

European Migration Governance: From “Anything Goes” to the Need for an Ethical Code

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<http://abs.sagepub.com>**Ricard Zapata-Barrero¹****Abstract**

This article discusses the need for an ethical code for states in international migration management (IMM). IMM is interpreted as an ethical context characterized by moral dilemmas, insofar as it is difficult to irrefutably know if the decision to “allow entry” or “deny entry” of people is good and right. This calls for an applied ethics approach drawing a normative map in a world in motion, and then for an ethical code of practice regulating state behavior at three levels: admission policies, diplomatic relations with sending states, and inter-European state relations. The discussion is framed within the current five-year strategy of the EU Stockholm Programme and the migration policies of European states.

Keywords

ethics, governance, migration

[G]overnments have some duties (which might be quite extensive) towards their own citizens that they do not owe to citizens of other countries. . . . But this does not entail that anything goes. Generally speaking, my special obligation to my family does not legitimate lying, stealing, cheating or killing on their behalf.

—Barry (1986, p. 67)

How should liberal democrats think about the issues of immigration from a normative perspective? Every normative political theory or moral analysis has to satisfy two

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requirements: criticality and feasibility. On the one hand, moral language loses all its meaning if it does not provide some perspective from which to criticize prevailing practice. On the other hand, moral inquiry loses its point if it cannot guide practice. As the old dictum has it—ought implies can.

—Carens (1997, p. 3)

Introduction: The Need for a Normative Map in a World in Motion

Human mobility and migration toward liberal democratic states have significantly increased in the recent decades, with patterns of migration becoming more complex and diversified, and involving more countries. Within this framework, I advocate the need for a normative map in a world in motion, proposing an ethical code of practice (ECP) regulating state behavior at three levels: admission policies, diplomatic relations with sending states, and inter-European state relations.¹ In the current ethics of migration debate, there is a trend that seems to assume that the citizens' interests prevail over those of noncitizens.² It is here that ethical questions arise. Whelan (1988, p. 6) rightly argued,

May citizens, by virtue of their sovereign powers, enact a closed society, or, in what would seem to be a morally similar use of the same powers, set limits and criteria that are designed to ensure immigration serves the interests of themselves (and their descendants), the interests of those admitted being served in this fashion only indirectly?

This “reactive turn” raises questions related to the moral limits of state behavior, given the current “anything goes” situation,³ in which states act according to their own self-interest and always measure the effects of migration based on their conception of their citizens' good.⁴ Considering this normative situation in European terms, must we accept that only citizens are owed the right of morality? Or, in other words, can states also be moral toward those who are not their citizens? In this article, I first argue that with the increasing international human mobility, there is also a corresponding growing need to address these ethical questions. At this point, I base my argument on B. Barry's (1986) assertions of a few decades ago, even though they were not presented in today's context, and the critical thinking–viability nexus proposed by Carens (1997), both of which are discussed in this article.

Although my general argument should be applied globally, involving international institutions such as United Nations and/or UNESCO, and can also be of interest for other regions of immigration such as Australia, the United States, and Canada, I single out the EU context and the current Stockholm Programme (2009). My article is organized around four main sections. In the first section, I undertake an ethical review of current European migration governance to consider the *three ethical contexts* where

the potential ethical code, presented in the second section, can apply. Methodologically, these two first sections provide the basis for the third section, in which I deal with the justification for an ECP. Finally, in a concluding fourth section, I argue within the *critical thinking–viability nexus* that we cannot defend a code without having some considerations as to the restrictions and institutions that can ensure compliance.

The EU's Unaddressed Ethical Challenges: An Ethical Review of Current European Migration Governance

There is today a general discursive trend in Europe, in which national sustainability based on security, welfare, and identity arguments is the driving force behind European migration policies. This tendency is becoming increasingly explicit in the modern context of the European Union (EU), characterized by economic crisis and favorable conditions contributing to the rise of negative public opinion,⁵ the consolidation of the wave of nationalist state and identity-based discourse of most traditional political parties, and the rise in governmental use of legal instruments for limits on diversity (mainly opposed to Islam, such as the Swiss referendum to ban minarets in Muslim centers of worship, the recent French debate on national identity, and the French discussion on whether burkas should be banned in public).

In the European political debate, some governments and opinion framers advocating an exclusive nationalism define European identity in such a way as to repudiate the full range of immigration-related (ethnic, national, religious, or cultural) diversity (Modood, Triandafyllidou, & Zapata-Barrero, 2006). However, we know that a multicultural Europe exists (Triandafyllidou, Modood, & Meer, 2011; Vertovec & Wessendorf, 2010) and that a sense of European community is being defined by EU migration policies (Zapata-Barrero, 2009b). It has also been argued that migration control is directly linked to the process of building the normative contours of Europe (Zapata-Barrero, 2010a). In this context, the assumption that “anything goes” at the admission level seems to be taken for granted in current state practices. It is this silence that I would like to theoretically address and argue for the need for an ethical code for the EU and European states.

Moving from these discursive trends toward general new practices, in current European migration governance (EMG) we are experiencing a shift in government policy toward greater selectivity, border surveillance, and personalized control at the international and diplomatic levels among liberal and nonliberal regimes. The desire to limit migration to only the well qualified, categorized as the “good/best migrants,” and to construct the category of unskilled migrants as a problematic group is entering the mainstream (and also assumes that this differentiation also implies a relationship between best/good, and easy to integrate, and bad/worst and difficult to integrate); the acceptance of agreements with states of origin without considering that these countries are simply “trading with their citizens” in a new international relations paradigm in which migrants become commodities in a diplomatic trade-off is also becoming accepted as inevitable if “we” want “well-ordered” migratory flows and to regulate

them according to “our own” interests (the informal argument is as follows: “What can we do? We cannot accept everybody who wants to come in!”). One of the undesired effects of a differentiated migratory policy among the EU members is the creation of a competition between EU states to attract “the best migrants,” creating an “immigrant European market,” with dumping effects.

To sum up, first, admission policies, external and diplomatic relations with countries of origin, and internal relationships between European states are three practices that deserve ethical treatment. This has become even more justified within the current EU Stockholm Programme, with its explicit national citizenship-based approach, founded only on protection (a “Europe that protects” is one of its devices) legitimated within the so-called “EU holy trinity” of security, freedom, and justice.⁶ At this point we can ask, can we envisage at least some moral limits given the liberal values and principles of European national states? Must we accept that the sovereignty of national states must prevail in this “give and take” between the national and liberal dimensions of European member states? Are we not at the beginning of a “conflict” in our national liberal states between the national and the liberal way of legitimating the EU’s current migratory policies?

Given the current European context and the normative challenges it poses, I would like to suggest a tentative research program on the need for an ECP. I propose considering this line of research within a broader reflection on the three main “ethical contexts” mentioned above and to contextualize it within the current 5-year strategy of the EU Stockholm Programme, legitimating an “à la carte” migration policy (Collet, 2009).

As a basis for this ethical concern, I am also concerned that European states are acting as if they were private companies, making their criteria for selection public (the “right of admission reserved” of most public spaces), and there is also widespread European public opinion legitimating these practices without questioning precisely the fact that our liberal states are selecting by origin (Joppke, 2005) and are therefore rejecting the “unskilled” and “the poor” without any moral concern (“show me your CV, tell me your religious beliefs and give me your bank details” prevails over any other consideration).⁷ This selective and partial treatment is very difficult to argue from a standpoint of global ethics. Why is it that some people can enter and others cannot? What are the ideological references that justify inclusion and exclusion? How can the difference in treatment given to those wishing to “enter” be ethically justified? What ethical grounds can justify the refusal to admit the unskilled and poor to European countries? Crossing the border illegally is deemed a criminal activity. Are such interpretations always right? Or are there circumstances where illegal migration ought to be seen as an ethically justifiable action (Frost, 2009)?

As this article marks the beginning of a research program, I would like to cover at least three levels of analysis. At the level of *foundation*, I want to answer the following key questions: How can the need for an ECP for states be justified? Why is a European code of ethics necessary within the current EU Stockholm Programme? And how can it be justified? At the level of *method*, the basic questions are the following: Which methodology should we follow, a bottom-up (particularism) or a

top-down (universalism) model? What information should this ethical code be based on (demands from civil society, ethical theories, interviews with stakeholders, liberal traditions, and values)? What are the mechanisms for implementing this ethical code?

Finally, at the level of *effects*, the questions to be posed are these: What effects might an ethical code have on current state behavior toward people seeking entry? What restrictions should this code of ethics include? Is the (human) rights-based approach the most appropriate foundation for an ethical code, or should we consider other approaches? What institutions can ensure compliance with an ethical code for states?

Three Ethical Contexts

I interpret EMG as an ethical context insofar as it is difficult to know for certain whether the decision to “allow entry” or “deny entry” to people is good and right. I want to demonstrate the need to codify this context within the framework of applied ethics. In this article I am not interested in studying whether or not this selective policy works effectively, or why this kind of policy is being implemented here and now. Neither do I ask what attracts skilled immigrants to one country rather than another. Instead, my key questions seek to answer whether or not this current “anything goes” state behavior should continue, without any ethical restrictions, and why.

The EU’s official discourse since 2005 has advocated a global approach. This has led to a political desire to link migration to external relations and development cooperation policies, which has started to take shape within the so-called “mobility partnerships.” When looking at migration policy, however, it is clear that the objectives enshrined in the 1999 Tampere Programme (to develop a European approach on the conditions for admission and residence of third country nationals [TCNs] for employment and ensuring the principles of nondiscrimination and of fair and equal treatment) have not been fulfilled. The EU is not yet a common area of liberty, security, and justice. There has been insufficient and uneven progress in recent years because security has been given priority over human rights and liberty. The common policy on “legal migration” constitutes a domain where Europeanization has not reached the expected level of policy convergence (Wolff, Goudappel, & de Zwaan, 2011).

The Stockholm EU Programme basically has one main objective and *raison d’être*: building a citizens’ Europe. Immigration issues are seen as instrumental and procedural ways to reach this main 5-year objective. The previous communication is very clear: “an area of freedom, security and justice *servicing* [italics added] the citizen” (European Commission, 2009). This means at least four priorities: (a) promoting citizens’ rights—a Europe of rights; (b) making life easier—a Europe of justice; (c) protecting citizens—a Europe that protects; and (d) promoting a more integrated society for the citizen—a Europe of solidarity. As shown in Table 1, I consider three ethical contexts, which answer three main ethical decision-making questions: Who enters and how many (first admission)? What are the moral limits to external and diplomatic relations? and How can national migration policies affect internal relations among EU member states?

Table 1. Three Ethical Contexts

Ethical context	Topics (practical examples)
Who enters and how many? First admission	<ul style="list-style-type: none"> • Immigrant selection—Highly skilled migrants and brain drain • Blue card • Biometrics
What moral limits to interstate relationships? External and diplomatic relations (bilateral/multilateral relations)	<ul style="list-style-type: none"> • Agreements with nondemocratic and nonliberal states • Externalization of policies (surveillance technologies: Frontex, visa policies) • Return policies, conditionality, and safe third country
How can national migration policy competency affect ethical treatment of migrants and their societies of origin? Internal relations between EU member states	<ul style="list-style-type: none"> • Competency among national migrant policies such as regularization programs, aggressive attraction of skilled migrants • Internal movement of immigrants • Europe of solidarity

Source: Author's research.

Ethical Context 1: First Admission

States' selective migration policies are often based on sectors (e.g., nurses) or skill-based distinctions (such as technicians). These terms are essentially related to discriminatory and utilitarian approaches (Carrera & Faure Atger, 2009), contributing to a diversified normative patchwork of rights and administrative procedures for TCNs in the EU, which is further reinforced by the silence over the fate of undocumented migrants.

Demand for skilled workers not only involves ethical issues around the commodification of human beings but also has consequences in terms of degrees of development and poverty reduction in the countries of origin. Decapitalization and loss of educational investment made in skilled migrating workers may be considered a two-fold loss for their homelands. First, the loss of skills and knowledge can lead to a decrease in productivity and prevent institutional change; second, the states lose the initial investment made when educating these individuals.

As a result of these policies, between one third and one half of researchers born in developing countries live in developed countries.⁸ The results are clear if we accept the importance of human capital in achieving sustainable development. This is particularly evident if, for instance, we take into account the health sector, where the brain drain occurs, and in which international recruitment of health personnel has become the norm.⁹ The resulting differential treatment is applied according to the individual's purported profession on arrival in the EU. The recently adopted Blue Card Directive is the most recent translation of this approach (EurActiv, 2009). It establishes a

common fast-track and flexible procedure for the admission of only third-country workers considered “highly qualified employees” and their family members, thus justifying a questionable disparity in the treatment of workers not falling within the privileged category of “highly skilled.”

EU policy is therefore heavily influenced by some member states’ immigration legislation, which is driven by a prominent selective and demand-driven approach toward managing human mobility. The EU blue card for high skilled migrants and biometrics are now new surveillance techniques. Biometric identifiers are pieces of information that encode a representation of a person’s unique biological makeup (e.g., fingerprints, retinal scans, voice scans). For some governments, utilizing these has improved security when issuing passports, visas, and residence permits (International Organization for Migration [IOM], 2004).

Wolff (2008) addresses the ethical challenges posited by the EU’s ambition to pursue internal security objectives in its territory, basically focusing on technological surveillance and the consequence of exporting border management to authoritarian regimes while at the same time promoting fundamental democratic values in its foreign policy. This extraterritorialization of the management of internal security to authoritarian regimes is not a unique argument, nor is the privatization of parts of the immigrant selection process to private firms as well. At this point, ethical responsibility issues arise for the EU member states that are willing to delegate, export, or extraterritorialize the management of their internal security to authoritarian regimes. The EU might be losing sight of the intermediate dimension of the rule of law, which lies between respect for its fundamental value internally and promotion of it externally (Wolff, 2008). The Foucauldian nexus between security and freedom shows that surveillance and technologies are not neutral tools (Bigo, 2005). They are shaped by the EU and its member states to define its own identity as well as the specific ways in which free movement can be exercised within the EU and between the union and its external environment (Huysmans, 2004, in Wolff, 2008).

This can have some normative implications, which are also founded on human rights principles, for the way that states are increasingly focusing their policy on preventing people from moving. Moreover, as an empirical example, we have not only the practice of conditionality,¹⁰ but also the new concept of the safe third state,¹¹ which allows European states to return unwanted migrants to third countries under bilateral agreements. The bilateral approach offers governments considerable flexibility because the terms of each agreement can be tailored to the circumstances of the countries concerned. However, these agreements should not be used to avoid or deflect obligations under international treaties or customary law, such as those related to refugees. Furthermore, in terms of international migration governance (IMG), keeping track of the implementation of multiple agreements with different provisions adds to the administrative burden. It may be necessary to develop national mechanisms to ensure the implementation of bilateral agreements and to facilitate the dissemination and understanding of the provisions of the bilateral agreements that are in force.

Ethical Context 2: Diplomatic Relations

The first argument here is that there is a proliferation of agreements with nonliberal democratic states. In other words, the state practice of externalization of migration policies is increasing.¹² Externalization involves not just conditionality practices and new notions such as third safe countries, asymmetrical power relationships, and extending the remote control approach (Zolberg, 1999), or *remote policies*,¹³ which in practice means preventing people from leaving (a new phenomenon instead of the old one: preventing people from entering). This conceptually involves separating two terms that initially were considered interchangeable: border management and flows management. The external dimension introduces also a new actor in migration policies that was previously underestimated, the states of origin, which begin to play an active part in the flows–border policy nexus (Aubarell, Zapata-Barrero, & Aragall, 2009).

The externalization of immigration policies has its advantages in terms of managing flows more efficiently. However, there has been criticism as to how the external dimension is affecting the third countries and migrants—particularly those in need of international protection. Furthermore, the EU's approach in migration matters has been labeled needlessly Eurocentric, in that it benefits only the union and its member states.¹⁴

As a result of increased nationalism, the legal and societal constraints of the liberal democratic member states when limiting migration are also to some extent present at the supranational level (Lavenex, 2006). Many of those taking part in the debate on externalization have criticized the one-sidedness of the EU's approach to migration in that it emphasizes control as opposed to the more comprehensive liberal agenda linking migration and development that the European Commission and Parliament advocate, and the fight against irregular migration. By focusing on control, it neglects other important aspects of immigration such as the promotion of legal migration and humanitarian aspects. In addition, the Eurocentric approach hardly takes into account the needs of the sending countries, which already suffer from inequalities and insufficient infrastructures.

There is clearly a contradiction between a state's sovereignty when selecting migrants and the responsibility that the developed countries have toward undeveloped nations in the context of human rights. Dover (2008) notes that some aspects of the EU's approach to migration are not consistent with the Declaration of Human Rights and the EU Treaty (which is based on UN declarations). According to the international declarations, the EU should either help people in their region of origin or grant them access to the EU member states. By placing the responsibility on governments in the sending countries, the EU risks ignoring its own responsibilities toward third countries and also misses the opportunity to import much needed migrants for labor. An example of the shifting of responsibility is the case of readmission agreements. The difficulty of cooperating with third countries in issues related to migration from the point of the rule of law in some sense highlights the lack of shared standards and guarantees between the parties in the agreement.

Ethical Context 3: Internal EU Member States' Relations

This dimension, albeit underdeveloped in European immigration studies, is indeed taken into account in the document preparing the Stockholm Programme, “Promoting a More Integrated Society: A Europe That Displays Responsibility and Solidarity in Immigration and Asylum Matters” (European Commission, 2009). Effective management of migratory flows is one of the greatest challenges that the EU faces in the coming years, especially in the context of an ageing population, and the financial crisis in Europe. Immigration plays an important role in the growth of the EU population and will make a crucial contribution to the EU’s economic performance in the long term. The formulation of a common immigration and asylum policy will be a top priority in years to come, as the commission declared in its communication of June 2008. Solidarity is a concept that is of growing importance on the EU migratory agenda and remains at the center of the common policy, and as such the EU should provide more support to the member states most exposed to migratory pressure. The so-called *Europe of solidarity* must be understood in terms of solidarity among the member states, rather than solidarity among all those who live in the EU.

Some common criteria should be established to avoid regulatory competition for skilled migrants. An unfair competition is taking place that favors decapitalization in the economic, social, and cultural codes of the underdeveloped countries. Classic examples of this migratory dumping are favorable tax policies (e.g., in Denmark) for highly skilled workers, creating dangerous dynamics of tax competition, and a public call for Spanish nurses by Germany.¹⁵ This trend can have negative impacts on the development of the welfare state and on the economies of other member states to foster knowledge economies at the expense of the rest. There is also the notion of *sharing of responsibilities and solidarity among Member states*, which means that there should be a true sharing of the responsibility for hosting and integrating refugees.

Having performed a brief ethical review of current EU practices, we now turn to the foundation for an ECP.

Founding an ECP

To found an ECP, let us first consider the sources of information, then consider the basic features, and finally propose a specific method.

Sources for Defining Ethical Standards

A decision or action needs to conform to certain standards to be considered ethical. In this respect, the standards that we take into account are not universal—either consequentialism, deontologism, rights, justice as fairness, common good, or virtue ethics¹⁶—but instead are international standards arising from international institutions and global civil society.

In this first decade of the 21st century, there has been growing interest among global institutions and international civil society to put IMG on the world agenda. One of the first international reports to directly address the way states are managing migratory flows is very recent, "Migration in an Interconnected World: New Directions for Action" (Global Commission on International Migration, 2005). These international institutions are becoming new actors deploying reports that define limits on states' behavior and proposing new approaches such as the migration–development nexus and now the right-based approach and the need for good governance (International Labour Organization [ILO], 2010). These reports have already been analyzed as international discourse by Pécoud (2009).¹⁷ They can indeed constitute the primary source for drawing up an ECP. The second source of information is the global civil society arguments put forward by international NGOs such as World Social Forum on Migrations (the first also dates back to 2005, in Porto Alegre), Amnesty International, Red Cross, and even the European Network Against Racism. In Table 2, we summarize the most influential international reports coming from both sources.

Table 2. Two International Sources of Information for an Ethical Code of Practice

International institutions

Global Commission on International Migration (2005), "Migration in an Interconnected World: New Directions for Action"

International Organization for Migration, World Migration Report (2000, 2003, 2005, 2008)

UN High-Level Dialogue on International Migration and Development (2006)

United Nations Development Programme (2009), "Human Development Report 2009: Overcoming Barriers: Human Mobility and Development"

International Labour Organization (ILO, 2006), "ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration"

Global Migration Group (2008), "International Migration and Human Rights Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights"

ILO (2010), "International Labour Migration: A Rights-Based Approach"

Global civil society

Global Forum on Migration and Development, 2007 (Brussels), 2008 (Manila), and 2009 (Athens)

World Social Forum on Migrations, Porto Alegre (2005), Rivas (2006), and Rivas (2008)

Amnesty International (2008), "Migration-Related Detention: a Global Concern"

Amnesty International (2007) "Migration-Related Detention: A Research Guide on Human Rights Standards Relevant to the Detention of Migrants, Asylum-Seekers and Refugees"

International Federation of Red Cross and Red Crescent Societies (2009), "Annual Report: Migration"

European Network Against Racism (2009), "15 Principles for Framing a Positive Approach to Migration"

European Network Against Racism (2007, 2008), "Shadow Reports on Racism in Europe"

Source: Author's research.

When considering these reports as a whole, the migration that interests us is the one that goes from nonliberal to liberal states, rather than migration within liberal democratic states, with advanced economies and well-consolidated welfare systems. Even some international reports maintain that some migration patterns, such as skilled workers and recruitment of health personnel, are a serious impediment to achieving some of the eight UN *Millennium Development Goals* (<http://www.un.org/millenniumgoals/>; see World Health Organization, 2008). In general, these international reports agree on the diagnosis and ethical challenges of IMG.

From a perspective of *diagnosis*, international migration is driven by necessity, and the fact that people use their “exit option” is seen as an anomaly in a world of delimited states. International migration is usually a response to differentials and disparities. When people decide to migrate, it is normally because they want to leave behind the constraints and insecurities they face in their own country, and because they believe that better conditions and opportunities are available elsewhere. The current situation is that the push factors continue to be disparities in income, wealth, and human rights and personal security protections across countries, as well as push factors such as skill-intensive economic sectors, the increased demand for skilled workers, and demographic trends such as population decline and aging in most reception countries. The driving forces in international migration have already been described by the Global Commission on International Migration (2005) in terms of three Ds: development, demography, and democracy. From a point of view of *challenge*, there is at least one dimension: individuals’ mobility acts as a factor in growth and development, creating win–win scenarios—the so-called human-rights-based approach.¹⁸

Bearing in mind the approaches related to diagnosis and challenge, the key question posed by most international reports (such as ILO, 2010) is which values, principles, and guidelines can be developed to govern international migration, given that the absence of a multilateral framework to govern cross-border movements of people has created or exacerbated a number of problems (ILO, 2010). Bilateralism, that is, an international traditional practice involving only two states, not only must be the last resort but also must always be justified in terms of both countries formalizing cooperative arrangements under conditions that are mutually beneficial to the countries involved (UN General Assembly, 2006). However, it is the most common practice involving an asymmetrical relationship not only in terms of power and socioeconomic disparities but also within their capacities to respond politically to the same phenomenon (Aubarell et al., 2009).

Given the sources proposed, why is an ECP necessary within the current EU Stockholm Programme, and how can it be justified? I try to answer these questions in the following section.

Basic Features of an ECP for EMG

An ECP seeks to define ethical standards applicable to governments and all stakeholders and administrations with a role in EMG. It seeks to frame action and discus-

sions and to act as an evaluative framework for benchmarking. We define an ECP as a set of principles and guidelines that are designed to set out acceptable behaviors for governments. Some basic features need to be highlighted from a conceptual point of view.

1. The code covers state management processes and resources. By management processes, we basically mean voluntary state mechanisms to implement admission and exclusion according to values of transparency, avoiding migration dumping between states and any competency for attracting aggressively migrants, as well the creation of an ethical commission for substantive discussion of aims. By resources, we basically mean knowledge and information sharing among European member states, and between origin and reception states, if the security of migrants is not at stake.
2. The code condemns the current practice of conditionality in the trade-off between states of origin and states of reception, as well as the assumption of the safe third state.
3. The code condemns bilateral relations with nonliberal and authoritarian states, and diplomatic agreements with the direct/indirect aim of preventing an exit option for migrants.
4. The code seeks to apply EU nondiscrimination and equal treatment of migrants at an internal level and condemns any negative effect they may have on migrants and their societies of origin because of national migration policies.
5. The code establishes ethical constraints to protect societies of origin and migrants. It achieves the ethical objective of protecting migrants against state actions when the migratory process is not planned between both states, or even against selection by states using their right of admission as if it were a private agency, as well as protecting developing countries' weak education, economic, and health systems from a brain drain, aggressive recruitment from European states, and even dumping migration between European states.
6. The code promotes the creation of a European ethical commission and ethical national contact points as the main institution supervising compliance.

Method: The Principle of Coherence: A Third-Way Approach Between Universalism and Particularism

Methodologically, an ECP seeks to follow the principle of coherence or *coherentism* (Beauchamp, 2005),¹⁹ presented as a third-way approach (this expression is mine) between the top-down (principles and theories, universalism) and the bottom-up (cases, specific criteria, particularism) approaches.²⁰

The method consists of working back and forth between conflicting interests on particular topics, as is the case when defining a common immigration policy at EU level. The principles or rules that govern particular interests need to be revised

wherever necessary to achieve acceptable coherence between them. Acceptable coherence requires not only the interests to be consistent with each other but also some to provide support or a best explanation for others. When applied as a method for constructing an ECP, it seeks to test liberal principles in practice to make them as coherent as possible and ensure “good governance” (ILO, 2010). It is a continuous test between general liberal commitments and considered state practices in IMG. It is a method of adjusting principles and practices.

If we accept that this method can be a tool for orienting the process of common European ethical framework, we first need to map what needs to be balanced (see Table 3). Using international discourse (institutions and global society), we can at least identify the following interests at play, organized within the three ethical contexts, which need to be developed further in the next step of this research program.

If we apply this *coherentism* when analyzing the Stockholm Programme (since 2009) and its action plan (April 2010), taking into account this first normative map, we can conclude that the program is unbalanced. One driving force of the new program is to defend the rights of only European citizens. Indeed, it is partiality rather than impartiality that governs the program. This citizenship approach is a conservative way of making sovereign nation-states the only legitimate institutions for defining the rights-based approach, while leaving TCNs to one side.

Having justified the ECP and mentioned its basic features, I conclude by suggesting how to deal with what we call the critical thinking–viability nexus.

Table 3. Normative Map of Balanced Interests in International Migration Governance

Ethical Context 1: Admission level	<ul style="list-style-type: none"> • Balance between security enhancing measures (such as border controls) and human rights • Balance between state and EU interests: States are often reluctant to implement measures that conflict with issues related to national sovereignty: the right to determine who has the right to enter, live, and work in their territory • Balance between citizenship interests and immigrants’ interests; both interests are the basis for a nationalistic and cosmopolitan approach since the dividing line between them is nationality as criteria of belonging to one national community or to the whole world community
Ethical Context 2: Diplomatic relations	<ul style="list-style-type: none"> • Balance between unilateral and multilateral relations between EU institutions and countries of origin and transit • Balance between the negative effects of migration in reception countries and their positive effects in demographic, welfare, and economical terms, as well as cultural terms (root cause perspective)
Ethical Context 3: Inter-European states relationship	<ul style="list-style-type: none"> • Balance between member states’ conflicting interests in some decisions concerning international migration governance

Source: Author’s research.

Concluding Remarks: The Critical Thinking–Viability Nexus

What is of interest to me is the use of Wright's suggestive analytical distinction among desirability, viability, and achievability (Wright, 2007, p. 28). Combining all the components, his argument is that "not all desirable alternatives are viable, and not all viable alternatives are achievable." In the exploration of desirability, one asks the question, "What are the moral principles that a given alternative is supposed to serve?" At this point, we enter the field of normative political theory. Its material consists of abstract principles rather than institutional arrangements. The study of viability "is a response to the perpetual objection that radical egalitarian proposals 'sound good on paper, but will never work'" (Wright, 2007, p. 28).

One of the most contested issues within the ECP debate is to ensure not only the acceptance but also the implementation of a code of conduct, that is, to move from desirability to achievability. Ethical codes are generally nonbinding instruments. They merely set out guidelines for action and encourage the setting of voluntary standards to promote an equitable balance between a set of conflicting interests. For Barry (1986), compliance is related to the morality of states. If states are not considered to be moral, then they hold no obligation and duties to anybody. But as he also points out, whatever the answer we give to the question "Can states be moral?" the fact is that not "everything goes." It is in between these two extremes that an ECP can be justified.

The balance between constraints and compliance can be ensured only by an institutional body responsible for preparing and evaluating compliance with this ECP: a European ethical commission for EMG. This structure will by its very presence certainly be a factor in states' behavior and play the role of highlighting unethical state practices and restricting the current "anything goes" situation. The diagnosis and challenge lies here, and I hope to have provided meaningful justification thereof. Within the ethics of migration debate, the need for an ECP deserves some reflection.

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Notes

1. It is true that this is an analytical distinction since the last two levels can be blurred. In Europe, there are also sending and receiving states. Some of my colleagues, after reading the first drafts of this article, and even the peer reviewer suggested to me why the issue of integration is not examined as a fourth ethical context at least as relevant as the three chosen. I obviously agree on the potential of this framework, making it more

comprehensive, but I have to say that the focus and the content that follows would certainly need to be readapted since my starting premise is migration and not integration, that is, the situation in which the state has to manage human movement. However, I take this suggestion seriously and consider that a most *comprehensive ethical code* also needs to be considered and then used to identify ethical tensions at the integration process.

2. See the bibliography in Zapata-Barrero (2010b).
3. Someone rightly could argue that today, the situation is not really “anything goes” since there is international law, for example, and courts, which control states’ behavior to some extent. However, the scope of state action is wide enough to justify this “anything goes” premise.
4. The question of the limits of the liberal state was considered in a recent special issue of the *Journal of Ethnic and Migration Studies* edited by Adamson, Triadafilopoulos, and Zolberg (2011). Also see Parker and Brassett (2005) and the applied ethics on immigration in Miller (2005) and Blake (2007).
5. See Zapata-Barrero (2009a) and the bibliography given there.
6. See Wolff and Zapata-Barrero (2011). On the Stockholm Programme, see the first critical analysis in Carrera and Faure Atger (2009), Collet (2009), Bigo and Jeandesboz (2009), Wolff (2010).
7. Here I use the relevant cosmopolitan starting premise of Zolberg in this volume: The most interesting critical analysis is not so much who is admitted, but who is left out. Also see Zolberg (1999).
8. However, the World Bank considers these data to be exaggerated and estimates the loss at 10% of the most educated in 22 countries of the 33 countries for which data can be estimated.
9. There is a great deal of literature on these topics. See, among others, World Health Organization (2008), Transatlantic Academy (2009), Martineau, Decke, and Bundred (2004), Scott, Whelan, Dewdney, and Zwi (2004), Mountford and Rapoport (2007), Pagett and Padarath (2007), Stubenrauch (2008), Buchan (2008), and Stilwell (2009).
10. The conditionality approach describes the use of conditions attached to a bilateral agreement in international relations. As applied to migration policy, it is quite new and has become a controversial concept: the European Community seems to be unproblematically endorsing the idea that development aid should be made conditional on would-be beneficiaries’ assistance with the return and repatriation of “unwanted” immigrants. Here, questions such as “should rich countries link aid with the cooperation of migrant-sending countries to try to limit emigration and accept the return of their nationals?” make sense. Conditionality as an approach appeared directly for the first time in Seville, Spain, in June 2002, when some EU leaders wanted to impose sanctions against “uncooperative countries in the fight against illegal immigration.” Wolff (2008) talks about the “conditionality game” between hosts and countries of origin; and Carrera and Hernández (2009) use the euphemism “conditionality or levels of commitment that third countries will need to demonstrate to the European Community (EC) to benefit from the regime envisaged by the partnerships.” On the approach in general, also see Lavenex (2008).

11. According to the International Organization for Migration (2004), a *safe third country* is considered by a receiving country to be any country other than the country of origin, in which an asylum seeker has found or might have found protection. The notion of the safe third country (protection elsewhere/first asylum principle) is often used as a criterion of admissibility in the refugee determination procedure. Also see John-Hopkins (2009) and Morgades (2010).
12. See Aubarell, Zapata-Barrero, and Aragall (2009) and the bibliography given there.
13. This term comes from Bigo and Guild (2005).
14. See, among others, Boswell (2003), Lindström (2005), Van Munster (2005), Lavenex (2006), Debenedetti (2006), Rodier (2006), Rijpma and Cremona (2007), Wolff (2008).
15. This analysis has become extended since the EU enlargement. See, for instance, Moravcsik and Vachudova (2003).
16. See Markkula Center for Applied Ethics (2010).
17. Also see Geiger and Pécoud (2010). See also Levatino and Pécoud in this Volume.
18. See international reports, such as the UN High-Level Dialogue on International Migration and Development (2006) and the Global Forum on Migration and Development (2007, 2008, 2009), maintaining the protection of human rights as a categorical imperative (de Guchteneire, Pécoud, & Cholewinski, 2009).
19. Because of length restrictions, I cannot further develop this method, which would obviously need more details and theoretical foundation. But at this stage, my interest is to show the driving logic of its principle of coherence and the strength of the ethical code of practice by taking care of how the information establishing its content is articulated.
20. This universalism/particularism logo can also have different versions, such as the treatment by Joppke (2005) in his *Selecting by Origin*, in which universalism is a liberal principle and particularism is national interests. Both liberalism and nationalism are dimensions of the modern state.

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