 1920s orders entailed a claim by the UK government to a "monopoly" on movement because neither gave UK officials control over the migration of British subjects to the UK. The migrations of these "foreign" nationals remained both unregistered and unregulated.

In relation to national immigration controls, Canada, Australia, South Africa, and New Zealand were far "in advance" of the metropole. Around the turn of the century, these governments passed eugenicist immigration laws, to maintain the health, strength, and character of the domestic population by denying entry to unfit, ill, destitute, and ostensibly racially inferior people. Crucially, these laws applied to all potential immigrants, whether they were British subjects or so called "alien" nationals. The British Parliament was not prepared to go so far in the UK. This was evident in the *Royal Commission Report on Alien Immigration* of 1903 that outlined the premises and formulated the key provisions of the 1905 Act and did not extend immigration control to subjects of the Crown (Great Britain 1903). The report's authors noted that there were limits to what the metropole could borrow from new laws in the colonies. This was partly due to the fact that settler states' laws were designed to discriminate on the basis of race and partly due to those laws' equal application to aliens and British subjects. Parliament could not consider either type of law because it was committed to a racially nondiscriminatory tradition of common rights for British subjects and the continued movement of British subjects within the empire (Great Britain 1903; Bashford and Gilchrist 2012). This analysis suggests that while a territorial sovereignty norm was gathering steam in early twentieth century Europe, the main developments may have merely built on nationalist, discriminatory, and immigration control methods deployed by extra-European states. Representing Europe's interwar years as *the* defining moment obscures the key points in the early twentieth century when the metropole was learning techniques from its colonies.

The other problem with this chronology is that it downplays the intersection between sovereign territorial and transnational/intra-imperial mobility norms. Whereas the norm of universal subjecthood was regularly reiterated in British policy and law as "civis Britannicus sum" (Hansen 1999), the norm of imperial mobility was less explicit. This was not a formally declared and nondiscriminatory "freedom" of movement. Mobility promotion within empire consisted of a range of intra-imperial migration processes, which were shaped in various ways by London and a range of other actors, in line with their interests. For example, emigration from Britain to the "settler" colonies was a constant and heated object of discussion in Colonial and

Imperial conferences. In these discussions, London's commonly laissez-faire attitude contrasted with the colonies' efforts to promote healthy, industrious, educated, and white migrations ([Imperial Conference London 1892–1926](#)).

The idea that intra-imperial mobility ought to be recognized as a freedom or right of subjecthood was primarily given voice by non-European actors, when settler governments began to assert their prerogative to exert sovereign territorial control vis-à-vis migration. An examination of these dynamics in the lead up to the interwar years suggests that the strength of the transnational mobility norm depended largely on the extent to which it coincided or conflicted with London's overarching goal of maintaining imperial unity. So, when the largely white populations of the settler states threatened to seek greater constitutional independence if they were not allowed to write their own immigration laws, the Colonial office was keen to appease them (Colonial and Imperial Conferences, London, 1902, 1907, 1911, and 1917). However, this was always dependent on whether the settler states could ensure that their discriminatory practices would not cause too much trouble in those parts of the empire whose subjects would be affected by these laws—principally India ([Huttenback 1976](#)). Racially motivated laws were therefore coded in nondiscriminatory language and terms in order to preserve imperial unity.

The strong connection with imperial interests does not mean that intra-imperial mobility was a superficial norm or capable of being reinvented to suit whatever set of interests prevailed at the time. The rising power and increasingly assertive position of the government of India was crucial here. Indian politicians were deeply offended by the palpably racist but semantically neutral settler state laws that had been developed to curtail their freedom of movement within the empire. Indian representatives relatively meekly acceded to the first full statement of the sovereignty of states over immigration in resolution XXII of the Imperial War Conference of 1918.⁴ However, a few years later, Indian delegations staunchly resisted the efforts of the white settler-dominated government of Kenya to acquire similar prerogatives to prevent Indian immigration (Imperial Conference, London 1923). These factors help explain why the British government—increasingly concerned with the gradual fragmentation of empire—did not entertain similar changes to the immigration laws of the United Kingdom in the interwar and early post-WWII era but remained committed to nonracial immigration policy from its colonies until well after the Second World War. In the postwar era, the freedom (increasingly recognized as a “right”) to migrate to the metropole enabled the unregulated and multiracial migration of Commonwealth citizens to the United Kingdom, such that, by 1960, a multiracial community of nationals from Commonwealth countries had come to constitute some of the largest foreign migrant groups in the UK.⁵ As far as the Crown's European territory is concerned, it is difficult to speak of a national, territorial monopoly over migration prior to this point without simultaneously noting its continued mitigation by this transnational mobility norm.

In the British case, the key precedent-setting and transitional moves fall outside of the temporal and geographical parameters that Torpey's case identifies for the state's “monopolization of legitimate movement.” The nation-state's prerogative to control movement had to be slowly carved out within a system that recognized, first, the relatively unimpeded migration of all and then, that of the free movement of British subjects. While the norm of free movement was consistently being mitigated in the interests of acceding to emergent nationalist demands on the periphery, a more open and nonracial combination of sovereign territorial and transnational mobility norms prevailed in the metropole until the 1960s.

⁴The text of the resolution states: “it is an inherent function of the governments of the several communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities” ([Imperial War Conference 1918](#)).

⁵India (1st, 190,722), Jamaica (5th, 116,203), Canada (7th, 65,702), South Africa (9th, 46,296).

There are good reasons to expect that a similar chronology would apply to several other important European states. The nationality laws of other European empires during this period recognized the rights of various sets of colonial nationals to migrate and settle in the metropole and were only secondarily geared toward the project of constructing an exclusionary nation-state. In the French case, the preservation of the privileges of citizens' rights of movement provided for the repatriation of substantial numbers of colonial populations during the decolonization of Indo-China and Algeria (Cohen 1980; Heffernan 1995). In the Dutch case, significant numbers of Dutch colonists, soldiers of colonial origin, and colonized peoples possessed the right to movement within the empire up until, and in many cases subsequent to, processes of decolonization (Van Amersfoort and Van Niekerk 2006). We can observe similar migrations in the Portuguese and Belgian cases. In all these instances, metropolitan states that were still yet to define themselves as unitary territories were carving their independent privileges to regulate migration territorially within and against institutions designed for promoting transnational imperial mobility throughout the interwar era and after the Second World War.

To summarize, the critical junctures that have been held out as potentially significant in the extant literature significantly misrepresent developments in the place (Europe) and at the times (1648 and 1919–1939) where change is purported to have happened. This brief review of some of the main legal authorities that have been identified as having inaugurated a national, territorial, sovereign system of immigration control suggest instead that an abiding concern of European migration governance across the modern era has been the *promotion* of specific forms of mobility, including both religious and imperial forms. This critical assessment should not lead us to the conclusion that European actors or sites ought to be somehow marginalized from the way we examine the history of contemporary migration governance institutions, nor wholly replaced by a non-European counternarrative, but that the image of an enduring European pedigree consisting of multiple decisive moments ought to be significantly questioned. Furthermore, given the finding that Europe's evolving concern with the promotion of transnational mobility has been central to migration management at the very moments when we may have expected the "Westphalian" model to be most prevalent or ascendant, I suggest that our search for critical junctures ought to include an attempt to more closely observe key points of transition between prevailing norms of mobility promotion. It is with this in mind that I turn to the third potential critical juncture of 1957–1960.

Europe's Evolving Norms of Mobility Promotion: Was 1957–1960 a Critical Juncture?

Over the past half-century, migration policies in Europe have changed dramatically. According to the perspective adopted here, a highly significant change involved the abandonment of the institutions and laws that promoted transnational movement within colonial empires. An important and simultaneous development has been the rise of the principle of free movement of economic agents within a regional multilateral community—the EU. At present, only a small number of colonial or former colonial communities enjoy privileges of free movement, residence, and the right to work in European territories. Meanwhile, all European citizens enjoy such privileges throughout all the territories of the member states. My suggestion that this difference is important does not imply that territorial sovereignty norms have not gathered steam during this period nor that rulers "chose" to adopt regional over imperial mobility norms. Instead, I want to suggest that we cannot understand the relationship between European and global migration governance norms, if we do not pay attention to both the enduring commitment of European states to promoting transnational mobility and the dramatic difference between these two

combinations of norms, sovereign territorial/imperial and sovereign territorial/regional.

This account must necessarily begin with developments in the realm of empire. Imperial systems of migration governance, based in European hubs, were not simply privileges that European states granted to their subjects but responsibilities that imperial governments saw as fundamental to their preservation *qua* empire. Over the course of the twentieth century, the precise geographic and popular scope of European empires was changed many times through processes of conquest, independence, and decolonization. Different empires each adopted their own principles regarding who could move where and how they would be treated on arrival. Mobility within empires was never a universal right of all categories of people. However, the fundamental idea of ensuring that people could migrate within imperial jurisdictions was common to all. Even as European states began to build more nationally defined systems of citizenship and territorially defined privileges of residence and controls over mobility at national borders, several transnationally defined colonial populations remained immune to these controls.

The underlying ideological premises and material justification for this system were dramatically undercut in a few short years leading up to 1960 (Boswell 1989; Strang 1990; Philpott 2001; Reus-Smit 2011). After a string of decolonization moments in the postwar era, these years saw many other states accept the principle of national, territorial sovereignty as universal and—much to the chagrin of large constituencies within their empires—promote the rapid acquisition of territorial sovereignty by a range of states, many of which had previously been considered unlikely candidates for full statehood.

One of the main reasons why 1960 has been identified as a watershed moment is that—alongside the rapid-fire decolonization processes occurring in Africa—the ideals of decolonization were given voice in the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples. The preamble to this text, prepared and fought for by many of the members of the Non-Aligned Movement, noted, “the people of the world ardently desire the end of colonialism in all its manifestations.” The document also reiterates the territorial sovereignty norm several times. For example, Article 4 noted all people’s “right to complete independence, and the integrity of their national territory shall be respected.”

This document provides evidence of a significant challenge to intra-imperial mobility norms, specifically those that could be characterized as part of broader colonial projects, that is, the implanting of an outsider group within a specific territory for the purpose of advancing the political domination of the resident community. In the General Assembly debates on the declaration, this idea was given voice in critiques of the history of Western European colonial settlement⁶ and more recent “neo-colonial” settlement projects, whether these involved Russian settlement in Eastern Europe and Central Asia,⁷ Israel in Palestine,⁸ or the vexed question of whether United States military bases should be counted as colonies.⁹ The depth of the opposition to the ideal of colonial settlement was evident in the lack of support for Portugal’s attempt to defend its imperial enterprise on the grounds of its desire to preserve its strong and multiracial, transnational imperial community.¹⁰

⁶ United Nations General Assembly 1960. See the speeches by the delegations of Iran (990), Czech Republic (998), Ghana (1011), Poland (1023), Yugoslavia (1028), Bulgaria (1036), Burma (1053), Albania (1085), and Ecuador (1100).

⁷ United Nations General Assembly 1960. See the speeches by the delegations of New Zealand (1074), China (1141), United States (1157), Italy (1164), and Belgium (1176).

⁸ United Nations General Assembly 1960. See the speeches by the delegations of Saudi Arabia (1016), United Arab Republic (1048), Jordan (1057), Lebanon (1161), and Iraq (1172).

⁹ United Nations General Assembly 1960. See the speeches by the delegations of Ghana (1012), Romania (1078), Albania (1086), Ukraine (1107), Byelorussia (1120), Cuba (1167), and the USSR (1190).

¹⁰ United Nations General Assembly 1960. See the speeches by the delegations of Portugal (1115), Bulgaria (1037), Sudan (1131), and Indonesia (1155).

At the same time, the document did not really advance any firm understanding of the ideal type of movement control that the old or new territorially sovereign states ought to practice. Furthermore, the expression that territorial sovereignty was an inalienable right of all peoples did not, in and of itself, entail the end of imperial systems of mobility movement. Instead, the broader process of decolonization severely undermined one of the most basic justifications for maintaining a nonracial approach to the migration of imperial subjects/citizens to the metropole: the ideal of imperial unity.

Imperial free movement regimes collapsed soon after the end of the formal empire. Again, we can use the British case to help understand why. The British decision to end its free movement regime came hot on the heels of the UN Declaration. In the 1962 Commonwealth Immigrants Act (10 & 11 Eliz. 2 ch. 21), Parliament subjected nationals of Commonwealth countries to an immigration-permitting process. In line with the interpretation I have provided here, the move was perceived to be a momentous change to a longstanding principle, which involved the mother country following the example set by its settler dominions. In introducing the bill, the Conservative home secretary, “Rab” Butler, noted that

citizens of member-states have always been free to come here and stay here as long as they like. This has been a cherished tradition of the mother country, and there is little doubt that it has been an important link binding the Commonwealth together.¹¹

Nevertheless, he opined that it was time for the UK to face up to a reality to which the settled colonies and newly independent states had adapted long ago:

the House knows well that all other Commonwealth countries have power to restrict immigration and all of them, in practice, exercise this power either generally or in respect of citizens of particular Commonwealth countries . . . the Government have now come to the decision that the time has come for us to take some necessary powers.¹²

Crucially, this portrait of the bill as both the adoption of a colonial practice and the death of an imperial institution appeared to be broadly accepted by both sides of the debate. The major point of dispute regarded the Bill’s impact on the veneer of imperial unity. Given that the Conservative government—a stalwart of empire—was proposing the bill, this was a particularly powerful form of rhetoric for its opponents to deploy. For example, Patrick Walker, the Labour member for Smethwick opined that:

the net effect of all this will be an affront to all Commonwealth countries, whether pre-war or post-war—the whole lot—Australians, Canadians, West Indians and Indians will find that for the first time they are being investigated, detained and having to get vouchers under the discretion of the immigration officers.¹³

The racist character of the bill was a significant target of this line of critique, primarily because of the “bad optics” in relation to empire. Hence, the Liberal Party leader Clement Davies complained:

the Government may assert and reassert until they are black in the face that this is not intended as a colour bar, but nobody will believe them. Nobody in India, Pakistan and the West Indies will believe them. Nobody throughout Africa will believe them. What a situation it is when the Government are mistrusted by the countries and peoples for whom we were hitherto responsible!¹⁴

¹¹ House of Commons Debate (hereafter, HC Deb) November 16, 1961, 649: 687.

¹² HC Deb November 16, 1961, 649: 687–88.

¹³ HC Deb November 16, 1961, 649: 711.

¹⁴ HC Deb November 16, 1961, 649: 731.

Of course, in seeking to manage its internal racial tensions through territorial immigration control, the UK government was clearly merely following in the footsteps of its own settler colonies. This dynamic was most succinctly identified by the Labour Party leader Hugh Gaitskell, who predicted that: “I am sure that the Nationalists in South Africa will be rubbing their hands and saying, ‘You see, even the British are beginning to learn at last.’”¹⁵ As Gaitskell and the rest of the opposition knew, the United Kingdom was not different from its colonies in being immune from racism or the use of sovereign prerogatives to respond to prejudicial tensions. Its distinction was in having an empire worth maintaining a nonracial immigration policy for. It seems plausible to suggest that once this no longer appeared to be a future worth fighting for, the will to maintain the free movement regime dissolved—or at least lost hold in Parliament—and the power of racial prejudices was permitted to more fully shape national migration policy.

To briefly recap, the end of imperial systems of free movement came late in Europe itself, as Asian and African Empires rapidly collapsed in the post-World War Two period, and metropolitan governments curtailed the movement rights of former colonial peoples. These impacts of the decolonization processes on European principles of free movement occurred largely in isolation from the other momentous shift in immigration politics taking place at the time: the formation of the European free movement regime. This leads us to the next component feature of this critical juncture. For, while London had remained largely out of the process to that point, the original six member states of the European Economic Community (EEC) had already established regional free movement as a founding ideal of what would eventually become the European Union.

The Treaty of Rome established the priority of regional free movement over national territorial sovereignty. The Nordic and Benelux groupings as well as various bi-lateral partners had established free movement deals prior to the signing of this treaty. The Treaty of Paris of 1951, establishing the European Coal and Steel Community, had established the right to work in other countries and made provisions to ensure that workers in the relevant sectors would not be discriminated against on the grounds of nationality (Art. 69). However, the ECSC was silent on the question of whether those nationals could be legitimately prevented from traveling to, and settling in, another member state in order to take up such employment. By way of contrast, the Treaty of Rome was the first to frame free movement as a *right*. In making the freedom of movement a basic right of member states’ nationals, the treaty put states in the position of having to justify national immigration controls as exceptions to this rule.

This outcome was not a foregone conclusion. During the negotiations to formulate the treaty, the relationship between state sovereignty and regional free movement was formulated in a variety of ways. For example, the Spaak Report, written by an expert commission designed to translate the broad principles for setting up the common market at the Messina Conference, interpreted the conference resolution that forming the common market required the “gradual introduction of freedom of movement for workers” to mean that individual states ought to “increase annually the number of workers from other member States which it will allot to be employed” (*Comité intergouvernemental 1956*). One way of stating the difference between the report’s formulation and that which appeared in the final treaty is as follows: In the Spaak Report, national governments would have been expected to progressively deploy their powers vis-à-vis migration to the benefit of one another’s nationals, a proposal that did not go much further than being a regionally prejudicial application of guest-worker policies. In contrast, the final treaty formally denies that the state has a monopoly over immigration and hands a new set of institutions the power to adjudicate whether states’ provisional and temporary deployment of territorial

¹⁵ HC Deb November 16, 1961, 649: 801.

powers over cross-border mobility infringed Europeans' transnational mobility rights.

This shift in the framing of the freedom of movement came late in the day, and it is difficult to discern what combination of factors ultimately gave rise to the final position. One of the major interpretative difficulties here is that, much like the case of the UN Declaration, migration was not a core issue occupying the minds of decision-makers at the time. While states vigorously debated the institutional framework, customs provisions, and mechanisms for adjusting to the social impact of the treaties, their positions on free movement appear to have been characterized by less clearly defined interests and/or friction. The West German and Italian delegations tabled the issue ([Netherlands Ministry of Economic Affairs 1950](#)). The ideal of free movement then made it onto the agenda at Messina without much evidence of dispute ([1955](#)). The more limited notion of states gradually expanding their labor markets to community members appears to have only surfaced when an expert committee was tasked with the objective of deciding how free movement could be achieved in accordance with the principle of gradualism, which—acceding primarily to French concerns—the partners had agreed to adopt as a general rule ([Intergovernmental Committee 1955](#)). Following the same line of interpretation here, it is worth considering whether the absence of much consideration of the implications of such an extensive freedom are an indicator of the limits of the norm of sovereign territorial control over migration at the time. It is plausible to suggest that those framing the treaty did not realize the radical implications of such an expansive freedom because, in 1960s Europe, prior to the rise of immigration-control rhetoric after the OPEC crisis, they would have found it far easier to motivate for the adoption of transnational mobility norms.

The most significant legitimating work taking place at the negotiating table was not to differentiate the emerging norm on regional free movement from a national territorial counterpart. Of greater importance was how the treaty affixed the relationship between free movement and the prevailing system for the promotion of mobility in several member states—mobility within empire. Would these norms be mutually sustaining or competitive? This emerged as an issue in the discussions surrounding the association of “Overseas Countries and Territories” (OCTs) to the economic community. Late in the negotiations, the French delegation had insisted that its current and former colonies—and by extension those of the other members—be included as a vital part of the community itself. However, facing stiff opposition from the German, Italian, and Dutch delegations, France ultimately only formally proposed a partial and differentiated form of “association” between the six and these colonial dependencies ([French Delegation 1957](#)). In essence, this involved the incorporation of these territories in a customs union plus an EEC-funded development package to help the less developed partners establish a competitive position in the emerging market. The French never tabled a proposal including a more general freedom of movement between its African empire and regional community ([Interministerial Committee 1956](#)). Hence, while the treaty afforded the right of “establishment” for those seeking to move between the European Continent and the OCTs for the purpose of investment, freedom of movement for workers was to be left to the future signing of agreements between the EEC and the OCTs (Art. 135).

French assessments of their European partners' nationalist fears of immigration from Africa was one of the reasons behind this decision to exclude OCT nationals from free movement rights ([Franco-Belgian Interparliamentary Congress 1956](#), 5). At the same time, an emergent taboo against recolonization—similar to what we saw in the General Assembly debates on the rights of colonial peoples—was an equally important obstacle. Here, it is important to note that the French negotiators were concerned that free movement might result in the *disruptive migration of Europeans to Africa*. We find an illustrative example of this concern expressed by the French

minister for the overseas territories, Gaston Defferre, in a letter to his prime minister, Guy Mollet:

Given the overpopulation and underemployment in some European countries such as Italy, it is likely that this free movement could lead to fairly large movements of populations to the overseas territories . . . it is necessary to guard against an excessive flow that could lead to adverse psychological reactions, which would affect the evolution of indigenous social structures and lead to clashes between African and European. (Defferre 1956, 4)

With the situation in Algeria very much at the forefront of their minds, and with little support coming from representatives of the increasingly autonomous colonial peoples for the encouragement of new streams of European settlement, the French delegation never pushed for the full incorporation of the OCTs in this one crucial aspect of the EEC.

Once free movement within Europe was enshrined in the Treaty of Rome, it would gradually supplant intra-imperial mobility as Europe's dominant norm of mobility promotion. Free movement is not a universal or inalienable right of European nationals. It also took ten years to implement and a further two decades to result in the end of internal border controls and has only been gradually and partially extended across the continent. This gradual transition in Europe's norms of mobility promotion was paralleled by European nation-states' elaboration of their own forms of mobility promotion, particularly their foreign migrant worker and guest worker systems of the 1950s and 1960s and global norms on refugee protection. Particularly since the 1980s and 1990s, European states and the European Union have been innovators and entrepreneurs of exclusionary norms. However, in Europe, these latter processes have always been conditioned and constrained by the power of Europe's evolving mobility-promotion norms.

The differences are twofold. First, prior to 1957, new powers of exclusion were always developed with the implicit assumption that colonials be protected from enforcement. After 1957–1960 it was the—primarily white—European neighbors who would automatically be immune from these growing exclusionary powers of the state and by extension the growing exclusionary powers of the European Union as well. Second, prior to 1960, the sovereign state and/or the empire-state constituted the primary spatial template for problematizing international population movements and the locus of immigration control efforts. Over the course of the next several decades, as European institutions worked to translate the right of free movement into an area of free mobility, the continent of Europe itself began to loom large as an important divider between inside and out and as a location of immigration control.

Concluding Remarks

To summarize, in the sphere of migration, it does not appear to make much sense to think about contemporary norms of sovereign territoriality as the product of a long-term trend generated by dramatic shifts occurring in Europe. When we look at the moments when Europe was supposed to have created contemporary migration norms, we do not find compelling evidence of a shift toward sovereign territoriality but rather a repeated and evolving tension between this evolving norm and various transnational mobility norms. Furthermore, when we begin to look at how this tension has evolved over the course of the last century, Europe appears less as crucible and more as unique product—the recipient of forms of sovereign territoriality invented elsewhere and the product of a shift between more global imperial mobility norms and more local/regional counterparts. Racial discourses within and beyond Europe and the agency of actors outside of Europe played significant roles in determining the course of this transition, explaining why the imperial norm of

mobility promotion lasted so long and the geographical extent of the European free-movement norm.

It is worth reflecting critically on how this revised history changes our understanding of the nature of contemporary migration regimes. To some extent, my account joins up with extant critiques of this position, which view European integration as part of the emergence of a global regime that prevents unwanted migrations from the Global South to the Global North. My contribution here is to note how the understanding of Europe as the inventor of global migration governance rests on a misleading image of European precociousness. At the same time, the narrative also opens the door to an approach that gives less weight to Europe and the Global North in general as the makers of history. It seems important to consider an alternative possibility: that governments in the Global South have had openings to push for alternative arrangements. Budding nationalist movements in India helped to preserve the imperial free-movement norm. Colonial constituencies and postcolonial elites helped make the geographical extension of Europe's free-movement regime to colonial possessions an unfathomable idea. This study would suggest that critical analyses of emerging norms of migration management ought to pay more attention to the agency of these actors and perhaps ask how and in what ways they have helped or hindered the construction of our decidedly unequal global migration regime.

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