

FREEDOM OF MIGRATION: OXYMORON OR PARADOX?

Joanna Caytas

A Review of *Migration and Freedom: Mobility, Citizenship and Exclusion*

By Brad K. Blitz

(Cheltenham, UK: Edward Elgar Publishing, Inc., 2014), 256 pages.

Prospects for meaningful immigration reform grow ever more remote on the agenda of the U.S. Congress. \$46 billion was earmarked in 2013 for border security, a wastefully ineffectual increase of U.S. national debt.¹ Public interest in prioritizing educated tech workers or job-creating investors remains a footnote to an afterthought.² America: built on freedom of migration? A narrative's power does not necessarily depend on its truth. What if the problem lies within its relativity and had at its core not the migration of foreigners, but the immobility and inadaptability of its own poverty-stricken citizens?

Any serious look at freedom of movement will examine experiences elsewhere in the First World. That is why an analysis of European experiences and regulatory responses ranging from the sophisticated to the crude—even barbaric—matters to the parallel discourse in the United States. After all, the European Union (EU) was built on three axiomatic freedoms of movement: of goods and services, of capital, and of people. The final one, though, remained hindered by policy and never entirely left the drawing board of theory.

Acknowledging that national borders, discrimination based on citizenship, and notions of sovereignty will not die in our lifetime despite frequent obituaries eulogizing the nation state since World War II, scholar Brad K. Blitz has now addressed dimensions of international law and policy, political theory, and sociology in *Migration and Freedom: Mobility, Citizenship and Exclusion*. A noted expert on human rights, statelessness, public and social policy, migration, and post-conflict transition, Blitz conducted more than 170 field interviews over a decade to distill opportunities and challenges arising out of the ambiguous context of existing rights to free movement (and, more importantly, to settlement and establishment) shown through the lens of five case studies: Croatia, Italy, Slovenia, Spain/United Kingdom (UK), and Russia. His original study seeks to demonstrate how formal vs. informal and official vs. de facto restraints affect individual mobility and result in all new categories of citizenship in Europe, internal and external to the EU, within and across national borders.³

Specifically in each case study, Blitz examines Spanish doctors in the UK, European language teachers in Italy, displaced Serbs in Croatia, discrimination as a barrier to mobility in Slovenia, and intranational migration within Russia.⁴

Unsurprisingly, in a country spanning eleven time zones, Russia had already challenged civil liberties and urban economics during the Soviet era.

The study analyzes the individual opportunity cost of migration. Considering Spain's post-2008 mass unemployment, even qualified general practitioners and physician specialists seek professional careers within the stable framework of Britain's National Health Service.⁵ And they do it at significant cost. Since so few opportunities exist in Spain, those leaving the country stand little chance of returning at a later date to the Spanish labor market. Contacts are lost, and locals do all within their power to monopolize access to jobs.⁶

Some of the practices devised to circumvent foreigners' equal rights could almost pass as humorous. European language teachers in Italy routinely do not show up on public records of exam commissions. Instead, someone else signs student registers of attendance and exams to deprive them of a record of ever having worked in Italy as teachers, and formally, they are listed, for example, as "watermelon pickers" on public records.⁷ Even fundamental treaty provisions prohibiting discrimination on the basis of nationality, such as Article 18 of the Treaty on the Functioning of the European Union, are routinely ignored in practice, and the Court of Justice of the European Union has held on numerous occasions that EU nationals have not been treated fairly in job applications outside their home states, often despite many years of local residence.⁸ Nationality remains perhaps the single most contentious issue in the workplace.


The Council of Europe's European Convention on Human Rights, whose parties exceed EU membership and include Russia, broadly holds that the freedom of movement includes the right to liberty of movement, freedom to choose one's residence, and the right to leave one's country. The convention also protects citizens from expulsion.⁹

Civil war in former Yugoslavia displaced both ethnic Serbs and Croats in Croatia. Notable discrepancies emerged on their return: Vastly different access to housing, social services, and employment was based not only on ethnic identity but also on property ownership and time spent in exile, factors placing ethnic Serbs at a notorious disadvantage.¹⁰

Croatia's neighbor Slovenia took an even less camouflaged approach to disassociate itself from historic links with "Southerners" from the Balkans. By erasing more than 25,000 ex-Yugoslavian individuals of non-Slovenian ethnicity from its register of permanent residents, it created a new citizenship category of "erased persons," depriving them of the right to freedom of movement.¹¹

Since tsarist times, Russian authorities have required domestic travelers to show "domestic passports" when buying tickets for intrastate transit by air, rail, water, or road—not to mention for purposes of settling in a different municipality (the *Propiska* regime), especially in Moscow.¹² Many migrants flock to key economic

centers seeking employment, but also arrive under managed migration programs. In Russia's post-communist reorganization, the municipality of Moscow extended individual rights to foster greater freedom of movement and settlement, despite President Vladimir Putin's aim of recentralizing the government.¹³

The artifice of citizenship seeks to link private choices and freedoms with public policies and governance for the purpose of creating manageable social cohesion. In this equation, migration remains one of the least calculable, much less controllable factors. Blitz's timely study significantly expands our understanding of the multitude of ways through which freedom of movement and mobility rights indirectly affect access to other substantive rights. He shows that many of the claims made by scholars of interstate migration—such as differentiated access, polarization of labor markets, and creation of occupational hierarchies—apply in equal measure to migration within states.¹⁴ It is the concept of “otherness,” of alienage per se, that triggers them. 

NOTES

¹ Richard Cowan and Thomas Ferraro, “Senate backs border amendment to immigration bill,” *Reuters*, 26 June 2013, <http://www.reuters.com/article/2013/06/26/us-usa-immigration-idUSBRE95P0ZX20130626>; see also, Joseph Tanfani and Brian Bennett, “Border ‘surge’ plan would be financial bonanza for private firms,” *Los Angeles Times*, 8 July 2013, <http://articles.latimes.com/2013/jul/08/nation/la-na-adv-border-money-20130708>.

² See Allan M. Findlay, “Skilled Transients: The Invisible Phenomenon?,” in *The Cambridge Survey of World Migration*, ed. Robin Cohen, (Cambridge, England: Cambridge University Press, 1995), 515–22.

³ Brad K. Blitz, *Migration and Freedom: Mobility, Citizenship and Exclusion* (Cheltenham, UK: Edward Elgar Publishing, Inc., 2014), 13–17.

⁴ *Ibid.*, 57–58.

⁵ *Ibid.*, 61, 65, 69.

⁶ *Ibid.*, 72–73.

⁷ *Ibid.*, 77, 83.

⁸ *Ibid.*, 87. Notable cases in the European Court of Human Rights (ECtHR) include 33/88 *Pilar Allué and Carmel Mary Coonan v. Università degli studi di Venezia* [1989] ECR 1591; C-90/96 *David Petric and Others v. Università degli studi di Verona and Camilla Bettoni* [1997] ECR I-6527; C-119/04 *Commission of the European Communities v. Italian Republic* [2006] ECR I-6885; and C-276/07 *Nancy Delay v. Università degli studi di Firenze, Istituto nazionale per la previdenza sociale (INPS) and Repubblica italiana* [2008] ECR I-363.

⁹ Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, entered into force 3 September 1953, Europe. T.S. No. 5; 213 U.N.T.S. 221, as further specified by Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11, as further interpreted by substantial jurisprudence of the ECtHR thereunder. See also, ECtHR, *Guide on Article 5 of the Convention – Right to Liberty and Security*, http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

¹⁰ Blitz, 115–17. The described situation is independent from any actual war crimes and atrocities alleged and adjudicated by the International Criminal Tribunal for the Former Yugoslavia. *Cf., e.g., The Prosecutor v. Ante Gotovina*, Amended Indictment [2004] and *The Prosecutor v. Ante Gotovina and Mladen Markač*, Judgment, Appeals Chamber [2012].

¹¹ Blitz, 149–55, 157–59. See also, Constitutional Court of the Republic of Slovenia, *Decision in Case No. U-I-284/94* [1999] and *Decision in Case No. U-I-246/02* [2003]; ECtHR (Application no. 26828/06)

Case of Kurić and Others v. Slovenia, Judgment [2012].

¹² *Propiska*, a notorious and uniquely Russian requirement since Peter the Great, is both a residency permit and a bureaucratic tool for recording migration, functioning as an internal passport within the country for its own citizens. See Georgy Bovt, "The Propiska Sends Russia Back to the U.S.S.R.," *The Moscow Times*, 17 January 2013, <http://www.themoscowtimes.com/opinion/article/the-propiska-sends-russia-back-to-the-ussr/474085.html>; Blitz, 120–125. Cf. Russian Federation, Law of Freedom of Movement and Choice of Place of Residence within the Boundaries of the Russian Federation, (FZ 5242-1) [1993].

¹³ Blitz, 137–40. Nonetheless, the Russian freedom of movement regime presumably violates the International Covenant on Civil and Political Rights (Art. 12), U.N.T.S. 171, *entered into force* 23 March 1976; the International Covenant on Economic, Social and Cultural Rights (Art. 6), U.N.T.S. 993, *entered into force* 3 January 1976; and the UN Convention on the Rights of the Child (Articles 24 and 28), U.N.T.S. 1577, *entered into force* 2 September 1990.

¹⁴ Blitz, 186–91; s Thomas Faist, *The Volume and Dynamics of International Migration and Transnational Social Spaces*, (Oxford: Oxford University Press, 2000); Everett S. Lee, "A Theory of Migration," *Demography* 3, no. 1 (1966): 47–57; Saskia Sassen, "Spatialities and Temporalities of the Global: Elements for a Theorization," *Public Culture* 12, no. 1 (2000), 215–32; Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton: Princeton University Press, 2001); Daniel C. Turack, "Freedom of Movement and the Travel Document in Benelux," *International and Comparative Law Quarterly* 17, no. 1 (1968), 191–206; and Kathryn Wilhelm, "Freedom of Movement at a Standstill? Toward the Establishment of a Fundamental Right to Intrastate Travel," *Boston University Law Review* 90 (2010), 2461–95.